
SENATE BILL 6697

State of Washington 61st Legislature 2010 Regular Session

By Senators Haugen, Kline, and Kohl-Welles

Read first time 01/21/10. Referred to Committee on Judiciary.

1 AN ACT Relating to suffocation; amending RCW 9A.36.021, 9A.04.110,
2 and 9.94A.030; and prescribing penalties.

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

4 **Sec. 1.** RCW 9A.36.021 and 2007 c 79 s 2 are each amended to read
5 as follows:

6 (1) A person is guilty of assault in the second degree if he or
7 she, under circumstances not amounting to assault in the first degree:

8 (a) Intentionally assaults another and thereby recklessly inflicts
9 substantial bodily harm; or

10 (b) Intentionally and unlawfully causes substantial bodily harm to
11 an unborn quick child by intentionally and unlawfully inflicting any
12 injury upon the mother of such child; or

13 (c) Assaults another with a deadly weapon; or

14 (d) With intent to inflict bodily harm, administers to or causes to
15 be taken by another, poison or any other destructive or noxious
16 substance; or

17 (e) With intent to commit a felony, assaults another; or

18 (f) Knowingly inflicts bodily harm which by design causes such pain
19 or agony as to be the equivalent of that produced by torture; or

1 (g) Assaults another by strangulation or suffocation.

2 (2)(a) Except as provided in (b) of this subsection, assault in the
3 second degree is a class B felony.

4 (b) Assault in the second degree with a finding of sexual
5 motivation under RCW 9.94A.835 or 13.40.135 is a class A felony.

6 **Sec. 2.** RCW 9A.04.110 and 2007 c 79 s 3 are each amended to read
7 as follows:

8 In this title unless a different meaning plainly is required:

9 (1) "Acted" includes, where relevant, omitted to act;

10 (2) "Actor" includes, where relevant, a person failing to act;

11 (3) "Benefit" is any gain or advantage to the beneficiary,
12 including any gain or advantage to a third person pursuant to the
13 desire or consent of the beneficiary;

14 (4)(a) "Bodily injury," "physical injury," or "bodily harm" means
15 physical pain or injury, illness, or an impairment of physical
16 condition;

17 (b) "Substantial bodily harm" means bodily injury which involves a
18 temporary but substantial disfigurement, or which causes a temporary
19 but substantial loss or impairment of the function of any bodily part
20 or organ, or which causes a fracture of any bodily part;

21 (c) "Great bodily harm" means bodily injury which creates a
22 probability of death, or which causes significant serious permanent
23 disfigurement, or which causes a significant permanent loss or
24 impairment of the function of any bodily part or organ;

25 (5) "Building", in addition to its ordinary meaning, includes any
26 dwelling, fenced area, vehicle, railway car, cargo container, or any
27 other structure used for lodging of persons or for carrying on business
28 therein, or for the use, sale or deposit of goods; each unit of a
29 building consisting of two or more units separately secured or occupied
30 is a separate building;

31 (6) "Deadly weapon" means any explosive or loaded or unloaded
32 firearm, and shall include any other weapon, device, instrument,
33 article, or substance, including a "vehicle" as defined in this
34 section, which, under the circumstances in which it is used, attempted
35 to be used, or threatened to be used, is readily capable of causing
36 death or substantial bodily harm;

1 (7) "Dwelling" means any building or structure, though movable or
2 temporary, or a portion thereof, which is used or ordinarily used by a
3 person for lodging;

4 (8) "Government" includes any branch, subdivision, or agency of the
5 government of this state and any county, city, district, or other local
6 governmental unit;

7 (9) "Governmental function" includes any activity which a public
8 servant is legally authorized or permitted to undertake on behalf of a
9 government;

10 (10) "Indicted" and "indictment" include "informed against" and
11 "information", and "informed against" and "information" include
12 "indicted" and "indictment";

13 (11) "Judge" includes every judicial officer authorized alone or
14 with others, to hold or preside over a court;

15 (12) "Malice" and "maliciously" shall import an evil intent, wish,
16 or design to vex, annoy, or injure another person. Malice may be
17 inferred from an act done in wilful disregard of the rights of another,
18 or an act wrongfully done without just cause or excuse, or an act or
19 omission of duty betraying a wilful disregard of social duty;

20 (13) "Officer" and "public officer" means a person holding office
21 under a city, county, or state government, or the federal government
22 who performs a public function and in so doing is vested with the
23 exercise of some sovereign power of government, and includes all
24 assistants, deputies, clerks, and employees of any public officer and
25 all persons lawfully exercising or assuming to exercise any of the
26 powers or functions of a public officer;

27 (14) "Omission" means a failure to act;

28 (15) "Peace officer" means a duly appointed city, county, or state
29 law enforcement officer;

30 (16) "Pecuniary benefit" means any gain or advantage in the form of
31 money, property, commercial interest, or anything else the primary
32 significance of which is economic gain;

33 (17) "Person", "he", and "actor" include any natural person and,
34 where relevant, a corporation, joint stock association, or an
35 unincorporated association;

36 (18) "Place of work" includes but is not limited to all the lands
37 and other real property of a farm or ranch in the case of an actor who
38 owns, operates, or is employed to work on such a farm or ranch;

1 (19) "Prison" means any place designated by law for the keeping of
2 persons held in custody under process of law, or under lawful arrest,
3 including but not limited to any state correctional institution or any
4 county or city jail;

5 (20) "Prisoner" includes any person held in custody under process
6 of law, or under lawful arrest;

7 (21) "Projectile stun gun" means an electronic device that projects
8 wired probes attached to the device that emit an electrical charge and
9 that is designed and primarily employed to incapacitate a person or
10 animal;

11 (22) "Property" means anything of value, whether tangible or
12 intangible, real or personal;

13 (23) "Public servant" means any person other than a witness who
14 presently occupies the position of or has been elected, appointed, or
15 designated to become any officer or employee of government, including
16 a legislator, judge, judicial officer, juror, and any person
17 participating as an advisor, consultant, or otherwise in performing a
18 governmental function;

19 (24) "Signature" includes any memorandum, mark, or sign made with
20 intent to authenticate any instrument or writing, or the subscription
21 of any person thereto;

22 (25) "Statute" means the Constitution or an act of the legislature
23 or initiative or referendum of this state;

24 (26) "Strangulation" means to compress a person's neck, thereby
25 obstructing the person's blood flow or ability to breathe, or doing so
26 with the intent to obstruct the person's blood flow or ability to
27 breathe;

28 (27) "Suffocation" means to deprive a person of breath by blocking
29 or impairing intake at the nose or mouth;

30 (28) "Threat" means to communicate, directly or indirectly the
31 intent:

32 (a) To cause bodily injury in the future to the person threatened
33 or to any other person; or

34 (b) To cause physical damage to the property of a person other than
35 the actor; or

36 (c) To subject the person threatened or any other person to
37 physical confinement or restraint; or

1 (d) To accuse any person of a crime or cause criminal charges to be
2 instituted against any person; or

3 (e) To expose a secret or publicize an asserted fact, whether true
4 or false, tending to subject any person to hatred, contempt, or
5 ridicule; or

6 (f) To reveal any information sought to be concealed by the person
7 threatened; or

8 (g) To testify or provide information or withhold testimony or
9 information with respect to another's legal claim or defense; or

10 (h) To take wrongful action as an official against anyone or
11 anything, or wrongfully withhold official action, or cause such action
12 or withholding; or

13 (i) To bring about or continue a strike, boycott, or other similar
14 collective action to obtain property which is not demanded or received
15 for the benefit of the group which the actor purports to represent; or

16 (j) To do any other act which is intended to harm substantially the
17 person threatened or another with respect to his health, safety,
18 business, financial condition, or personal relationships;

19 ~~((+28))~~ (29) "Vehicle" means a "motor vehicle" as defined in the
20 vehicle and traffic laws, any aircraft, or any vessel equipped for
21 propulsion by mechanical means or by sail;

22 ~~((+29))~~ (30) Words in the present tense shall include the future
23 tense; and in the masculine shall include the feminine and neuter
24 genders; and in the singular shall include the plural; and in the
25 plural shall include the singular.

26 **Sec. 3.** RCW 9.94A.030 and 2009 c 375 s 4 are each amended to read
27 as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

32 (2) "Collect," or any derivative thereof, "collect and remit," or
33 "collect and deliver," when used with reference to the department,
34 means that the department, either directly or through a collection
35 agreement authorized by RCW 9.94A.760, is responsible for monitoring
36 and enforcing the offender's sentence with regard to the legal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (21) "Drug offense" means:

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

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

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

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

19 (23) "Escape" means:

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

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

29 (24) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

29 (b) Assault in the second degree, except when committed by
30 strangulation or suffocation;

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

32 (d) Child molestation in the second degree;

33 (e) Controlled substance homicide;

34 (f) Extortion in the first degree;

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

36 (h) Indecent liberties;

37 (i) Kidnapping in the second degree;

38 (j) Leading organized crime;

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

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

5 (30) "Nonviolent offense" means an offense which is not a violent
6 offense.

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

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

27 (33) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

12 (36) "Private school" means a school regulated under chapter
13 28A.195 or 28A.205 RCW.

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

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

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

23 (40) "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 (41) "Serious violent offense" is a subcategory of violent offense
33 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 (42) "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 (43) "Sexual motivation" means that one of the purposes for which
26 the defendant committed the crime was for the purpose of his or her
27 sexual gratification.
28 (44) "Standard sentence range" means the sentencing court's
29 discretionary range in imposing a nonappealable sentence.
30 (45) "Statutory maximum sentence" means the maximum length of time
31 for which an offender may be confined as punishment for a crime as
32 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
33 crime, or other statute defining the maximum penalty for a crime.
34 (46) "Stranger" means that the victim did not know the offender
35 twenty-four hours before the offense.
36 (47) "Total confinement" means confinement inside the physical
37 boundaries of a facility or institution operated or utilized under

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

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

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

12 (50) "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 (51) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community that
6 complies with RCW 9.94A.725.

7 (52) "Work ethic camp" means an alternative incarceration program
8 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
9 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 (53) "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.

--- END ---