

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2638

65th Legislature
2018 Regular Session

Passed by the House March 6, 2018
Yeas 85 Nays 13

Speaker of the House of Representatives

Passed by the Senate March 7, 2018
Yeas 35 Nays 13

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 2638** as passed by House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2638

Passed Legislature - 2018 Regular Session

State of Washington 65th Legislature 2018 Regular Session

By House Public Safety (originally sponsored by Representatives Goodman, Pettigrew, Appleton, and Ortiz-Self; by request of Department of Corrections)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to creating a graduated reentry program of
2 partial confinement for certain offenders; amending RCW 9.94A.030,
3 9.94A.734, and 9.94A.190; reenacting and amending RCW 9.94A.728; and
4 adding a new section to chapter 9.94A RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A
7 RCW to read as follows:

8 (1) No more than the final six months of the offender's term of
9 confinement may be served in partial confinement as home detention as
10 part of the graduated reentry program developed by the department.
11 However, an offender may not participate in the graduated reentry
12 program under this section unless he or she has served at least
13 twelve months in total confinement in a state correctional facility.

14 (2) The secretary of the department may transfer an offender from
15 a department correctional facility to home detention in the community
16 if it is determined that the graduated reentry program is an
17 appropriate placement and must assist the offender's transition from
18 confinement to the community.

19 (3) The department and its officers, agents, and employees are
20 not liable for the acts of offenders participating in the graduated

1 reentry program unless the department or its officers, agents, and
2 employees acted with willful and wanton disregard.

3 (4) All offenders placed on home detention as part of the
4 graduated reentry program must provide an approved residence and
5 living arrangement prior to transfer to home detention.

6 (5) While in the community on home detention as part of the
7 graduated reentry program, the department must:

8 (a) Require the offender to be placed on electronic home
9 monitoring;

10 (b) Require the offender to participate in programming and
11 treatment that the department shall assign based on an offender's
12 assessed need; and

13 (c) Assign a community corrections officer who will monitor the
14 offender's compliance with conditions of partial confinement and
15 programming requirements.

16 (6) The department retains the authority to return any offender
17 serving partial confinement in the graduated reentry program to total
18 confinement for any reason including, but not limited to, the
19 offender's noncompliance with any sentence requirement.

20 (7) The department may issue rental vouchers for a period not to
21 exceed six months for those transferring to partial confinement under
22 this section if an approved address cannot be obtained without the
23 assistance of a voucher.

24 (8) In the selection of offenders to participate in the graduated
25 reentry program, and in setting, modifying, and enforcing the
26 requirements of the graduated release program, the department is
27 deemed to be performing a quasi-judicial function.

28 **Sec. 2.** RCW 9.94A.728 and 2015 c 156 s 1 and 2015 c 134 s 3 are
29 each reenacted and amended to read as follows:

30 (1) No person serving a sentence imposed pursuant to this chapter
31 and committed to the custody of the department shall leave the
32 confines of the correctional facility or be released prior to the
33 expiration of the sentence except as follows:

34 (a) An offender may earn early release time as authorized by RCW
35 9.94A.729;

36 (b) An offender may leave a correctional facility pursuant to an
37 authorized furlough or leave of absence. In addition, offenders may
38 leave a correctional facility when in the custody of a corrections
39 officer or officers;

1 (c)(i) The secretary may authorize an extraordinary medical
2 placement for an offender when all of the following conditions exist:

3 (A) The offender has a medical condition that is serious and is
4 expected to require costly care or treatment;

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

8 (C) It is expected that granting the extraordinary medical
9 placement will result in a cost savings to the state.

10 (ii) An offender sentenced to death or to life imprisonment
11 without the possibility of release or parole is not eligible for an
12 extraordinary medical placement.

13 (iii) The secretary shall require electronic monitoring for all
14 offenders in extraordinary medical placement unless the electronic
15 monitoring equipment interferes with the function of the offender's
16 medical equipment or results in the loss of funding for the
17 offender's medical care, in which case, an alternative type of
18 monitoring shall be utilized. The secretary shall specify who shall
19 provide the monitoring services and the terms under which the
20 monitoring shall be performed.

21 (iv) The secretary may revoke an extraordinary medical placement
22 under this subsection (1)(c) at any time.

23 (v) Persistent offenders are not eligible for extraordinary
24 medical placement;

25 (d) The governor, upon recommendation from the clemency and
26 pardons board, may grant an extraordinary release for reasons of
27 serious health problems, senility, advanced age, extraordinary
28 meritorious acts, or other extraordinary circumstances;

29 (e) No more than the final ~~((six))~~ twelve months of the
30 offender's term of confinement may be served in partial confinement
31 ~~((designed to aid))~~ for aiding the offender ~~((in))~~ with: Finding work
32 ~~((and))~~ as part of the work release program under chapter 72.65 RCW;
33 or reestablishing himself or herself in the community ~~((or no more~~
34 ~~than the final twelve months of the offender's term of confinement~~
35 ~~may be served in partial confinement))~~ as part of the parenting
36 program in RCW 9.94A.6551. This is in addition to that period of
37 earned early release time that may be exchanged for partial
38 confinement pursuant to RCW 9.94A.729(5)(d);

39 (f) No more than the final six months of the offender's term of
40 confinement may be served in partial confinement as home detention as

1 part of the graduated reentry program developed by the department
2 under section 1 of this act;

3 (g) The governor may pardon any offender;

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

7 ~~((h))~~ (i) An offender may leave a correctional facility prior
8 to completion of his or her sentence if the sentence has been reduced
9 as provided in RCW 9.94A.870;

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

16 ~~((j))~~ (k) Any person convicted of one or more crimes committed
17 prior to the person's eighteenth birthday may be released from
18 confinement pursuant to RCW 9.94A.730.

19 (2) Offenders residing in a juvenile correctional facility
20 placement pursuant to RCW 72.01.410(1)(a) are not subject to the
21 limitations in this section.

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

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

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

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

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

38 (4) "Community corrections officer" means an employee of the
39 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

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

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

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

15 (9) "Conviction" means an adjudication of guilt pursuant to Title
16 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
17 and acceptance of a plea of guilty.

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

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

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

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

38 (c) The determination of a defendant's criminal history is
39 distinct from the determination of an offender score. A prior
40 conviction that was not included in an offender score calculated

1 pursuant to a former version of the sentencing reform act remains
2 part of the defendant's criminal history.

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

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

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

- 23 (a) To gain admission, prestige, or promotion within the gang;
- 24 (b) To increase or maintain the gang's size, membership,
25 prestige, dominance, or control in any geographical area;
- 26 (c) To exact revenge or retribution for the gang or any member of
27 the gang;
- 28 (d) To obstruct justice, or intimidate or eliminate any witness
29 against the gang or any member of the gang;
- 30 (e) To directly or indirectly cause any benefit, aggrandizement,
31 gain, profit, or other advantage for the gang, its reputation,
32 influence, or membership; or
- 33 (f) To provide the gang with any advantage in, or any control or
34 dominance over any criminal market sector, including, but not limited
35 to, manufacturing, delivering, or selling any controlled substance
36 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
37 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
38 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
39 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
40 9.68 RCW).

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

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

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

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

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

31 (20) "Domestic violence" has the same meaning as defined in RCW
32 10.99.020 and 26.50.010.

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

37 (22) "Drug offense" means:

38 (a) Any felony violation of chapter 69.50 RCW except possession
39 of a controlled substance (RCW 69.50.4013) or forged prescription for
40 a controlled substance (RCW 69.50.403);

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

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

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

9 (24) "Electronic monitoring" means tracking the location of an
10 individual, whether pretrial or posttrial, through the use of
11 technology that is capable of determining or identifying the
12 monitored individual's presence or absence at a particular location
13 including, but not limited to:

14 (a) Radio frequency signaling technology, which detects if the
15 monitored individual is or is not at an approved location and
16 notifies the monitoring agency of the time that the monitored
17 individual either leaves the approved location or tampers with or
18 removes the monitoring device; or

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

22 (25) "Escape" means:

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

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

32 (26) "Felony traffic offense" means:

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

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

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

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

10 (29) "Home detention" is a subset of electronic monitoring and
11 means a program of partial confinement available to offenders wherein
12 the offender is confined in a private residence twenty-four hours a
13 day, unless an absence from the residence is approved, authorized, or
14 otherwise permitted in the order by the court or other supervising
15 agency that ordered home detention, and the offender is subject to
16 electronic monitoring.

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

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

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

24 (c) A private residence where the individual stays as a transient
25 invitee.

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

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

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

6 (a) Any felony defined under any law as a class A felony or
7 criminal solicitation of or criminal conspiracy to commit a class A
8 felony;

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

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

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

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

34 (t) Any other felony with a deadly weapon verdict under RCW
35 9.94A.825;

36 (u) Any felony offense in effect at any time prior to December 2,
37 1993, that is comparable to a most serious offense under this
38 subsection, or any federal or out-of-state conviction for an offense
39 that under the laws of this state would be a felony classified as a
40 most serious offense under this subsection;

1 (v)(i) A prior conviction for indecent liberties under RCW
2 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
3 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
4 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
5 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
6 until July 1, 1988;

7 (ii) A prior conviction for indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
9 if: (A) The crime was committed against a child under the age of
10 fourteen; or (B) the relationship between the victim and perpetrator
11 is included in the definition of indecent liberties under RCW
12 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
13 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
14 1993, through July 27, 1997;

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

21 (34) "Nonviolent offense" means an offense which is not a violent
22 offense.

23 (35) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior
26 court jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. In addition, for the purpose of community custody
29 requirements under this chapter, "offender" also means a misdemeanor
30 or gross misdemeanor probationer ordered by a superior court to
31 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
32 supervised by the department pursuant to RCW 9.94A.501 and
33 9.94A.5011. Throughout this chapter, the terms "offender" and
34 "defendant" are used interchangeably.

35 (36) "Partial confinement" means confinement for no more than one
36 year in a facility or institution operated or utilized under contract
37 by the state or any other unit of government, or, if home detention,
38 electronic monitoring, or work crew has been ordered by the court or
39 home detention has been ordered by the department as part of the
40 parenting program or the graduated reentry program, in an approved

1 residence, for a substantial portion of each day with the balance of
2 the day spent in the community. Partial confinement includes work
3 release, home detention, work crew, electronic monitoring, and a
4 combination of work crew, electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

20 (vii) Malicious Harassment (RCW 9A.36.080);

21 (viii) Harassment where a subsequent violation or deadly threat
22 is made (RCW 9A.46.020(2)(b));

23 (ix) Criminal Gang Intimidation (RCW 9A.46.120);

24 (x) Any felony conviction by a person eighteen years of age or
25 older with a special finding of involving a juvenile in a felony
26 offense under RCW 9.94A.833;

27 (xi) Residential Burglary (RCW 9A.52.025);

28 (xii) Burglary 2 (RCW 9A.52.030);

29 (xiii) Malicious Mischief 1 (RCW 9A.48.070);

30 (xiv) Malicious Mischief 2 (RCW 9A.48.080);

31 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);

32 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

33 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
34 9A.56.070);

35 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
36 9A.56.075);

37 (xix) Extortion 1 (RCW 9A.56.120);

38 (xx) Extortion 2 (RCW 9A.56.130);

39 (xxi) Intimidating a Witness (RCW 9A.72.110);

40 (xxii) Tampering with a Witness (RCW 9A.72.120);

1 (xxiii) Reckless Endangerment (RCW 9A.36.050);
2 (xxiv) Coercion (RCW 9A.36.070);
3 (xxv) Harassment (RCW 9A.46.020); or
4 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
5 (b) That at least one of the offenses listed in (a) of this
6 subsection shall have occurred after July 1, 2008;
7 (c) That the most recent committed offense listed in (a) of this
8 subsection occurred within three years of a prior offense listed in
9 (a) of this subsection; and
10 (d) Of the offenses that were committed in (a) of this
11 subsection, the offenses occurred on separate occasions or were
12 committed by two or more persons.
13 (38) "Persistent offender" is an offender who:
14 (a)(i) Has been convicted in this state of any felony considered
15 a most serious offense; and
16 (ii) Has, before the commission of the offense under (a) of this
17 subsection, been convicted as an offender on at least two separate
18 occasions, whether in this state or elsewhere, of felonies that under
19 the laws of this state would be considered most serious offenses and
20 would be included in the offender score under RCW 9.94A.525; provided
21 that of the two or more previous convictions, at least one conviction
22 must have occurred before the commission of any of the other most
23 serious offenses for which the offender was previously convicted; or
24 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
25 of a child in the first degree, child molestation in the first
26 degree, rape in the second degree, rape of a child in the second
27 degree, or indecent liberties by forcible compulsion; (B) any of the
28 following offenses with a finding of sexual motivation: Murder in the
29 first degree, murder in the second degree, homicide by abuse,
30 kidnapping in the first degree, kidnapping in the second degree,
31 assault in the first degree, assault in the second degree, assault of
32 a child in the first degree, assault of a child in the second degree,
33 or burglary in the first degree; or (C) an attempt to commit any
34 crime listed in this subsection (38)(b)(i); and
35 (ii) Has, before the commission of the offense under (b)(i) of
36 this subsection, been convicted as an offender on at least one
37 occasion, whether in this state or elsewhere, of an offense listed in
38 (b)(i) of this subsection or any federal or out-of-state offense or
39 offense under prior Washington law that is comparable to the offenses
40 listed in (b)(i) of this subsection. A conviction for rape of a child

1 in the first degree constitutes a conviction under (b)(i) of this
2 subsection only when the offender was sixteen years of age or older
3 when the offender committed the offense. A conviction for rape of a
4 child in the second degree constitutes a conviction under (b)(i) of
5 this subsection only when the offender was eighteen years of age or
6 older when the offender committed the offense.

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

31 (40) "Private school" means a school regulated under chapter
32 28A.195 or 28A.205 RCW.

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

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

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

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

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

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

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

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

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

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

20 (45) "Serious traffic offense" means:

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

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

29 (46) "Serious violent offense" is a subcategory of violent
30 offense and means:

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

32 (ii) Homicide by abuse;

33 (iii) Murder in the second degree;

34 (iv) Manslaughter in the first degree;

35 (v) Assault in the first degree;

36 (vi) Kidnapping in the first degree;

37 (vii) Rape in the first degree;

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

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

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

4 (47) "Sex offense" means:

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

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

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

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

13 (v) A felony violation of RCW 9A.44.132(1) (failure to register
14 as a sex offender) if the person has been convicted of violating RCW
15 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
16 prior to June 10, 2010, on at least one prior occasion;

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

20 (c) A felony with a finding of sexual motivation under RCW
21 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

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

10 (55) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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

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

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

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

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

14 **Sec. 4.** RCW 9.94A.734 and 2015 c 287 s 2 are each amended to
15 read as follows:

16 (1) Home detention may not be imposed for offenders convicted of
17 the following offenses, unless imposed as partial confinement in the
18 department's parenting program under RCW 9.94A.6551 or the graduated
19 reentry program under section 1 of this act:

20 (a) A violent offense;

21 (b) Any sex offense;

22 (c) Any drug offense;

23 (d) Reckless burning in the first or second degree as defined in
24 RCW 9A.48.040 or 9A.48.050;

25 (e) Assault in the third degree as defined in RCW 9A.36.031;

26 (f) Assault of a child in the third degree;

27 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

28 (h) Harassment as defined in RCW 9A.46.020.

29 Home detention may be imposed for offenders convicted of possession
30 of a controlled substance under RCW 69.50.4013 or forged prescription
31 for a controlled substance under RCW 69.50.403 if the offender
32 fulfills the participation conditions set forth in this section and
33 is monitored for drug use by a treatment alternatives to street crime
34 program or a comparable court or agency-referred program.

35 (2) Home detention may be imposed for offenders convicted of
36 burglary in the second degree as defined in RCW 9A.52.030 or
37 residential burglary conditioned upon the offender:

38 (a) Successfully completing twenty-one days in a work release
39 program;

1 (b) Having no convictions for burglary in the second degree or
2 residential burglary during the preceding two years and not more than
3 two prior convictions for burglary or residential burglary;

4 (c) Having no convictions for a violent felony offense during the
5 preceding two years and not more than two prior convictions for a
6 violent felony offense;

7 (d) Having no prior charges of escape; and

8 (e) Fulfilling the other conditions of the home detention
9 program.

10 (3) Home detention may be imposed for offenders convicted of
11 taking a motor vehicle without permission in the second degree as
12 defined in RCW 9A.56.075, theft of a motor vehicle as defined under
13 RCW 9A.56.065, or possession of a stolen motor vehicle as defined
14 under RCW 9A.56.068 conditioned upon the offender:

15 (a) Having no convictions for taking a motor vehicle without
16 permission, theft of a motor vehicle or possession of a stolen motor
17 vehicle during the preceding five years and not more than two prior
18 convictions for taking a motor vehicle without permission, theft of a
19 motor vehicle or possession of a stolen motor vehicle;

20 (b) Having no convictions for a violent felony offense during the
21 preceding two years and not more than two prior convictions for a
22 violent felony offense;

23 (c) Having no prior charges of escape; and

24 (d) Fulfilling the other conditions of the home detention
25 program.

26 (4) Participation in a home detention program shall be
27 conditioned upon:

28 (a) The offender obtaining or maintaining current employment or
29 attending a regular course of school study at regularly defined
30 hours, or the offender performing parental duties to offspring or
31 minors normally in the custody of the offender;

32 (b) Abiding by the rules of the home detention program; and

33 (c) Compliance with court-ordered legal financial obligations.

34 (5) The home detention program may also be made available to
35 offenders whose charges and convictions do not otherwise disqualify
36 them if medical or health-related conditions, concerns or treatment
37 would be better addressed under the home detention program, or where
38 the health and welfare of the offender, other inmates, or staff would
39 be jeopardized by the offender's incarceration. Participation in the
40 home detention program for medical or health-related reasons is

1 conditioned on the offender abiding by the rules of the home
2 detention program and complying with court-ordered restitution.

3 (6)(a) A sentencing court shall deny the imposition of home
4 detention if the court finds that (i) the offender has previously and
5 knowingly violated the terms of a home detention program and (ii) the
6 previous violation is not a technical, minor, or nonsubstantive
7 violation.

8 (b) A sentencing court may deny the imposition of home detention
9 if the court finds that (i) the offender has previously and knowingly
10 violated the terms of a home detention program and (ii) the previous
11 violation or violations were technical, minor, or nonsubstantive
12 violations.

13 (7) A home detention program must be administered by a monitoring
14 agency that meets the conditions described in RCW 9.94A.736.

15 **Sec. 5.** RCW 9.94A.190 and 2010 c 224 s 10 are each amended to
16 read as follows:

17 (1) A sentence that includes a term or terms of confinement
18 totaling more than one year shall be served in a facility or
19 institution operated, or utilized under contract, by the state, or in
20 home detention pursuant to RCW 9.94A.6551 or the graduated reentry
21 program under section 1 of this act. Except as provided in subsection
22 (3) or (5) of this section, a sentence of not more than one year of
23 confinement shall be served in a facility operated, licensed, or
24 utilized under contract, by the county, or if home detention or work
25 crew has been ordered by the court, in the residence of either the
26 offender or a member of the offender's immediate family.

27 (2) If a county uses a state partial confinement facility for the
28 partial confinement of a person sentenced to confinement for not more
29 than one year, the county shall reimburse the state for the use of
30 the facility as provided in this subsection. The office of financial
31 management shall set the rate of reimbursement based upon the average
32 per diem cost per offender in the facility. The office of financial
33 management shall determine to what extent, if any, reimbursement
34 shall be reduced or eliminated because of funds provided by the
35 legislature to the department for the purpose of covering the cost of
36 county use of state partial confinement facilities. The office of
37 financial management shall reestablish reimbursement rates each even-
38 numbered year.

1 (3) A person who is sentenced for a felony to a term of not more
2 than one year, and who is committed or returned to incarceration in a
3 state facility on another felony conviction, either under the
4 indeterminate sentencing laws, chapter 9.95 RCW, or under this
5 chapter shall serve all terms of confinement, including a sentence of
6 not more than one year, in a facility or institution operated, or
7 utilized under contract, by the state, consistent with the provisions
8 of RCW 9.94A.589.

9 (4) Notwithstanding any other provision of this section, a
10 sentence imposed pursuant to RCW 9.94A.660 which has a standard
11 sentence range of over one year, regardless of length, shall be
12 served in a facility or institution operated, or utilized under
13 contract, by the state.

14 (5) Sentences imposed pursuant to RCW 9.94A.507 shall be served
15 in a facility or institution operated, or utilized under contract, by
16 the state.

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