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SENATE BILL 6397

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State of Washington

61st Legislature

2010 Regular Session

By Senators Kline, Pflug, Oemig, McDermott, Eide, Kauffman, Shin, and McAuliffe

Read first time 01/13/10. Referred to Committee on Judiciary.

1 AN ACT Relating to viewing sexually explicit depictions of minors  
2 on the internet; amending RCW 9.68A.011, 9.68A.110, 9.68A.070, and  
3 9.94A.030; reenacting and amending RCW 9.94A.515; creating a new  
4 section; and prescribing penalties.

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

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

17 (2) It is the intent of the legislature that the unit of  
18 prosecution under RCW 9.68A.070(1) be one count per possession of child  
19 pornography without regard to the number of images comprising such

1 possession or the number of minors depicted in the images possessed  
2 consistent with the Washington supreme court's holding in *State v.*  
3 *Sutherby*, 165 Wn.2d 870 (2009). It is the intent of the legislature  
4 that the unit of prosecution under RCW 9.68A.070(2) be per pattern of  
5 viewing, as described in RCW 9.68A.070(2), not per number of images  
6 comprising such pattern of viewing or the number of minors depicted in  
7 each pattern of viewing.

8 **Sec. 2.** RCW 9.68A.011 and 2002 c 70 s 1 are each amended to read  
9 as follows:

10 Unless the context clearly indicates otherwise, the definitions in  
11 this section apply throughout this chapter.

12 (1) To "photograph" means to make a print, negative, slide, digital  
13 image, motion picture, or videotape. A "photograph" means anything  
14 tangible or intangible produced by photographing.

15 (2) "Visual depictions or printed matter" means any photograph or  
16 other material that contains a reproduction of a photograph.

17 (3) "Sexually explicit conduct" means actual or simulated:

18 (a) Sexual intercourse, including genital-genital, oral-genital,  
19 anal-genital, or oral-anal, whether between persons of the same or  
20 opposite sex or between humans and animals;

21 (b) Penetration of the vagina or rectum by any object;

22 (c) Masturbation;

23 (d) Sadomasochistic abuse for the purpose of sexual stimulation of  
24 the viewer;

25 (e) Exhibition of the genitals or unclothed pubic or rectal areas  
26 of any minor, or the unclothed breast of a female minor, for the  
27 purpose of sexual stimulation of the viewer;

28 (f) Defecation or urination for the purpose of sexual stimulation  
29 of the viewer; and

30 (g) Touching of a person's clothed or unclothed genitals, pubic  
31 area, buttocks, or breast area for the purpose of sexual stimulation of  
32 the viewer.

33 (4) "Minor" means any person under eighteen years of age.

34 (5) "Live performance" means any play, show, skit, dance, or other  
35 exhibition performed or presented to or before an audience of one or  
36 more, with or without consideration.

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

3       (1) In a prosecution under RCW 9.68A.040, it is not a defense that  
4 the defendant was involved in activities of law enforcement and  
5 prosecution agencies in the investigation and prosecution of criminal  
6 offenses. Law enforcement and prosecution agencies shall not employ  
7 minors to aid in the investigation of a violation of RCW 9.68A.090 or  
8 9.68A.100. This chapter does not apply to lawful conduct between  
9 spouses.

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

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

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

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

1       **Sec. 4.** RCW 9.68A.070 and 2006 c 139 s 3 are each amended to read  
2 as follows:

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

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

23       **Sec. 5.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read  
24 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (21) "Drug offense" means:  
2 (a) Any felony violation of chapter 69.50 RCW except possession of  
3 a controlled substance (RCW 69.50.4013) or forged prescription for a  
4 controlled substance (RCW 69.50.403);  
5 (b) Any offense defined as a felony under federal law that relates  
6 to the possession, manufacture, distribution, or transportation of a  
7 controlled substance; or  
8 (c) Any out-of-state conviction for an offense that under the laws  
9 of this state would be a felony classified as a drug offense under (a)  
10 of this subsection.  
11 (22) "Earned release" means earned release from confinement as  
12 provided in RCW 9.94A.728.  
13 (23) "Escape" means:  
14 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
15 first degree (RCW 9A.76.110), escape in the second degree (RCW  
16 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
17 willful failure to return from work release (RCW 72.65.070), or willful  
18 failure to be available for supervision by the department while in  
19 community custody (RCW 72.09.310); or  
20 (b) Any federal or out-of-state conviction for an offense that  
21 under the laws of this state would be a felony classified as an escape  
22 under (a) of this subsection.  
23 (24) "Felony traffic offense" means:  
24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
25 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
26 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
27 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
28 felony physical control of a vehicle while under the influence of  
29 intoxicating liquor or any drug (RCW 46.61.504(6)); or  
30 (b) Any federal or out-of-state conviction for an offense that  
31 under the laws of this state would be a felony classified as a felony  
32 traffic offense under (a) of this subsection.  
33 (25) "Fine" means a specific sum of money ordered by the sentencing  
34 court to be paid by the offender to the court over a specific period of  
35 time.  
36 (26) "First-time offender" means any person who has no prior  
37 convictions for a felony and is eligible for the first-time offender  
38 waiver under RCW 9.94A.650.



1 (27) "Home detention" means a program of partial confinement  
2 available to offenders wherein the offender is confined in a private  
3 residence subject to electronic surveillance.

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

18 (29) "Most serious offense" means any of the following felonies or  
19 a felony attempt to commit any of the following felonies:

20 (a) Any felony defined under any law as a class A felony or  
21 criminal solicitation of or criminal conspiracy to commit a class A  
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

1 (q) Vehicular assault, when caused by the operation or driving of  
2 a vehicle by a person while under the influence of intoxicating liquor  
3 or any drug or by the operation or driving of a vehicle in a reckless  
4 manner;

5 (r) Vehicular homicide, when proximately caused by the driving of  
6 any vehicle by any person while under the influence of intoxicating  
7 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
8 any vehicle in a reckless manner;

9 (s) Any other class B felony offense with a finding of sexual  
10 motivation;

11 (t) Any other felony with a deadly weapon verdict under RCW  
12 9.94A.825;

13 (u) Any felony offense in effect at any time prior to December 2,  
14 1993, that is comparable to a most serious offense under this  
15 subsection, or any federal or out-of-state conviction for an offense  
16 that under the laws of this state would be a felony classified as a  
17 most serious offense under this subsection;

18 (v)(i) A prior conviction for indecent liberties under RCW  
19 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
20 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
21 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
22 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

23 (ii) A prior conviction for indecent liberties under RCW  
24 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
25 if: (A) The crime was committed against a child under the age of  
26 fourteen; or (B) the relationship between the victim and perpetrator is  
27 included in the definition of indecent liberties under RCW  
28 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
29 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
30 through July 27, 1997;

31 (w) Any out-of-state conviction for a felony offense with a finding  
32 of sexual motivation if the minimum sentence imposed was ten years or  
33 more; provided that the out-of-state felony offense must be comparable  
34 to a felony offense under Title 9 or 9A RCW and the out-of-state  
35 definition of sexual motivation must be comparable to the definition of  
36 sexual motivation contained in this section.

37 (30) "Nonviolent offense" means an offense which is not a violent  
38 offense.

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

13 (32) "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 (33) "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 this  
26 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
27 Child 1 (RCW 9A.36.120);

28 (ii) Any "violent" offense as defined by this section, 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 (34) "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 (34)(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 (35) "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 (36) "Private school" means a school regulated under chapter  
6 28A.195 or 28A.205 RCW.

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

8 (38) "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 (39) "Risk assessment" means the application of the risk instrument  
13 recommended to the department by the Washington state institute for  
14 public policy as having the highest degree of predictive accuracy for  
15 assessing an offender's risk of reoffense.

16 (40) "Serious traffic offense" means:

17 (a) Nonfelony driving while under the influence of intoxicating  
18 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
19 while under the influence of intoxicating liquor or any drug (RCW  
20 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
21 attended vehicle (RCW 46.52.020(5)); or

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

25 (41) "Serious violent offense" is a subcategory of violent offense  
26 and means:

- 27 (a)(i) Murder in the first degree;
- 28 (ii) Homicide by abuse;
- 29 (iii) Murder in the second degree;
- 30 (iv) Manslaughter in the first degree;
- 31 (v) Assault in the first degree;
- 32 (vi) Kidnapping in the first degree;
- 33 (vii) Rape in the first degree;
- 34 (viii) Assault of a child in the first degree; or
- 35 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
36 commit one of these felonies; or

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

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

3 (42) "Sex offense" means:

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

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

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

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

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

14 (c) A felony with a finding of sexual motivation under RCW  
15 9.94A.835 or 13.40.135; or

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

19 (43) "Sexual motivation" means that one of the purposes for which  
20 the defendant committed the crime was for the purpose of his or her  
21 sexual gratification.

22 (44) "Standard sentence range" means the sentencing court's  
23 discretionary range in imposing a nonappealable sentence.

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

28 (46) "Stranger" means that the victim did not know the offender  
29 twenty-four hours before the offense.

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

34 (48) "Transition training" means written and verbal instructions  
35 and assistance provided by the department to the offender during the  
36 two weeks prior to the offender's successful completion of the work  
37 ethic camp program. The transition training shall include instructions

1 in the offender's requirements and obligations during the offender's  
2 period of community custody.

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

6 (50) "Violent offense" means:

7 (a) Any of the following felonies:

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

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

12 (iii) Manslaughter in the first degree;

13 (iv) Manslaughter in the second degree;

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

15 (vi) Kidnapping in the second degree;

16 (vii) Arson in the second degree;

17 (viii) Assault in the second degree;

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

19 (x) Extortion in the first degree;

20 (xi) Robbery in the second degree;

21 (xii) Drive-by shooting;

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

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

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

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

36 (51) "Work crew" means a program of partial confinement consisting  
37 of civic improvement tasks for the benefit of the community that  
38 complies with RCW 9.94A.725.



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

8 (53) "Work release" means a program of partial confinement  
9 available to offenders who are employed or engaged as a student in a  
10 regular course of study at school.

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

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TABLE 2	
CRIMES INCLUDED WITHIN	
EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)

1 Rape 2 (RCW 9A.44.050)  
2 Rape of a Child 2 (RCW 9A.44.076)  
3 X Child Molestation 1 (RCW 9A.44.083)  
4 Criminal Mistreatment 1 (RCW  
5 9A.42.020)  
6 Indecent Liberties (with forcible  
7 compulsion) (RCW  
8 9A.44.100(1)(a))  
9 Kidnapping 1 (RCW 9A.40.020)  
10 Leading Organized Crime (RCW  
11 9A.82.060(1)(a))  
12 Malicious explosion 3 (RCW  
13 70.74.280(3))  
14 Sexually Violent Predator Escape  
15 (RCW 9A.76.115)  
16 IX Abandonment of Dependent Person 1  
17 (RCW 9A.42.060)  
18 Assault of a Child 2 (RCW 9A.36.130)  
19 Explosive devices prohibited (RCW  
20 70.74.180)  
21 Hit and Run--Death (RCW  
22 46.52.020(4)(a))  
23 Homicide by Watercraft, by being  
24 under the influence of intoxicating  
25 liquor or any drug (RCW  
26 79A.60.050)  
27 Inciting Criminal Profiteering (RCW  
28 9A.82.060(1)(b))  
29 Malicious placement of an explosive 2  
30 (RCW 70.74.270(2))  
31 Robbery 1 (RCW 9A.56.200)  
32 Sexual Exploitation (RCW 9.68A.040)  
33 Vehicular Homicide, by being under  
34 the influence of intoxicating liquor  
35 or any drug (RCW 46.61.520)  
36 VIII Arson 1 (RCW 9A.48.020)

1 Homicide by Watercraft, by the  
2 operation of any vessel in a  
3 reckless manner (RCW  
4 79A.60.050)  
5 Manslaughter 2 (RCW 9A.32.070)  
6 Promoting Commercial Sexual Abuse  
7 of a Minor (RCW 9.68A.101)  
8 Promoting Prostitution 1 (RCW  
9 9A.88.070)  
10 Theft of Ammonia (RCW 69.55.010)  
11 Vehicular Homicide, by the operation  
12 of any vehicle in a reckless manner  
13 (RCW 46.61.520)  
14 VII Burglary 1 (RCW 9A.52.020)  
15 Child Molestation 2 (RCW 9A.44.086)  
16 Civil Disorder Training (RCW  
17 9A.48.120)  
18 Dealing in depictions of minor engaged  
19 in sexually explicit conduct (RCW  
20 9.68A.050)  
21 Drive-by Shooting (RCW 9A.36.045)  
22 Homicide by Watercraft, by disregard  
23 for the safety of others (RCW  
24 79A.60.050)  
25 Indecent Liberties (without forcible  
26 compulsion) (RCW 9A.44.100(1)  
27 (b) and (c))  
28 Introducing Contraband 1 (RCW  
29 9A.76.140)  
30 Malicious placement of an explosive 3  
31 (RCW 70.74.270(3))  
32 Negligently Causing Death By Use of a  
33 Signal Preemption Device (RCW  
34 46.37.675)  
35 Sending, bringing into state depictions  
36 of minor engaged in sexually  
37 explicit conduct (RCW 9.68A.060)

1 Unlawful Possession of a Firearm in  
2 the first degree (RCW 9A.41.040(1))  
3 Use of a Machine Gun in Commission  
4 of a Felony (RCW 9A.41.225)  
5 Vehicular Homicide, by disregard for  
6 the safety of others (RCW  
7 46.61.520)  
8 VI Bail Jumping with Murder 1 (RCW  
9 9A.76.170(3)(a))  
10 Bribery (RCW 9A.68.010)  
11 Incest 1 (RCW 9A.64.020(1))  
12 Intimidating a Judge (RCW 9A.72.160)  
13 Intimidating a Juror/Witness (RCW  
14 9A.72.110, 9A.72.130)  
15 Malicious placement of an imitation  
16 device 2 (RCW 70.74.272(1)(b))  
17 Possession of Depictions of a Minor  
18 Engaged in Sexually Explicit  
19 Conduct 1 (RCW 9.68A.070(1))  
20 Rape of a Child 3 (RCW 9A.44.079)  
21 Theft of a Firearm (RCW 9A.56.300)  
22 Unlawful Storage of Ammonia (RCW  
23 69.55.020)  
24 V Abandonment of Dependent Person 2  
25 (RCW 9A.42.070)  
26 Advancing money or property for  
27 extortionate extension of credit  
28 (RCW 9A.82.030)  
29 Bail Jumping with class A Felony  
30 (RCW 9A.76.170(3)(b))  
31 Child Molestation 3 (RCW 9A.44.089)  
32 Criminal Mistreatment 2 (RCW  
33 9A.42.030)  
34 Custodial Sexual Misconduct 1 (RCW  
35 9A.44.160)

1 Domestic Violence Court Order  
2 Violation (RCW 10.99.040,  
3 10.99.050, 26.09.300, 26.10.220,  
4 26.26.138, 26.50.110, 26.52.070,  
5 or 74.34.145)  
6 Driving While Under the Influence  
7 (RCW 46.61.502(6))  
8 Extortion 1 (RCW 9A.56.120)  
9 Extortionate Extension of Credit (RCW  
10 9A.82.020)  
11 Extortionate Means to Collect  
12 Extensions of Credit (RCW  
13 9A.82.040)  
14 Incest 2 (RCW 9A.64.020(2))  
15 Kidnapping 2 (RCW 9A.40.030)  
16 Perjury 1 (RCW 9A.72.020)  
17 Persistent prison misbehavior (RCW  
18 9.94.070)  
19 Physical Control of a Vehicle While  
20 Under the Influence (RCW  
21 46.61.504(6))  
22 Possession of a Stolen Firearm (RCW  
23 9A.56.310)  
24 Rape 3 (RCW 9A.44.060)  
25 Rendering Criminal Assistance 1  
26 (RCW 9A.76.070)  
27 Sexual Misconduct with a Minor 1  
28 (RCW 9A.44.093)  
29 Sexually Violating Human Remains  
30 (RCW 9A.44.105)  
31 Stalking (RCW 9A.46.110)  
32 Taking Motor Vehicle Without  
33 Permission 1 (RCW 9A.56.070)  
34 IV Arson 2 (RCW 9A.48.030)  
35 Assault 2 (RCW 9A.36.021)

1 Assault 3 (of a Peace Officer with a  
2 Projectile Stun Gun) (RCW  
3 9A.36.031(1)(h))  
4 Assault by Watercraft (RCW  
5 79A.60.060)  
6 Bribing a Witness/Bribe Received by  
7 Witness (RCW 9A.72.090,  
8 9A.72.100)  
9 Cheating 1 (RCW 9.46.1961)  
10 Commercial Bribery (RCW 9A.68.060)  
11 Counterfeiting (RCW 9.16.035(4))  
12 Endangerment with a Controlled  
13 Substance (RCW 9A.42.100)  
14 Escape 1 (RCW 9A.76.110)  
15 Hit and Run--Injury (RCW  
16 46.52.020(4)(b))  
17 Hit and Run with Vessel--Injury  
18 Accident (RCW 79A.60.200(3))  
19 Identity Theft 1 (RCW 9.35.020(2))  
20 Indecent Exposure to Person Under  
21 Age Fourteen (subsequent sex  
22 offense) (RCW 9A.88.010)  
23 Influencing Outcome of Sporting Event  
24 (RCW 9A.82.070)  
25 Malicious Harassment (RCW  
26 9A.36.080)  
27 Residential Burglary (RCW  
28 9A.52.025)  
29 Robbery 2 (RCW 9A.56.210)  
30 Theft of Livestock 1 (RCW 9A.56.080)  
31 Threats to Bomb (RCW 9.61.160)  
32 Trafficking in Stolen Property 1 (RCW  
33 9A.82.050)  
34 Unlawful factoring of a credit card or  
35 payment card transaction (RCW  
36 9A.56.290(4)(b))

1 Unlawful transaction of health  
2 coverage as a health care service  
3 contractor (RCW 48.44.016(3))  
4 Unlawful transaction of health  
5 coverage as a health maintenance  
6 organization (RCW 48.46.033(3))  
7 Unlawful transaction of insurance  
8 business (RCW 48.15.023(3))  
9 Unlicensed practice as an insurance  
10 professional (RCW  
11 48.17.063(~~(3)~~)(2))  
12 Use of Proceeds of Criminal  
13 Profiteering (RCW 9A.82.080 (1)  
14 and (2))  
15 Vehicular Assault, by being under the  
16 influence of intoxicating liquor or  
17 any drug, or by the operation or  
18 driving of a vehicle in a reckless  
19 manner (RCW 46.61.522)  
20 Willful Failure to Return from  
21 Furlough (RCW 72.66.060)  
22 III Animal Cruelty 1 (Sexual Conduct or  
23 Contact) (RCW 16.52.205(3))  
24 Assault 3 (Except Assault 3 of a Peace  
25 Officer With a Projectile Stun  
26 Gun) (RCW 9A.36.031 except  
27 subsection (1)(h))  
28 Assault of a Child 3 (RCW 9A.36.140)  
29 Bail Jumping with class B or C Felony  
30 (RCW 9A.76.170(3)(c))  
31 Burglary 2 (RCW 9A.52.030)  
32 Commercial Sexual Abuse of a Minor  
33 (RCW 9.68A.100)  
34 Communication with a Minor for  
35 Immoral Purposes (RCW  
36 9.68A.090)

1 Criminal Gang Intimidation (RCW  
2 9A.46.120)  
3 Custodial Assault (RCW 9A.36.100)  
4 Cyberstalking (subsequent conviction  
5 or threat of death) (RCW  
6 9.61.260(3))  
7 Escape 2 (RCW 9A.76.120)  
8 Extortion 2 (RCW 9A.56.130)  
9 Harassment (RCW 9A.46.020)  
10 Intimidating a Public Servant (RCW  
11 9A.76.180)  
12 Introducing Contraband 2 (RCW  
13 9A.76.150)  
14 Malicious Injury to Railroad Property  
15 (RCW 81.60.070)  
16 Mortgage Fraud (RCW 19.144.080)  
17 Negligently Causing Substantial Bodily  
18 Harm By Use of a Signal  
19 Preemption Device (RCW  
20 46.37.674)  
21 Organized Retail Theft 1 (RCW  
22 9A.56.350(2))  
23 Perjury 2 (RCW 9A.72.030)  
24 Possession of Incendiary Device (RCW  
25 9.40.120)  
26 Possession of Machine Gun or Short-  
27 Barreled Shotgun or Rifle (RCW  
28 9.41.190)  
29 Promoting Prostitution 2 (RCW  
30 9A.88.080)  
31 Retail Theft with Extenuating  
32 Circumstances 1 (RCW  
33 9A.56.360(2))  
34 Securities Act violation (RCW  
35 21.20.400)  
36 Tampering with a Witness (RCW  
37 9A.72.120)



1 Telephone Harassment (subsequent  
2 conviction or threat of death)  
3 (RCW 9.61.230(2))  
4 Theft of Livestock 2 (RCW 9A.56.083)  
5 Theft with the Intent to Resell 1 (RCW  
6 9A.56.340(2))  
7 Trafficking in Stolen Property 2 (RCW  
8 9A.82.055)  
9 Unlawful Imprisonment (RCW  
10 9A.40.040)  
11 Unlawful possession of firearm in the  
12 second degree (RCW 9.41.040(2))  
13 Vehicular Assault, by the operation or  
14 driving of a vehicle with disregard  
15 for the safety of others (RCW  
16 46.61.522)  
17 Willful Failure to Return from Work  
18 Release (RCW 72.65.070)  
19 II Computer Trespass 1 (RCW  
20 9A.52.110)  
21 Counterfeiting (RCW 9.16.035(3))  
22 Escape from Community Custody  
23 (RCW 72.09.310)  
24 Failure to Register as a Sex Offender  
25 (second or subsequent offense)  
26 (RCW 9A.44.130(11)(a))  
27 Health Care False Claims (RCW  
28 48.80.030)  
29 Identity Theft 2 (RCW 9.35.020(3))  
30 Improperly Obtaining Financial  
31 Information (RCW 9.35.010)  
32 Malicious Mischief 1 (RCW  
33 9A.48.070)  
34 Organized Retail Theft 2 (RCW  
35 9A.56.350(3))  
36 Possession of Stolen Property 1 (RCW  
37 9A.56.150)

1 Possession of a Stolen Vehicle (RCW  
2 9A.56.068)  
3 Retail Theft with Extenuating  
4 Circumstances 2 (RCW  
5 9A.56.360(3))  
6 Theft 1 (RCW 9A.56.030)  
7 Theft of a Motor Vehicle (RCW  
8 9A.56.065)  
9 Theft of Rental, Leased, or Lease-  
10 purchased Property (valued at one  
11 thousand five hundred dollars or  
12 more) (RCW 9A.56.096(5)(a))  
13 Theft with the Intent to Resell 2 (RCW  
14 9A.56.340(3))  
15 Trafficking in Insurance Claims (RCW  
16 48.30A.015)  
17 Unlawful factoring of a credit card or  
18 payment card transaction (RCW  
19 9A.56.290(4)(a))  
20 Unlawful Practice of Law (RCW  
21 2.48.180)  
22 Unlicensed Practice of a Profession or  
23 Business (RCW 18.130.190(7))  
24 Voyeurism (RCW 9A.44.115)  
25 I Attempting to Elude a Pursuing Police  
26 Vehicle (RCW 46.61.024)  
27 False Verification for Welfare (RCW  
28 74.08.055)  
29 Forgery (RCW 9A.60.020)  
30 Fraudulent Creation or Revocation of a  
31 Mental Health Advance Directive  
32 (RCW 9A.60.060)  
33 Malicious Mischief 2 (RCW  
34 9A.48.080)  
35 Mineral Trespass (RCW 78.44.330)  
36 Possession of Stolen Property 2 (RCW  
37 9A.56.160)

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

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