
SENATE BILL 5216

State of Washington

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2009 Regular Session

By Senators Carrell, Brandland, Stevens, Oemig, Swecker, Pflug, King, Schoesler, Delvin, Tom, and Shin

Read first time 01/16/09. Referred to Committee on Judiciary.

1 AN ACT Relating to body armor; amending RCW 9.94A.728; reenacting
2 and amending RCW 9.94A.030 and 9.94A.533; adding a new section to
3 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 2008 c 276 s 309, 2008 c 231 s 23, 2008
7 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as
8 follows:

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

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

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

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

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

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

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

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

15 ~~((+6))~~ (7) "Community custody range" means the minimum and maximum
16 period of community custody included as part of a sentence under RCW
17 ~~((9.94A.715))~~ 9.94A.701, as established by the commission or the
18 legislature under RCW 9.94A.850.

19 ~~((+7))~~ (8) "Community protection zone" means the area within eight
20 hundred eighty feet of the facilities and grounds of a public or
21 private school.

22 ~~((+8))~~ (9) "Community restitution" means compulsory service,
23 without compensation, performed for the benefit of the community by the
24 offender.

25 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

26 ~~((+10))~~ (11) "Conviction" means an adjudication of guilt pursuant
27 to Title~~((s))~~ 10 or 13 RCW and includes a verdict of guilty, a finding
28 of guilty, and acceptance of a plea of guilty.

29 ~~((+11))~~ (12) "Crime-related prohibition" means an order of a court
30 prohibiting conduct that directly relates to the circumstances of the
31 crime for which the offender has been convicted, and shall not be
32 construed to mean orders directing an offender affirmatively to
33 participate in rehabilitative programs or to otherwise perform
34 affirmative conduct. However, affirmative acts necessary to monitor
35 compliance with the order of a court may be required by the department.

36 ~~((+12))~~ (13) "Criminal history" means the list of a defendant's
37 prior convictions and juvenile adjudications, whether in this state, in
38 federal court, or elsewhere.

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

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

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

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

24 ~~((14))~~ (15) "Criminal street gang associate or member" means any
25 person who actively participates in any criminal street gang and who
26 intentionally promotes, furthers, or assists in any criminal act by the
27 criminal street gang.

28 ~~((15))~~ (16) "Criminal street gang-related offense" means any
29 felony or misdemeanor offense, whether in this state or elsewhere, that
30 is committed for the benefit of, at the direction of, or in association
31 with any criminal street gang, or is committed with the intent to
32 promote, further, or assist in any criminal conduct by the gang, or is
33 committed for one or more of the following reasons:

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

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

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

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

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

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

13 ((+16+)) (17) "Day fine" means a fine imposed by the sentencing
14 court that equals the difference between the offender's net daily
15 income and the reasonable obligations that the offender has for the
16 support of the offender and any dependents.

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

22 ((+18+)) (19) "Department" means the department of corrections.

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

31 ((+20+)) (21) "Disposable earnings" means that part of the earnings
32 of an offender remaining after the deduction from those earnings of any
33 amount required by law to be withheld. For the purposes of this
34 definition, "earnings" means compensation paid or payable for personal
35 services, whether denominated as wages, salary, commission, bonuses, or
36 otherwise, and, notwithstanding any other provision of law making the
37 payments exempt from garnishment, attachment, or other process to
38 satisfy a court-ordered legal financial obligation, specifically

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

5 ~~((+21+))~~ (22) "Drug offender sentencing alternative" is a
6 sentencing option available to persons convicted of a felony offense
7 other than a violent offense or a sex offense and who are eligible for
8 the option under RCW 9.94A.660.

9 ~~((+22+))~~ (23) "Drug offense" means:

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

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

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

19 ~~((+23+))~~ (24) "Earned release" means earned release from
20 confinement as provided in RCW 9.94A.728.

21 ~~((+24+))~~ (25) "Escape" means:

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

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

31 ~~((+25+))~~ (26) "Felony traffic offense" means:

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

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

4 ~~((+26+))~~ (27) "Fine" means a specific sum of money ordered by the
5 sentencing court to be paid by the offender to the court over a
6 specific period of time.

7 ~~((+27+))~~ (28) "First-time offender" means any person who has no
8 prior convictions for a felony and is eligible for the first-time
9 offender waiver under RCW 9.94A.650.

10 ~~((+28+))~~ (29) "Home detention" means a program of partial
11 confinement available to offenders wherein the offender is confined in
12 a private residence subject to electronic surveillance.

13 ~~((+29+))~~ (30) "Legal financial obligation" means a sum of money
14 that is ordered by a superior court of the state of Washington for
15 legal financial obligations which may include restitution to the
16 victim, statutorily imposed crime victims' compensation fees as
17 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
18 drug funds, court-appointed attorneys' fees, and costs of defense,
19 fines, and any other financial obligation that is assessed to the
20 offender as a result of a felony conviction. Upon conviction for
21 vehicular assault while under the influence of intoxicating liquor or
22 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
23 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
24 legal financial obligations may also include payment to a public agency
25 of the expense of an emergency response to the incident resulting in
26 the conviction, subject to RCW 38.52.430.

27 ~~((+30+))~~ (31) "Most serious offense" means any of the following
28 felonies or a felony attempt to commit any of the following felonies:

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

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (h) Indecent liberties;

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

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

7 ~~((+31+))~~ (32) "Nonviolent offense" means an offense which is not a
8 violent offense.

9 ~~((+32+))~~ (33) "Offender" means a person who has committed a felony
10 established by state law and is eighteen years of age or older or is
11 less than eighteen years of age but whose case is under superior court
12 jurisdiction under RCW 13.04.030 or has been transferred by the
13 appropriate juvenile court to a criminal court pursuant to RCW
14 13.40.110. Throughout this chapter, the terms "offender" and
15 "defendant" are used interchangeably.

16 ~~((+33+))~~ (34) "Partial confinement" means confinement for no more
17 than one year in a facility or institution operated or utilized under
18 contract by the state or any other unit of government, or, if home
19 detention or work crew has been ordered by the court, in an approved
20 residence, for a substantial portion of each day with the balance of
21 the day spent in the community. Partial confinement includes work
22 release, home detention, work crew, and a combination of work crew and
23 home detention.

24 ~~((+34+))~~ (35) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) any of the following
10 offenses with a finding of sexual motivation: Murder in the first
11 degree, murder in the second degree, homicide by abuse, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, assault of a child in the first
14 degree, assault of a child in the second degree, or burglary in the
15 first degree; or (C) an attempt to commit any crime listed in this
16 subsection (~~(+35+)~~) (36)(b)(i); and

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

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

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

7 ~~((+37+))~~ (38) "Private school" means a school regulated under
8 chapter 28A.195 or 28A.205 RCW.

9 ~~((+38+))~~ (39) "Public school" has the same meaning as in RCW
10 28A.150.010.

11 ~~((+39+))~~ (40) "Restitution" means a specific sum of money ordered
12 by the sentencing court to be paid by the offender to the court over a
13 specified period of time as payment of damages. The sum may include
14 both public and private costs.

15 ~~((+40+))~~ (41) "Risk assessment" means the application of an
16 objective instrument supported by research and adopted by the
17 department for the purpose of assessing an offender's risk of
18 reoffense, taking into consideration the nature of the harm done by the
19 offender, place and circumstances of the offender related to risk, the
20 offender's relationship to any victim, and any information provided to
21 the department by victims. The results of a risk assessment shall not
22 be based on unconfirmed or unconfirmable allegations.

23 ~~((+41+))~~ (42) "Serious traffic offense" means:

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

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

32 ~~((+42+))~~ (43) "Serious violent offense" is a subcategory of violent
33 offense and means:

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

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or
6 (b) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a serious
8 violent offense under (a) of this subsection.
9 ((+43+)) (44) "Sex offense" means:
10 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
11 RCW 9A.44.130(12);
12 (ii) A violation of RCW 9A.64.020;
13 (iii) A felony that is a violation of chapter 9.68A RCW other than
14 RCW 9.68A.080; or
15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
16 criminal solicitation, or criminal conspiracy to commit such crimes;
17 (b) Any conviction for a felony offense in effect at any time prior
18 to July 1, 1976, that is comparable to a felony classified as a sex
19 offense in (a) of this subsection;
20 (c) A felony with a finding of sexual motivation under RCW
21 9.94A.835 or 13.40.135; or
22 (d) Any federal or out-of-state conviction for an offense that
23 under the laws of this state would be a felony classified as a sex
24 offense under (a) of this subsection.
25 ((+44+)) (45) "Sexual motivation" means that one of the purposes
26 for which the defendant committed the crime was for the purpose of his
27 or her sexual gratification.
28 ((+45+)) (46) "Standard sentence range" means the sentencing
29 court's discretionary range in imposing a nonappealable sentence.
30 ((+46+)) (47) "Statutory maximum sentence" means the maximum length
31 of time for which an offender may be confined as punishment for a crime
32 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
33 the crime, or other statute defining the maximum penalty for a crime.
34 ((+47+)) (48) "Stranger" means that the victim did not know the
35 offender twenty-four hours before the offense.
36 ((+48+)) (49) "Total confinement" means confinement inside the
37 physical boundaries of a facility or institution operated or utilized

1 under contract by the state or any other unit of government for twenty-
2 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 ~~((+49+))~~ (50) "Transition training" means written and verbal
4 instructions and assistance provided by the department to the offender
5 during the two weeks prior to the offender's successful completion of
6 the work ethic camp program. The transition training shall include
7 instructions in the offender's requirements and obligations during the
8 offender's period of community custody.

9 ~~((+50+))~~ (51) "Victim" means any person who has sustained
10 emotional, psychological, physical, or financial injury to person or
11 property as a direct result of the crime charged.

12 ~~((+51+))~~ (52) "Violent offense" means:

13 (a) Any of the following felonies:

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

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

18 (iii) Manslaughter in the first degree;

19 (iv) Manslaughter in the second degree;

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

21 (vi) Kidnapping in the second degree;

22 (vii) Arson in the second degree;

23 (viii) Assault in the second degree;

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

25 (x) Extortion in the first degree;

26 (xi) Robbery in the second degree;

27 (xii) Drive-by shooting;

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

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

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

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

4 ~~((+52+))~~ (53) "Work crew" means a program of partial confinement
5 consisting of civic improvement tasks for the benefit of the community
6 that complies with RCW 9.94A.725.

7 ~~((+53+))~~ (54) "Work ethic camp" means an alternative incarceration
8 program as provided in RCW 9.94A.690 designed to reduce recidivism and
9 lower the cost of corrections by requiring offenders to complete a
10 comprehensive array of real-world job and vocational experiences,
11 character-building work ethics training, life management skills
12 development, substance abuse rehabilitation, counseling, literacy
13 training, and basic adult education.

14 ~~((+54+))~~ (55) "Work release" means a program of partial confinement
15 available to offenders who are employed or engaged as a student in a
16 regular course of study at school.

17 **Sec. 2.** RCW 9.94A.533 and 2008 c 276 s 301 and 2008 c 219 s 3 are
18 each reenacted and amended to read as follows:

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

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

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

1 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
2 commit one of the crimes listed in this subsection as eligible for any
3 firearm enhancements, the following additional times shall be added to
4 the standard sentence range determined under subsection (2) of this
5 section based on the felony crime of conviction as classified under RCW
6 9A.28.020:

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

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

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

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

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

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

36 (g) If the standard sentence range under this section exceeds the
37 statutory maximum sentence for the offense, the statutory maximum
38 sentence shall be the presumptive sentence unless the offender is a

1 persistent offender. If the addition of a firearm enhancement
2 increases the sentence so that it would exceed the statutory maximum
3 for the offense, the portion of the sentence representing the
4 enhancement may not be reduced.

5 (4) The following additional times shall be added to the standard
6 sentence range for felony crimes committed after July 23, 1995, if the
7 offender or an accomplice was armed with a deadly weapon other than a
8 firearm as defined in RCW 9.41.010 and the offender is being sentenced
9 for one of the crimes listed in this subsection as eligible for any
10 deadly weapon enhancements based on the classification of the completed
11 felony crime. If the offender is being sentenced for more than one
12 offense, the deadly weapon enhancement or enhancements must be added to
13 the total period of confinement for all offenses, regardless of which
14 underlying offense is subject to a deadly weapon enhancement. If the
15 offender or an accomplice was armed with a deadly weapon other than a
16 firearm as defined in RCW 9.41.010 and the offender is being sentenced
17 for an anticipatory offense under chapter 9A.28 RCW to commit one of
18 the crimes listed in this subsection as eligible for any deadly weapon
19 enhancements, the following additional times shall be added to the
20 standard sentence range determined under subsection (2) of this section
21 based on the felony crime of conviction as classified under RCW
22 9A.28.020:

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

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

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

32 (d) If the offender is being sentenced under (a), (b), and/or (c)
33 of this subsection for any deadly weapon enhancements and the offender
34 has previously been sentenced for any deadly weapon enhancements after
35 July 23, 1995, under (a), (b), and/or (c) of this subsection or
36 subsection (3)(a), (b), and/or (c) of this section, or both, all deadly
37 weapon enhancements under this subsection shall be twice the amount of
38 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, 2009,
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, 2009, 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(4);

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. All enhancements under this subsection shall run
18 consecutively to all other sentencing provisions, for all offenses
19 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 (i), (ii), and/or (iii) of this subsection and the
10 offender has previously been sentenced for any sexual motivation
11 enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of
12 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 **Sec. 3.** RCW 9.94A.728 and 2008 c 231 s 34 are each amended to read
2 as follows:

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

7 (1) Except as otherwise provided for in subsection (2) of this
8 section, the term of the sentence of an offender committed to a
9 correctional facility operated by the department may be reduced by
10 earned release time in accordance with procedures that shall be
11 developed and promulgated by the correctional agency having
12 jurisdiction in which the offender is confined. The earned release
13 time shall be for good behavior and good performance, as determined by
14 the correctional agency having jurisdiction. The correctional agency
15 shall not credit the offender with earned release credits in advance of
16 the offender actually earning the credits. Any program established
17 pursuant to this section shall allow an offender to earn early release
18 credits for presentence incarceration. If an offender is transferred
19 from a county jail to the department, the administrator of a county
20 jail facility shall certify to the department the amount of time spent
21 in custody at the facility and the amount of earned release time. An
22 offender who has been convicted of a felony committed after July 23,
23 1995, that involves any applicable deadly weapon enhancements under RCW
24 9.94A.533 (3) or (4), or both, shall not receive any good time credits
25 or earned release time for that portion of his or her sentence that
26 results from any deadly weapon enhancements. An offender who has been
27 convicted of a felony committed on or after July 26, 2009, that
28 involves any applicable body armor enhancements under RCW 9.94A.533(5),
29 shall not receive any good time credits or earned release time for that
30 portion of his or her sentence that results from any body armor
31 enhancements.

32 (a) In the case of an offender convicted of a serious violent
33 offense, or a sex offense that is a class A felony, committed on or
34 after July 1, 1990, and before July 1, 2003, the aggregate earned
35 release time may not exceed fifteen percent of the sentence. In the
36 case of an offender convicted of a serious violent offense, or a sex
37 offense that is a class A felony, committed on or after July 1, 2003,

1 the aggregate earned release time may not exceed ten percent of the
2 sentence.

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

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

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

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

12 (I) A sex offense;

13 (II) A violent offense;

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

15 (IV) A felony that is domestic violence as defined in RCW
16 10.99.020;

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

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

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

23 (C) Has no prior conviction for:

24 (I) A sex offense;

25 (II) A violent offense;

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

27 (IV) A felony that is domestic violence as defined in RCW
28 10.99.020;

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

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

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

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

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

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

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

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

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

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

27 (2)(a) A person convicted of a sex offense, a violent offense, any
28 crime against persons under RCW 9.94A.411(2), or a felony offense under
29 chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a
30 program developed by the department, for transfer to community custody
31 in lieu of earned release time pursuant to subsection (1) of this
32 section;

33 (b) The department shall, as a part of its program for release to
34 the community in lieu of earned release, require the offender to
35 propose a release plan that includes an approved residence and living
36 arrangement. All offenders with community custody terms eligible for
37 release to community custody in lieu of earned release shall provide an

1 approved residence and living arrangement prior to release to the
2 community;

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

13 (d) If the department denies transfer to community custody in lieu
14 of earned early release pursuant to (c) of this subsection, the
15 department may transfer an offender to partial confinement in lieu of
16 earned early release up to three months. The three months in partial
17 confinement is in addition to that portion of the offender's term of
18 confinement that may be served in partial confinement as provided in
19 this section;

20 (e) An offender serving a term of confinement imposed under RCW
21 9.94A.670(5)(a) is not eligible for earned release credits under this
22 section;

23 (3) An offender may leave a correctional facility pursuant to an
24 authorized furlough or leave of absence. In addition, offenders may
25 leave a correctional facility when in the custody of a corrections
26 officer or officers;

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

29 (i) The offender has a medical condition that is serious enough to
30 require costly care or treatment;

31 (ii) The offender poses a low risk to the community because he or
32 she is physically incapacitated due to age or the medical condition;
33 and

34 (iii) Granting the extraordinary medical placement will result in
35 a cost savings to the state.

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

1 (c) The secretary shall require electronic monitoring for all
2 offenders in extraordinary medical placement unless the electronic
3 monitoring equipment interferes with the function of the offender's
4 medical equipment or results in the loss of funding for the offender's
5 medical care. The secretary shall specify who shall provide the
6 monitoring services and the terms under which the monitoring shall be
7 performed.

8 (d) The secretary may revoke an extraordinary medical placement
9 under this subsection at any time;

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

14 (6) No more than the final six months of the offender's term of
15 confinement may be served in partial confinement designed to aid the
16 offender in finding work and reestablishing himself or herself in the
17 community. This is in addition to that period of earned early release
18 time that may be exchanged for partial confinement pursuant to
19 subsection (2)(d) of this section;

20 (7) The governor may pardon any offender;

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

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

27 (10) Notwithstanding any other provisions of this section, an
28 offender sentenced for a felony crime listed in RCW 9.94A.540 as
29 subject to a mandatory minimum sentence of total confinement shall not
30 be released from total confinement before the completion of the listed
31 mandatory minimum sentence for that felony crime of conviction unless
32 allowed under RCW 9.94A.540, however persistent offenders are not
33 eligible for extraordinary medical placement.

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

36 In a criminal case wherein there has been a special allegation and
37 evidence establishing that the accused or an accomplice was armed with

1 a firearm as defined in RCW 9.41.010 and the offender or an accomplice
2 was wearing body armor as defined in RCW 9.94A.030 at the time of the
3 commission of the crime, the court shall make a finding of fact of
4 whether or not the accused or an accomplice was armed with a firearm
5 and wearing body armor at the time of the commission of the crime, or
6 if a jury trial is had, the jury shall, if it finds the defendant
7 guilty, also find a special verdict as to whether or not the defendant
8 or an accomplice was armed with a firearm and wearing body armor at the
9 time of the commission of the crime.

10 NEW SECTION. **Sec. 5.** Sections 1 and 3 of this act take effect
11 August 1, 2009.

--- END ---