
SENATE BILL 5036

State of Washington

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By Senators O'Ban and Dammeier

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

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

5 **Sec. 1.** RCW 9.94A.030 and 2012 c 143 s 1 are each amended to
6 read as follows:

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

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

11 (2) "Body armor" means any clothing or devices designed primarily
12 to prevent penetration by a projectile fired from a firearm or by a
13 knife, sword, or other cutting or stabbing instrument, and which is
14 worn by an individual for that specific purpose in the commission of
15 a crime.

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
20 and enforcing the offender's sentence with regard to the legal
21 financial obligation, receiving payment thereof from the offender,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (~~(14)~~) (15) "Criminal street gang-related offense" means any
25 felony or misdemeanor offense, whether in this state or elsewhere,
26 that is committed for the benefit of, at the direction of, or in
27 association with any criminal street gang, or is committed with the
28 intent to promote, further, or assist in any criminal conduct by the
29 gang, or is 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,
32 prestige, 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,
38 gain, profit, or other advantage for the gang, its reputation,
39 influence, or membership; or

1 (f) To provide the gang with any advantage in, or any control or
2 dominance over any criminal market sector, including, but not limited
3 to, manufacturing, delivering, or selling any controlled substance
4 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
5 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
6 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
7 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
8 9.68 RCW).

9 ~~((15))~~ (16) "Day fine" means a fine imposed by the sentencing
10 court that equals the difference between the offender's net daily
11 income and the reasonable obligations that the offender has for the
12 support of the offender and any dependents.

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

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

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

27 ~~((19))~~ (20) "Disposable earnings" means that part of the
28 earnings of an offender remaining after the deduction from those
29 earnings of any amount required by law to be withheld. For the
30 purposes of this definition, "earnings" means compensation paid or
31 payable for personal services, whether denominated as wages, salary,
32 commission, bonuses, or otherwise, and, notwithstanding any other
33 provision of law making the payments exempt from garnishment,
34 attachment, or other process to satisfy a court-ordered legal
35 financial obligation, specifically includes periodic payments
36 pursuant to pension or retirement programs, or insurance policies of
37 any type, but does not include payments made under Title 50 RCW,
38 except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

39 ~~((20))~~ (21) "Domestic violence" has the same meaning as defined
40 in RCW 10.99.020 and 26.50.010.

1 ~~((21))~~ (22) "Drug offender sentencing alternative" is a
2 sentencing option available to persons convicted of a felony offense
3 other than a violent offense or a sex offense and who are eligible
4 for the option under RCW 9.94A.660.

5 ~~((22))~~ (23) "Drug offense" means:

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

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

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

15 ~~((23))~~ (24) "Earned release" means earned release from
16 confinement as provided in RCW 9.94A.728.

17 ~~((24))~~ (25) "Escape" means:

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

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

27 ~~((25))~~ (26) "Felony traffic offense" means:

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

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

37 ~~((26))~~ (27) "Fine" means a specific sum of money ordered by the
38 sentencing court to be paid by the offender to the court over a
39 specific period of time.

1 ~~((27))~~ (28) "First-time offender" means any person who has no
2 prior convictions for a felony and is eligible for the first-time
3 offender waiver under RCW 9.94A.650.

4 ~~((28))~~ (29) "Home detention" means a program of partial
5 confinement available to offenders wherein the offender is confined
6 in a private residence subject to electronic surveillance.

7 ~~((29))~~ (30) "Homelessness" or "homeless" means a condition
8 where an individual lacks a fixed, regular, and adequate nighttime
9 residence and who has a primary nighttime residence that is:

10 (a) A supervised, publicly or privately operated shelter designed
11 to provide temporary living accommodations;

12 (b) A public or private place not designed for, or ordinarily
13 used as, a regular sleeping accommodation for human beings; or

14 (c) A private residence where the individual stays as a transient
15 invitee.

16 ~~((30))~~ (31) "Legal financial obligation" means a sum of money
17 that is ordered by a superior court of the state of Washington for
18 legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims' compensation fees as
20 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
21 drug funds, court-appointed attorneys' fees, and costs of defense,
22 fines, and any other financial obligation that is assessed to the
23 offender as a result of a felony conviction. Upon conviction for
24 vehicular assault while under the influence of intoxicating liquor or
25 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
26 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
27 legal financial obligations may also include payment to a public
28 agency of the expense of an emergency response to the incident
29 resulting in the conviction, subject to RCW 38.52.430.

30 ~~((31))~~ (32) "Minor child" means a biological or adopted child
31 of the offender who is under age eighteen at the time of the
32 offender's current offense.

33 ~~((32))~~ (33) "Most serious offense" means any of the following
34 felonies or a felony attempt to commit any of the following felonies:

35 (a) Any felony defined under any law as a class A felony or
36 criminal solicitation of or criminal conspiracy to commit a class A
37 felony;

38 (b) Assault in the second degree;

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

40 (d) Child molestation in the second degree;

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

1 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
2 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
3 1993, through July 27, 1997;

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

10 ~~((+33+))~~ (34) "Nonviolent offense" means an offense which is not
11 a violent offense.

12 ~~((+34+))~~ (35) "Offender" means a person who has committed a
13 felony established by state law and is eighteen years of age or older
14 or is less than eighteen years of age but whose case is under
15 superior court jurisdiction under RCW 13.04.030 or has been
16 transferred by the appropriate juvenile court to a criminal court
17 pursuant to RCW 13.40.110. In addition, for the purpose of community
18 custody requirements under this chapter, "offender" also means a
19 misdemeanor or gross misdemeanor probationer ordered by a superior
20 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
21 and supervised by the department pursuant to RCW 9.94A.501 and
22 9.94A.5011. Throughout this chapter, the terms "offender" and
23 "defendant" are used interchangeably.

24 ~~((+35+))~~ (36) "Partial confinement" means confinement for no more
25 than one year in a facility or institution operated or utilized under
26 contract by the state or any other unit of government, or, if home
27 detention or work crew has been ordered by the court or home
28 detention has been ordered by the department as part of the parenting
29 program, in an approved residence, for a substantial portion of each
30 day with the balance of the day spent in the community. Partial
31 confinement includes work release, home detention, work crew, and a
32 combination of work crew and home detention.

33 ~~((+36+))~~ (37) "Pattern of criminal street gang activity" means:

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

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

1 (ii) Any "violent" offense as defined by this section, excluding
2 Assault of a Child 2 (RCW 9A.36.130);
3 (iii) Deliver or Possession with Intent to Deliver a Controlled
4 Substance (chapter 69.50 RCW);
5 (iv) Any violation of the firearms and dangerous weapon act
6 (chapter 9.41 RCW);
7 (v) Theft of a Firearm (RCW 9A.56.300);
8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);
9 (vii) Malicious Harassment (RCW 9A.36.080);
10 (viii) Harassment where a subsequent violation or deadly threat
11 is made (RCW 9A.46.020(2)(b));
12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
13 (x) Any felony conviction by a person eighteen years of age or
14 older with a special finding of involving a juvenile in a felony
15 offense under RCW 9.94A.833;
16 (xi) Residential Burglary (RCW 9A.52.025);
17 (xii) Burglary 2 (RCW 9A.52.030);
18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
23 9A.56.070);
24 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
25 9A.56.075);
26 (xix) Extortion 1 (RCW 9A.56.120);
27 (xx) Extortion 2 (RCW 9A.56.130);
28 (xxi) Intimidating a Witness (RCW 9A.72.110);
29 (xxii) Tampering with a Witness (RCW 9A.72.120);
30 (xxiii) Reckless Endangerment (RCW 9A.36.050);
31 (xxiv) Coercion (RCW 9A.36.070);
32 (xxv) Harassment (RCW 9A.46.020); or
33 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
34 (b) That at least one of the offenses listed in (a) of this
35 subsection shall have occurred after July 1, 2008;
36 (c) That the most recent committed offense listed in (a) of this
37 subsection occurred within three years of a prior offense listed in
38 (a) of this subsection; and

1 (d) Of the offenses that were committed in (a) of this
2 subsection, the offenses occurred on separate occasions or were
3 committed by two or more persons.

4 (~~(+37+)~~) (38) "Persistent offender" is an offender who:

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

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

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
16 of a child in the first degree, child molestation in the first
17 degree, rape in the second degree, rape of a child in the second
18 degree, or indecent liberties by forcible compulsion; (B) any of the
19 following offenses with a finding of sexual motivation: Murder in the
20 first degree, murder in the second degree, homicide by abuse,
21 kidnapping in the first degree, kidnapping in the second degree,
22 assault in the first degree, assault in the second degree, assault of
23 a child in the first degree, assault of a child in the second degree,
24 or burglary in the first degree; or (C) an attempt to commit any
25 crime listed in this subsection (~~(+37+)~~) (38)(b)(i); and

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

38 (~~(+38+)~~) (39) "Predatory" means: (a) The perpetrator of the crime
39 was a stranger to the victim, as defined in this section; (b) the
40 perpetrator established or promoted a relationship with the victim

1 prior to the offense and the victimization of the victim was a
2 significant reason the perpetrator established or promoted the
3 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
4 volunteer, or other person in authority in any public or private
5 school and the victim was a student of the school under his or her
6 authority or supervision. For purposes of this subsection, "school"
7 does not include home-based instruction as defined in RCW
8 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
9 authority in any recreational activity and the victim was a
10 participant in the activity under his or her authority or
11 supervision; (iii) a pastor, elder, volunteer, or other person in
12 authority in any church or religious organization, and the victim was
13 a member or participant of the organization under his or her
14 authority; or (iv) a teacher, counselor, volunteer, or other person
15 in authority providing home-based instruction and the victim was a
16 student receiving home-based instruction while under his or her
17 authority or supervision. For purposes of this subsection: (A) "Home-
18 based instruction" has the same meaning as defined in RCW
19 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
20 in authority" does not include the parent or legal guardian of the
21 victim.

22 ~~((+39+))~~ (40) "Private school" means a school regulated under
23 chapter 28A.195 or 28A.205 RCW.

24 ~~((+40+))~~ (41) "Public school" has the same meaning as in RCW
25 28A.150.010.

26 ~~((+41+))~~ (42) "Repetitive domestic violence offense" means any:

27 (a)(i) Domestic violence assault that is not a felony offense
28 under RCW 9A.36.041;

29 (ii) Domestic violence violation of a no-contact order under
30 chapter 10.99 RCW that is not a felony offense;

31 (iii) Domestic violence violation of a protection order under
32 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony
33 offense;

34 (iv) Domestic violence harassment offense under RCW 9A.46.020
35 that is not a felony offense; or

36 (v) Domestic violence stalking offense under RCW 9A.46.110 that
37 is not a felony offense; or

38 (b) Any federal, out-of-state, tribal court, military, county, or
39 municipal conviction for an offense that under the laws of this state

1 would be classified as a repetitive domestic violence offense under
2 (a) of this subsection.

3 ~~((42))~~ (43) "Restitution" means a specific sum of money ordered
4 by the sentencing court to be paid by the offender to the court over
5 a specified period of time as payment of damages. The sum may include
6 both public and private costs.

7 ~~((43))~~ (44) "Risk assessment" means the application of the risk
8 instrument recommended to the department by the Washington state
9 institute for public policy as having the highest degree of
10 predictive accuracy for assessing an offender's risk of reoffense.

11 ~~((44))~~ (45) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
14 while under the influence of intoxicating liquor or any drug (RCW
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
16 attended vehicle (RCW 46.52.020(5)); or

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

20 ~~((45))~~ (46) "Serious violent offense" is a subcategory of
21 violent offense and means:

22 (a)(i) Murder in the first degree;

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

29 (viii) Assault of a child in the first degree; or

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

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

35 ~~((46))~~ (47) "Sex offense" means:

36 (a)(i) A felony that is a violation of chapter 9A.44 RCW other
37 than RCW 9A.44.132;

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

39 (iii) A felony that is a violation of chapter 9.68A RCW other
40 than RCW 9.68A.080;

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

4 (v) A felony violation of RCW 9A.44.132(1) (failure to register)
5 if the person has been convicted of violating RCW 9A.44.132(1)
6 (failure to register) on at least one prior occasion;

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

10 (c) A felony with a finding of sexual motivation under RCW
11 9.94A.835 or 13.40.135; or

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

15 ~~((47))~~ (48) "Sexual motivation" means that one of the purposes
16 for which the defendant committed the crime was for the purpose of
17 his or her sexual gratification.

18 ~~((48))~~ (49) "Standard sentence range" means the sentencing
19 court's discretionary range in imposing a nonappealable sentence.

20 ~~((49))~~ (50) "Statutory maximum sentence" means the maximum
21 length of time for which an offender may be confined as punishment
22 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
23 statute defining the crime, or other statute defining the maximum
24 penalty for a crime.

25 ~~((50))~~ (51) "Stranger" means that the victim did not know the
26 offender twenty-four hours before the offense.

27 ~~((51))~~ (52) "Total confinement" means confinement inside the
28 physical boundaries of a facility or institution operated or utilized
29 under contract by the state or any other unit of government for
30 twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

31 ~~((52))~~ (53) "Transition training" means written and verbal
32 instructions and assistance provided by the department to the
33 offender during the two weeks prior to the offender's successful
34 completion of the work ethic camp program. The transition training
35 shall include instructions in the offender's requirements and
36 obligations during the offender's period of community custody.

37 ~~((53))~~ (54) "Victim" means any person who has sustained
38 emotional, psychological, physical, or financial injury to person or
39 property as a direct result of the crime charged.

40 ~~((54))~~ (55) "Violent offense" means:

1 (a) Any of the following felonies:
2 (i) Any felony defined under any law as a class A felony or an
3 attempt to commit a class A felony;
4 (ii) Criminal solicitation of or criminal conspiracy to commit a
5 class A felony;
6 (iii) Manslaughter in the first degree;
7 (iv) Manslaughter in the second degree;
8 (v) Indecent liberties if committed by forcible compulsion;
9 (vi) Kidnapping in the second degree;
10 (vii) Arson in the second degree;
11 (viii) Assault in the second degree;
12 (ix) Assault of a child in the second degree;
13 (x) Extortion in the first degree;
14 (xi) Robbery in the second degree;
15 (xii) Drive-by shooting;
16 (xiii) Vehicular assault, when caused by the operation or driving
17 of a vehicle by a person while under the influence of intoxicating
18 liquor or any drug or by the operation or driving of a vehicle in a
19 reckless manner; and
20 (xiv) Vehicular homicide, when proximately caused by the driving
21 of any vehicle by any person while under the influence of
22 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
23 the operation of any vehicle in a reckless manner;
24 (b) Any conviction for a felony offense in effect at any time
25 prior to July 1, 1976, that is comparable to a felony classified as a
26 violent offense in (a) of this subsection; and
27 (c) Any federal or out-of-state conviction for an offense that
28 under the laws of this state would be a felony classified as a
29 violent offense under (a) or (b) of this subsection.
30 ~~((+55+))~~ (56) "Work crew" means a program of partial confinement
31 consisting of civic improvement tasks for the benefit of the
32 community that complies with RCW 9.94A.725.
33 ~~((+56+))~~ (57) "Work ethic camp" means an alternative
34 incarceration program as provided in RCW 9.94A.690 designed to reduce
35 recidivism and lower the cost of corrections by requiring offenders
36 to complete a comprehensive array of real-world job and vocational
37 experiences, character-building work ethics training, life management
38 skills development, substance abuse rehabilitation, counseling,
39 literacy training, and basic adult education.

1 (~~(57)~~) (58) "Work release" means a program of partial
2 confinement available to offenders who are employed or engaged as a
3 student in a regular course of study at school.

4 **Sec. 2.** RCW 9.94A.533 and 2013 c 270 s 2 are each amended to
5 read as follows:

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

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

14 (3) The following additional times shall be added to the standard
15 sentence range for felony crimes committed after July 23, 1995, if
16 the offender or an accomplice was armed with a firearm as defined in
17 RCW 9.41.010 and the offender is being sentenced for one of the
18 crimes listed in this subsection as eligible for any firearm
19 enhancements based on the classification of the completed felony
20 crime. If the offender is being sentenced for more than one offense,
21 the firearm enhancement or enhancements must be added to the total
22 period of confinement for all offenses, regardless of which
23 underlying offense is subject to a firearm enhancement. If the
24 offender or an accomplice was armed with a firearm as defined in RCW
25 9.41.010 and the offender is being sentenced for an anticipatory
26 offense under chapter 9A.28 RCW to commit one of the crimes listed in
27 this subsection as eligible for any firearm enhancements, the
28 following additional times shall be added to the standard sentence
29 range determined under subsection (2) of this section based on the
30 felony crime of conviction as classified under RCW 9A.28.020:

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

34 (b) Three years for any felony defined under any law as a class B
35 felony or with a statutory maximum sentence of ten years, or both,
36 and not covered under (~~(f)~~) (g) of this subsection;

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

1 (d) If the offender is being sentenced for any firearm
2 enhancements under (a), (b), and/or (c) of this subsection and the
3 offender has previously been sentenced for any deadly weapon
4 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
5 subsection or subsection (4)(a), (b), and/or (c) of this section, or
6 both, all firearm enhancements under this subsection shall be twice
7 the amount of the enhancement listed;

8 (e) If the offender or an accomplice was wearing body armor at
9 the time of the offense, all firearm enhancements under this
10 subsection shall be twice the amount of the enhancement listed;

11 (f) Notwithstanding any other provision of law, all firearm
12 enhancements under this section are mandatory, shall be served in
13 total confinement, and shall run consecutively to all other
14 sentencing provisions, including other firearm or deadly weapon
15 enhancements, for all offenses sentenced under this chapter. However,
16 whether or not a mandatory minimum term has expired, an offender
17 serving a sentence under this subsection may be granted an
18 extraordinary medical placement when authorized under RCW
19 9.94A.728(3);

20 (~~(f)~~) (g) The firearm enhancements in this section shall apply
21 to all felony crimes except the following: Possession of a machine
22 gun, possessing a stolen firearm, drive-by shooting, theft of a
23 firearm, unlawful possession of a firearm in the first and second
24 degree, and use of a machine gun in a felony;

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

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

1 regardless of which underlying offense is subject to a deadly weapon
2 enhancement. If the offender or an accomplice was armed with a deadly
3 weapon other than a firearm as defined in RCW 9A.41.010 and the
4 offender is being sentenced for an anticipatory offense under chapter
5 9A.28 RCW to commit one of the crimes listed in this subsection as
6 eligible for any deadly weapon enhancements, the following additional
7 times shall be added to the standard sentence range determined under
8 subsection (2) of this section based on the felony crime of
9 conviction as classified under RCW 9A.28.020:

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

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

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

19 (d) If the offender is being sentenced under (a), (b), and/or (c)
20 of this subsection for any deadly weapon enhancements and the
21 offender has previously been sentenced for any deadly weapon
22 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
23 subsection or subsection (3)(a), (b), and/or (c) of this section, or
24 both, or the offender or an accomplice was wearing body armor at the
25 time of the offense, all deadly weapon enhancements under this
26 subsection shall be twice the amount of the enhancement listed;

27 (e) Notwithstanding any other provision of law, all deadly weapon
28 enhancements under this section are mandatory, shall be served in
29 total confinement, and shall run consecutively to all other
30 sentencing provisions, including other firearm or deadly weapon
31 enhancements, for all offenses sentenced under this chapter. However,
32 whether or not a mandatory minimum term has expired, an offender
33 serving a sentence under this subsection may be granted an
34 extraordinary medical placement when authorized under RCW
35 9.94A.728(3);

36 (f) The deadly weapon enhancements in this section shall apply to
37 all felony crimes except the following: Possession of a machine gun,
38 possessing a stolen firearm, drive-by shooting, theft of a firearm,
39 unlawful possession of a firearm in the first and second degree, and
40 use of a machine gun in a felony;

1 (g) If the standard sentence range under this section exceeds the
2 statutory maximum sentence for the offense, the statutory maximum
3 sentence shall be the presumptive sentence unless the offender is a
4 persistent offender. If the addition of a deadly weapon enhancement
5 increases the sentence so that it would exceed the statutory maximum
6 for the offense, the portion of the sentence representing the
7 enhancement may not be reduced.

8 (5) The following additional times shall be added to the standard
9 sentence range if the offender or an accomplice committed the offense
10 while in a county jail or state correctional facility and the
11 offender is being sentenced for one of the crimes listed in this
12 subsection. If the offender or an accomplice committed one of the
13 crimes listed in this subsection while in a county jail or state
14 correctional facility, and the offender is being sentenced for an
15 anticipatory offense under chapter 9A.28 RCW to commit one of the
16 crimes listed in this subsection, the following additional times
17 shall be added to the standard sentence range determined under
18 subsection (2) of this section:

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

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

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

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

27 (6) An additional twenty-four months shall be added to the
28 standard sentence range for any ranked offense involving a violation
29 of chapter 69.50 RCW if the offense was also a violation of RCW
30 69.50.435 or 9.94A.827. All enhancements under this subsection shall
31 run consecutively to all other sentencing provisions, for all
32 offenses sentenced under this chapter.

33 (7) An additional two years shall be added to the standard
34 sentence range for vehicular homicide committed while under the
35 influence of intoxicating liquor or any drug as defined by RCW
36 46.61.502 for each prior offense as defined in RCW 46.61.5055. All
37 enhancements under this subsection shall be mandatory, shall be
38 served in total confinement, and shall run consecutively to all other
39 sentencing provisions.

1 (8)(a) The following additional times shall be added to the
2 standard sentence range for felony crimes committed on or after July
3 1, 2006, if the offense was committed with sexual motivation, as that
4 term is defined in RCW 9.94A.030. If the offender is being sentenced
5 for more than one offense, the sexual motivation enhancement must be
6 added to the total period of total confinement for all offenses,
7 regardless of which underlying offense is subject to a sexual
8 motivation enhancement. If the offender committed the offense with
9 sexual motivation and the offender is being sentenced for an
10 anticipatory offense under chapter 9A.28 RCW, the following
11 additional times shall be added to the standard sentence range
12 determined under subsection (2) of this section based on the felony
13 crime of conviction as classified under RCW 9A.28.020:

14 (i) Two years for any felony defined under the law as a class A
15 felony or with a statutory maximum sentence of at least twenty years,
16 or both;

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

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

22 (iv) If the offender is being sentenced for any sexual motivation
23 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
24 the offender has previously been sentenced for any sexual motivation
25 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
26 (iii) of this subsection, all sexual motivation enhancements under
27 this subsection shall be twice the amount of the enhancement listed;

28 (b) Notwithstanding any other provision of law, all sexual
29 motivation enhancements under this subsection are mandatory, shall be
30 served in total confinement, and shall run consecutively to all other
31 sentencing provisions, including other sexual motivation
32 enhancements, for all offenses sentenced under this chapter. However,
33 whether or not a mandatory minimum term has expired, an offender
34 serving a sentence under this subsection may be granted an
35 extraordinary medical placement when authorized under RCW
36 9.94A.728(3);

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

39 (d) If the standard sentence range under this subsection exceeds
40 the statutory maximum sentence for the offense, the statutory maximum

1 sentence shall be the presumptive sentence unless the offender is a
2 persistent offender. If the addition of a sexual motivation
3 enhancement increases the sentence so that it would exceed the
4 statutory maximum for the offense, the portion of the sentence
5 representing the enhancement may not be reduced;

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

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

12 (9) An additional one-year enhancement shall be added to the
13 standard sentence range for the felony crimes of RCW 9A.44.073,
14 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
15 or after July 22, 2007, if the offender engaged, agreed, or offered
16 to engage the victim in the sexual conduct in return for a fee. If
17 the offender is being sentenced for more than one offense, the one-
18 year enhancement must be added to the total period of total
19 confinement for all offenses, regardless of which underlying offense
20 is subject to the enhancement. If the offender is being sentenced for
21 an anticipatory offense for the felony crimes of RCW 9A.44.073,
22 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
23 offender attempted, solicited another, or conspired to engage, agree,
24 or offer to engage the victim in the sexual conduct in return for a
25 fee, an additional one-year enhancement shall be added to the
26 standard sentence range determined under subsection (2) of this
27 section. For purposes of this subsection, "sexual conduct" means
28 sexual intercourse or sexual contact, both as defined in chapter
29 9A.44 RCW.

30 (10)(a) For a person age eighteen or older convicted of any
31 criminal street gang-related felony offense for which the person
32 compensated, threatened, or solicited a minor in order to involve the
33 minor in the commission of the felony offense, the standard sentence
34 range is determined by locating the sentencing grid sentence range
35 defined by the appropriate offender score and the seriousness level
36 of the completed crime, and multiplying the range by one hundred
37 twenty-five percent. If the standard sentence range under this
38 subsection exceeds the statutory maximum sentence for the offense,
39 the statutory maximum sentence is the presumptive sentence unless the
40 offender is a persistent offender.

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

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

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

13 (12) An additional twelve months shall be added to the standard
14 sentence range for an offense that is also a violation of RCW
15 9.94A.831.

16 (13) An additional twelve months shall be added to the standard
17 sentence range for vehicular homicide committed while under the
18 influence of intoxicating liquor or any drug as defined by RCW
19 46.61.520 or for vehicular assault committed while under the
20 influence of intoxicating liquor or any drug as defined by RCW
21 46.61.522, or for any felony driving under the influence (RCW
22 46.61.502(6)) or felony physical control under the influence (RCW
23 46.61.504(6)) for each child passenger under the age of sixteen who
24 is an occupant in the defendant's vehicle. These enhancements shall
25 be mandatory, shall be served in total confinement, and shall run
26 consecutively to all other sentencing provisions. If the addition of
27 a minor child enhancement increases the sentence so that it would
28 exceed the statutory maximum for the offense, the portion of the
29 sentence representing the enhancement may not be reduced.

30 (14) An additional twelve months shall be added to the standard
31 sentence range for an offense that is also a violation of RCW
32 9.94A.832.

33 **Sec. 3.** RCW 9.94A.728 and 2010 c 224 s 6 are each amended to
34 read as follows:

35 No person serving a sentence imposed pursuant to this chapter and
36 committed to the custody of the department shall leave the confines
37 of the correctional facility or be released prior to the expiration
38 of the sentence except as follows:

1 (1) An offender may earn early release time as authorized by RCW
2 9.94A.729;

3 (2) An offender may leave a correctional facility pursuant to an
4 authorized furlough or leave of absence. In addition, offenders may
5 leave a correctional facility when in the custody of a corrections
6 officer or officers;

7 (3)(a) The secretary may authorize an extraordinary medical
8 placement for an offender when all of the following conditions exist:

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

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

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

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

19 (c) The secretary shall require electronic monitoring for all
20 offenders in extraordinary medical placement unless the electronic
21 monitoring equipment interferes with the function of the offender's
22 medical equipment or results in the loss of funding for the
23 offender's medical care, in which case, an alternative type of
24 monitoring shall be utilized. The secretary shall specify who shall
25 provide the monitoring services and the terms under which the
26 monitoring shall be performed.

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

29 (e) Persistent offenders are not eligible for extraordinary
30 medical placement;

31 (4) The governor, upon recommendation from the clemency and
32 pardons board, may grant an extraordinary release for reasons of
33 serious health problems, senility, advanced age, extraordinary
34 meritorious acts, or other extraordinary circumstances;

35 (5) No more than the final six months of the offender's term of
36 confinement may be served in partial confinement designed to aid the
37 offender in finding work and reestablishing himself or herself in the
38 community or no more than the final twelve months of the offender's
39 term of confinement may be served in partial confinement as part of
40 the parenting program in RCW 9.94A.6551. This is in addition to that

1 period of earned early release time that may be exchanged for partial
2 confinement pursuant to RCW 9.94A.729(5)(d);

3 (6) The governor may pardon any offender;

4 (7) The department may release an offender from confinement any
5 time within ten days before a release date calculated under this
6 section;

7 (8) An offender or accomplice wearing body armor at the time of
8 the offense shall not receive any good time credits or earned release
9 time for that portion of his or her sentence that results from any
10 body armor enhancements;

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

14 (~~(9)~~) (10) Notwithstanding any other provisions of this
15 section, an offender sentenced for a felony crime listed in RCW
16 9.94A.540 as subject to a mandatory minimum sentence of total
17 confinement shall not be released from total confinement before the
18 completion of the listed mandatory minimum sentence for that felony
19 crime of conviction unless allowed under RCW 9.94A.540.

20 NEW SECTION. Sec. 4. A new section is added to chapter 9.94A
21 RCW to read as follows:

22 In a criminal case wherein there has been a special allegation
23 and evidence establishing that the accused or an accomplice was armed
24 with a firearm as defined in RCW 9.41.010 or deadly weapon and the
25 offender or an accomplice was wearing body armor as defined in RCW
26 9.94A.030 at the time of the commission of the crime, the court shall
27 make a finding of fact of whether or not the accused or an accomplice
28 was armed with a firearm or deadly weapon and wearing body armor at
29 the time of the commission of the crime, or if a jury trial is had,
30 the jury shall, if it finds the defendant guilty, also find a special
31 verdict as to whether or not the defendant or an accomplice was armed
32 with a firearm or deadly weapon and wearing body armor at the time of
33 the commission of the crime.

34 NEW SECTION. Sec. 5. This act takes effect August 1, 2015.

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