
HOUSE BILL 2968

State of Washington 65th Legislature 2018 Regular Session

By Representatives Irwin, Johnson, McDonald, and Muri

Read first time 01/30/18. Referred to Committee on Public Safety.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that during the
6 commission of crimes some criminals wear body armor which presents an
7 enhanced degree of danger for the public and especially law
8 enforcement because it may significantly reduce their ability to use
9 deadly force to eliminate the threat posed by the criminal. The
10 legislature finds that a recent example of the threat to public
11 safety posed by body armor when possessed by criminals in the
12 commission of a crime resulted in the events leading to the death of
13 Deputy Daniel Alexander McCartney.

14 Deputy McCartney served the citizens of the state as a law
15 enforcement officer for nine years, three of which were with the
16 Pierce county sheriff's department. On January 8, 2018, he responded
17 to a 911 call at night regarding a burglary. According to media
18 reports, Deputy McCartney heroically chased two suspects and
19 exchanged fire in a gun battle with at least one suspect armed with
20 body armor. Deputy McCartney was able to hit the suspect with body
21 armor five times before the suspect was killed at the scene. Any one

1 of the five shots fired by Deputy McCartney may have proved lethal
2 had they not been deflected by the suspect's body armor. Tragically,
3 Deputy McCartney succumbed to injuries he sustained at the scene. The
4 legislature finds that greater penalties are necessary in order to
5 deter the use of body armor in the commission of a crime.

6 NEW SECTION. **Sec. 2.** This act may be known and cited as the
7 "Deputy Daniel McCartney Act."

8 **Sec. 3.** RCW 9.94A.030 and 2016 c 81 s 16 are each amended to
9 read as follows:

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

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

14 (2) "Collect," or any derivative thereof, "collect and remit," or
15 "collect and deliver," when used with reference to the department,
16 means that the department, either directly or through a collection
17 agreement authorized by RCW 9.94A.760, is responsible for monitoring
18 and enforcing the offender's sentence with regard to the legal
19 financial obligation, receiving payment thereof from the offender,
20 and, consistent with current law, delivering daily the entire payment
21 to the superior court clerk without depositing it in a departmental
22 account.

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

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

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

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

36 (7) "Community restitution" means compulsory service, without
37 compensation, performed for the benefit of the community by the
38 offender.

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

2 (9) "Conviction" means an adjudication of guilt pursuant to Title
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
4 and acceptance of a plea of guilty.

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

13 (11) "Criminal history" means the list of a defendant's prior
14 convictions and juvenile adjudications, whether in this state, in
15 federal court, or elsewhere, and any issued certificates of
16 restoration of opportunity pursuant to RCW 9.97.020.

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

21 (b) A conviction may be removed from a defendant's criminal
22 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
23 9.95.240, or a similar out-of-state statute, or if the conviction has
24 been vacated pursuant to a governor's pardon.

25 (c) The determination of a defendant's criminal history is
26 distinct from the determination of an offender score. A prior
27 conviction that was not included in an offender score calculated
28 pursuant to a former version of the sentencing reform act remains
29 part of the defendant's criminal history.

30 (12) "Criminal street gang" means any ongoing organization,
31 association, or group of three or more persons, whether formal or
32 informal, having a common name or common identifying sign or symbol,
33 having as one of its primary activities the commission of criminal
34 acts, and whose members or associates individually or collectively
35 engage in or have engaged in a pattern of criminal street gang
36 activity. This definition does not apply to employees engaged in
37 concerted activities for their mutual aid and protection, or to the
38 activities of labor and bona fide nonprofit organizations or their
39 members or agents.

1 (13) "Criminal street gang associate or member" means any person
2 who actively participates in any criminal street gang and who
3 intentionally promotes, furthers, or assists in any criminal act by
4 the criminal street gang.

5 (14) "Criminal street gang-related offense" means any felony or
6 misdemeanor offense, whether in this state or elsewhere, that is
7 committed for the benefit of, at the direction of, or in association
8 with any criminal street gang, or is committed with the intent to
9 promote, further, or assist in any criminal conduct by the gang, or
10 is committed for one or more of the following reasons:

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

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

14 (c) To exact revenge or retribution for the gang or any member of
15 the gang;

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

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

21 (f) To provide the gang with any advantage in, or any control or
22 dominance over any criminal market sector, including, but not limited
23 to, manufacturing, delivering, or selling any controlled substance
24 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
25 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
26 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
27 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
28 9.68 RCW).

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

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

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

39 (18) "Determinate sentence" means a sentence that states with
40 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community custody, the number
2 of actual hours or days of community restitution work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through earned release can reduce the actual period of confinement
5 shall not affect the classification of the sentence as a determinate
6 sentence.

7 (19) "Disposable earnings" means that part of the earnings of an
8 offender remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for
11 personal services, whether denominated as wages, salary, commission,
12 bonuses, or otherwise, and, notwithstanding any other provision of
13 law making the payments exempt from garnishment, attachment, or other
14 process to satisfy a court-ordered legal financial obligation,
15 specifically includes periodic payments pursuant to pension or
16 retirement programs, or insurance policies of any type, but does not
17 include payments made under Title 50 RCW, except as provided in RCW
18 50.40.020 and 50.40.050, or Title 74 RCW.

19 (20) "Domestic violence" has the same meaning as defined in RCW
20 10.99.020 and 26.50.010.

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

25 (22) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession
27 of a controlled substance (RCW 69.50.4013) or forged prescription for
28 a controlled substance (RCW 69.50.403);

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

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

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

37 (24) "Electronic monitoring" means tracking the location of an
38 individual, whether pretrial or posttrial, through the use of
39 technology that is capable of determining or identifying the

1 monitored individual's presence or absence at a particular location
2 including, but not limited to:

3 (a) Radio frequency signaling technology, which detects if the
4 monitored individual is or is not at an approved location and
5 notifies the monitoring agency of the time that the monitored
6 individual either leaves the approved location or tampers with or
7 removes the monitoring device; or

8 (b) Active or passive global positioning system technology, which
9 detects the location of the monitored individual and notifies the
10 monitoring agency of the monitored individual's location.

11 (25) "Escape" means:

12 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
13 the first degree (RCW 9A.76.110), escape in the second degree (RCW
14 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
15 willful failure to return from work release (RCW 72.65.070), or
16 willful failure to be available for supervision by the department
17 while in community custody (RCW 72.09.310); or

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

21 (26) "Felony traffic offense" means:

22 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
23 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
24 run injury-accident (RCW 46.52.020(4)), felony driving while under
25 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
26 or felony physical control of a vehicle while under the influence of
27 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

31 (27) "Fine" means a specific sum of money ordered by the
32 sentencing court to be paid by the offender to the court over a
33 specific period of time.

34 (28) "First-time offender" means any person who has no prior
35 convictions for a felony and is eligible for the first-time offender
36 waiver under RCW 9.94A.650.

37 (29) "Home detention" is a subset of electronic monitoring and
38 means a program of partial confinement available to offenders wherein
39 the offender is confined in a private residence twenty-four hours a
40 day, unless an absence from the residence is approved, authorized, or

1 otherwise permitted in the order by the court or other supervising
2 agency that ordered home detention, and the offender is subject to
3 electronic monitoring.

4 (30) "Homelessness" or "homeless" means a condition where an
5 individual lacks a fixed, regular, and adequate nighttime residence
6 and who has a primary nighttime residence that is:

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

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

11 (c) A private residence where the individual stays as a transient
12 invitee.

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

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

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

32 (a) Any felony defined under any law as a class A felony or
33 criminal solicitation of or criminal conspiracy to commit a class A
34 felony;

35 (b) Assault in the second degree;

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

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

39 (f) Extortion in the first degree;

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

1 (h) Indecent liberties;
2 (i) Kidnapping in the second degree;
3 (j) Leading organized crime;
4 (k) Manslaughter in the first degree;
5 (l) Manslaughter in the second degree;
6 (m) Promoting prostitution in the first degree;
7 (n) Rape in the third degree;
8 (o) Robbery in the second degree;
9 (p) Sexual exploitation;
10 (q) Vehicular assault, when caused by the operation or driving of
11 a vehicle by a person while under the influence of intoxicating
12 liquor or any drug or by the operation or driving of a vehicle in a
13 reckless manner;
14 (r) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation
17 of any vehicle in a reckless manner;
18 (s) Any other class B felony offense with a finding of sexual
19 motivation;
20 (t) Any other felony with a deadly weapon verdict under RCW
21 9.94A.825;
22 (u) Any felony offense in effect at any time prior to December 2,
23 1993, that is comparable to a most serious offense under this
24 subsection, or any federal or out-of-state conviction for an offense
25 that under the laws of this state would be a felony classified as a
26 most serious offense under this subsection;
27 (v)(i) A prior conviction for indecent liberties under RCW
28 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
29 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
30 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
31 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
32 until July 1, 1988;
33 (ii) A prior conviction for indecent liberties under RCW
34 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
35 if: (A) The crime was committed against a child under the age of
36 fourteen; or (B) the relationship between the victim and perpetrator
37 is included in the definition of indecent liberties under RCW
38 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
39 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
40 1993, through July 27, 1997;

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

7 (34) "Nonviolent offense" means an offense which is not a violent
8 offense.

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

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

31 (37) "Pattern of criminal street gang activity" means:

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

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

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

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

40 (38) "Persistent offender" is an offender who:

1 (a)(i) Has been convicted in this state of any felony considered
2 a 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
13 degree, rape in the second degree, rape of a child in the second
14 degree, or indecent liberties by forcible compulsion; (B) any of the
15 following offenses with a finding of sexual motivation: Murder in the
16 first degree, murder in the second degree, homicide by abuse,
17 kidnapping in the first degree, kidnapping in the second degree,
18 assault in the first degree, assault in the second degree, assault of
19 a child in the first degree, assault of a child in the second degree,
20 or burglary in the first degree; or (C) an attempt to commit any
21 crime listed in this subsection (38)(b)(i); and

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

34 (39) "Predatory" means: (a) The perpetrator of the crime was a
35 stranger to the victim, as defined in this section; (b) the
36 perpetrator established or promoted a relationship with the victim
37 prior to the offense and the victimization of the victim was a
38 significant reason the perpetrator established or promoted the
39 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
40 volunteer, or other person in authority in any public or private

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

18 (40) "Private school" means a school regulated under chapter
19 28A.195 or 28A.205 RCW.

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

21 (42) "Repetitive domestic violence offense" means any:

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

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

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

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

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

33 (b) Any federal, out-of-state, tribal court, military, county, or
34 municipal conviction for an offense that under the laws of this state
35 would be classified as a repetitive domestic violence offense under
36 (a) of this subsection.

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

1 (44) "Risk assessment" means the application of the risk
2 instrument recommended to the department by the Washington state
3 institute for public policy as having the highest degree of
4 predictive accuracy for assessing an offender's risk of reoffense.

5 (45) "Serious traffic offense" means:

6 (a) Nonfelony driving while under the influence of intoxicating
7 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
8 while under the influence of intoxicating liquor or any drug (RCW
9 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
10 attended vehicle (RCW 46.52.020(5)); or

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

14 (46) "Serious violent offense" is a subcategory of violent
15 offense and means:

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

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

24 (ix) An attempt, criminal solicitation, or criminal conspiracy to
25 commit one of these felonies; 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 a
28 serious violent offense under (a) of this subsection.

29 (47) "Sex offense" means:

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

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

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

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

38 (v) A felony violation of RCW 9A.44.132(1) (failure to register
39 as a sex offender) if the person has been convicted of violating RCW

1 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
2 prior to June 10, 2010, on at least one prior occasion;

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

6 (c) A felony with a finding of sexual motivation under RCW
7 9.94A.835 or 13.40.135; or

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

11 (48) "Sexual motivation" means that one of the purposes for which
12 the defendant committed the crime was for the purpose of his or her
13 sexual gratification.

14 (49) "Standard sentence range" means the sentencing court's
15 discretionary range in imposing a nonappealable sentence.

16 (50) "Statutory maximum sentence" means the maximum length of
17 time for which an offender may be confined as punishment for a crime
18 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
19 defining the crime, or other statute defining the maximum penalty for
20 a crime.

21 (51) "Stranger" means that the victim did not know the offender
22 twenty-four hours before the offense.

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

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

33 (54) "Victim" means any person who has sustained emotional,
34 psychological, physical, or financial injury to person or property as
35 a direct result of the crime charged.

36 (55) "Violent offense" means:

37 (a) Any of the following felonies:

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

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault, when caused by the operation or driving
14 of 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; and

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

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

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

27 (56) "Work crew" means a program of partial confinement
28 consisting of civic improvement tasks for the benefit of the
29 community that complies with RCW 9.94A.725.

30 (57) "Work ethic camp" means an alternative incarceration program
31 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
32 the cost of corrections by requiring offenders to complete a
33 comprehensive array of real-world job and vocational experiences,
34 character-building work ethics training, life management skills
35 development, substance abuse rehabilitation, counseling, literacy
36 training, and basic adult education.

37 (58) "Work release" means a program of partial confinement
38 available to offenders who are employed or engaged as a student in a
39 regular course of study at school.

1 (59) "Body armor" means any clothing or device designed primarily
2 to prevent penetration by a projectile fired from a firearm or by a
3 knife, sword, or other cutting or stabbing instrument, and which is
4 worn by an individual for that specific purpose in the commission of
5 a crime.

6 **Sec. 4.** RCW 9.94A.533 and 2016 c 203 s 7 are each amended to
7 read as follows:

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

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

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

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

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

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

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

11 (e) If the offender is being sentenced for any firearm
12 enhancements under (a), (b), and/or (c) of this subsection and the
13 offender or an accomplice of the offender was in possession of body
14 armor at the time of the offense, all firearm enhancements under this
15 subsection shall be twice the amount of the enhancement listed or a
16 minimum of five years, whichever is greater;

17 (f) Notwithstanding any other provision of law, all firearm
18 enhancements under this section are mandatory, shall be served in
19 total confinement, and shall run consecutively to all other
20 sentencing provisions, including other firearm or deadly weapon
21 enhancements, for all offenses sentenced under this chapter. However,
22 whether or not a mandatory minimum term has expired, an offender
23 serving a sentence under this subsection may be:

24 (i) Granted an extraordinary medical placement when authorized
25 under RCW 9.94A.728(1)(c); or

26 (ii) Released under the provisions of RCW 9.94A.730;

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

32 ~~((g))~~ (h) If the standard sentence range under this section
33 exceeds the statutory maximum sentence for the offense, the statutory
34 maximum sentence shall be the presumptive sentence unless the
35 offender is a persistent offender. If the addition of a firearm
36 enhancement increases the sentence so that it would exceed the
37 statutory maximum for the offense, the portion of the sentence
38 representing the enhancement may not be reduced.

39 (4) The following additional times shall be added to the standard
40 sentence range for felony crimes committed after July 23, 1995, if

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

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

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

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

26 (d) If the offender is being sentenced under (a), (b), and/or (c)
27 of this subsection for any deadly weapon enhancements and the
28 offender has previously been sentenced for any deadly weapon
29 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
30 subsection or subsection (3)(a), (b), and/or (c) of this section, or
31 both, or the offender or an accomplice was in possession of body
32 armor at the time of the offense, all deadly weapon enhancements
33 under this subsection shall be twice the amount of the enhancement
34 listed;

35 (e) Notwithstanding any other provision of law, all deadly weapon
36 enhancements under this section are mandatory, shall be served in
37 total confinement, and shall run consecutively to all other
38 sentencing provisions, including other firearm or deadly weapon
39 enhancements, for all offenses sentenced under this chapter. However,

1 whether or not a mandatory minimum term has expired, an offender
2 serving a sentence under this subsection may be:

3 (i) Granted an extraordinary medical placement when authorized
4 under RCW 9.94A.728(1)(c); or

5 (ii) Released under the provisions of RCW 9.94A.730;

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

11 (g) If the standard sentence range under this section exceeds the
12 statutory maximum sentence for the offense, the statutory maximum
13 sentence shall be the presumptive sentence unless the offender is a
14 persistent offender. If the addition of a deadly weapon enhancement
15 increases the sentence so that it would exceed the statutory maximum
16 for the offense, the portion of the sentence representing the
17 enhancement may not be reduced.

18 (5) The following additional times shall be added to the standard
19 sentence range if the offender or an accomplice committed the offense
20 while in a county jail or state correctional facility and the
21 offender is being sentenced for one of the crimes listed in this
22 subsection. If the offender or an accomplice committed one of the
23 crimes listed in this subsection while in a county jail or state
24 correctional facility, and the offender is being sentenced for an
25 anticipatory offense under chapter 9A.28 RCW to commit one of the
26 crimes listed in this subsection, the following additional times
27 shall be added to the standard sentence range determined under
28 subsection (2) of this section:

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

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

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

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

37 (6) An additional twenty-four months shall be added to the
38 standard sentence range for any ranked offense involving a violation
39 of chapter 69.50 RCW if the offense was also a violation of RCW
40 69.50.435 or 9.94A.827. All enhancements under this subsection shall

1 run consecutively to all other sentencing provisions, for all
2 offenses sentenced under this chapter.

3 (7) An additional two years shall be added to the standard
4 sentence range for vehicular homicide committed while under the
5 influence of intoxicating liquor or any drug as defined by RCW
6 46.61.502 for each prior offense as defined in RCW 46.61.5055.

7 Notwithstanding any other provision of law, all impaired driving
8 enhancements under this subsection are mandatory, shall be served in
9 total confinement, and shall run consecutively to all other
10 sentencing provisions, including other impaired driving enhancements,
11 for all offenses sentenced under this chapter.

12 An offender serving a sentence under this subsection may be
13 granted an extraordinary medical placement when authorized under RCW
14 9.94A.728(1)(c).

15 (8)(a) The following additional times shall be added to the
16 standard sentence range for felony crimes committed on or after July
17 1, 2006, if the offense was committed with sexual motivation, as that
18 term is defined in RCW 9.94A.030. If the offender is being sentenced
19 for more than one offense, the sexual motivation enhancement must be
20 added to the total period of total confinement for all offenses,
21 regardless of which underlying offense is subject to a sexual
22 motivation enhancement. If the offender committed the offense with
23 sexual motivation and the offender is being sentenced for an
24 anticipatory offense under chapter 9A.28 RCW, the following
25 additional times shall be added to the standard sentence range
26 determined under subsection (2) of this section based on the felony
27 crime of conviction as classified under RCW 9A.28.020:

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

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

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

36 (iv) If the offender is being sentenced for any sexual motivation
37 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
38 the offender has previously been sentenced for any sexual motivation
39 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or

1 (iii) of this subsection, all sexual motivation enhancements under
2 this subsection shall be twice the amount of the enhancement listed;

3 (b) Notwithstanding any other provision of law, all sexual
4 motivation enhancements under this subsection are mandatory, shall be
5 served in total confinement, and shall run consecutively to all other
6 sentencing provisions, including other sexual motivation
7 enhancements, for all offenses sentenced under this chapter. However,
8 whether or not a mandatory minimum term has expired, an offender
9 serving a sentence under this subsection may be:

10 (i) Granted an extraordinary medical placement when authorized
11 under RCW 9.94A.728(1)(c); or

12 (ii) Released under the provisions of RCW 9.94A.730;

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

15 (d) If the standard sentence range under this subsection exceeds
16 the statutory maximum sentence for the offense, the statutory maximum
17 sentence shall be the presumptive sentence unless the offender is a
18 persistent offender. If the addition of a sexual motivation
19 enhancement increases the sentence so that it would exceed the
20 statutory maximum for the offense, the portion of the sentence
21 representing the enhancement may not be reduced;

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

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

28 (9) An additional one-year enhancement shall be added to the
29 standard sentence range for the felony crimes of RCW 9A.44.073,
30 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
31 or after July 22, 2007, if the offender engaged, agreed, or offered
32 to engage the victim in the sexual conduct in return for a fee. If
33 the offender is being sentenced for more than one offense, the
34 one-year enhancement must be added to the total period of total
35 confinement for all offenses, regardless of which underlying offense
36 is subject to the enhancement. If the offender is being sentenced for
37 an anticipatory offense for the felony crimes of RCW 9A.44.073,
38 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
39 offender attempted, solicited another, or conspired to engage, agree,
40 or offer to engage the victim in the sexual conduct in return for a

1 fee, an additional one-year enhancement shall be added to the
2 standard sentence range determined under subsection (2) of this
3 section. For purposes of this subsection, "sexual conduct" means
4 sexual intercourse or sexual contact, both as defined in chapter
5 9A.44 RCW.

6 (10)(a) For a person age eighteen or older convicted of any
7 criminal street gang-related felony offense for which the person
8 compensated, threatened, or solicited a minor in order to involve the
9 minor in the commission of the felony offense, the standard sentence
10 range is determined by locating the sentencing grid sentence range
11 defined by the appropriate offender score and the seriousness level
12 of the completed crime, and multiplying the range by one hundred
13 twenty-five percent. If the standard sentence range under this
14 subsection exceeds the statutory maximum sentence for the offense,
15 the statutory maximum sentence is the presumptive sentence unless the
16 offender is a persistent offender.

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

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

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

29 (12) An additional twelve months shall be added to the standard
30 sentence range for an offense that is also a violation of RCW
31 9.94A.831.

32 (13) An additional twelve months shall be added to the standard
33 sentence range for vehicular homicide committed while under the
34 influence of intoxicating liquor or any drug as defined by RCW
35 46.61.520 or for vehicular assault committed while under the
36 influence of intoxicating liquor or any drug as defined by RCW
37 46.61.522, or for any felony driving under the influence (RCW
38 46.61.502(6)) or felony physical control under the influence (RCW
39 46.61.504(6)) for each child passenger under the age of sixteen who
40 is an occupant in the defendant's vehicle. These enhancements shall

1 be mandatory, shall be served in total confinement, and shall run
2 consecutively to all other sentencing provisions. If the addition of
3 a minor child enhancement increases the sentence so that it would
4 exceed the statutory maximum for the offense, the portion of the
5 sentence representing the enhancement may not be reduced.

6 (14) An additional twelve months shall be added to the standard
7 sentence range for an offense that is also a violation of RCW
8 9.94A.832.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A
10 RCW to read as follows:

11 In a criminal case wherein there has been a special allegation
12 and evidence establishing that the accused or an accomplice was armed
13 with a firearm as defined in RCW 9.41.010 or deadly weapon and the
14 offender or an accomplice was in possession of body armor as defined
15 in RCW 9.94A.030 at the time of the commission of the crime, the
16 court shall make a finding of fact of whether or not the accused or
17 an accomplice was armed with a firearm or deadly weapon and in
18 possession of body armor at the time of the commission of the crime,
19 or if a jury trial is had, the jury shall, if it finds the defendant
20 guilty, also find a special verdict as to whether or not the
21 defendant or an accomplice was armed with a firearm or deadly weapon
22 and in possession of body armor at the time of the commission of the
23 crime.

24 NEW SECTION. **Sec. 6.** This act takes effect August 1, 2018.

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