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SENATE BILL 6566

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State of Washington

65th Legislature

2018 Regular Session

By Senators Dhingra, Chase, Cleveland, Darneille, Saldaña, and Kuderer

Read first time 01/26/18. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to juvenile offenses; amending RCW 9.68A.050,  
2 9.68A.060, 9.68A.070, 9.68A.075, 13.40.070, and 9.94A.030; adding a  
3 new section to chapter 13.40 RCW; adding a new section to chapter  
4 9.68A RCW; adding a new section to chapter 9A.86 RCW; prescribing  
5 penalties; and providing an expiration date.

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

7 **Sec. 1.** RCW 9.68A.050 and 2017 c 126 s 3 are each amended to  
8 read as follows:

9 (1)(a) Except as provided in subsections (3) and (4) of this  
10 section, a person commits the crime of dealing in depictions of a  
11 minor engaged in sexually explicit conduct in the first degree when  
12 he or she:

13 (i) Knowingly develops, duplicates, publishes, prints,  
14 disseminates, exchanges, finances, attempts to finance, or sells a  
15 visual or printed matter that depicts a minor engaged in an act of  
16 sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through  
17 (e); or

18 (ii) Possesses with intent to develop, duplicate, publish, print,  
19 disseminate, exchange, or sell any visual or printed matter that  
20 depicts a minor engaged in an act of sexually explicit conduct as  
21 defined in RCW 9.68A.011(4) (a) through (e).

1 (b) Dealing in depictions of a minor engaged in sexually explicit  
2 conduct in the first degree is a class B felony punishable under  
3 chapter 9A.20 RCW.

4 (c) For the purposes of determining the unit of prosecution under  
5 this subsection, each depiction or image of visual or printed matter  
6 constitutes a separate offense.

7 (2)(a) Except as provided in subsection (3) of this section, a  
8 person commits the crime of dealing in depictions of a minor engaged  
9 in sexually explicit conduct in the second degree when he or she:

10 (i) Knowingly develops, duplicates, publishes, prints,  
11 disseminates, exchanges, finances, attempts to finance, or sells any  
12 visual or printed matter that depicts a minor engaged in an act of  
13 sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g);  
14 or

15 (ii) Possesses with intent to develop, duplicate, publish, print,  
16 disseminate, exchange, or sell any visual or printed matter that  
17 depicts a minor engaged in an act of sexually explicit conduct as  
18 defined in RCW 9.68A.011(4) (f) or (g).

19 (b) Dealing in depictions of a minor engaged in sexually explicit  
20 conduct in the second degree is a class B felony punishable under  
21 chapter 9A.20 RCW.

22 (c) For the purposes of determining the unit of prosecution under  
23 this subsection, each incident of dealing in one or more depictions  
24 or images of visual or printed matter constitutes a separate offense.

25 (3) This section shall not apply to a minor who (a) knowingly  
26 develops, duplicates, publishes, or prints a visual or printed matter  
27 that depicts any minor over the age of twelve engaged in an act of  
28 sexually explicit conduct; (b) possesses any depiction of any minor  
29 over the age of twelve engaged in an act of sexually explicit conduct  
30 with the intent to develop, duplicate, publish, print, disseminate,  
31 or exchange such depiction; or (c) knowingly distributes, transfers,  
32 disseminates, or exchanges a visual or printed matter that depicts  
33 themselves engaged in an act of sexually explicit conduct.

34 (4) Any minor who knowingly distributes, transfers, disseminates,  
35 or exchanges a visual or printed matter that depicts any other minor  
36 over the age of twelve engaged in an act of sexually explicit conduct  
37 shall be guilty of a misdemeanor.

38 **Sec. 2.** RCW 9.68A.060 and 2017 c 126 s 4 are each amended to  
39 read as follows:

1           (1)(a) Except as provided in subsection (3) of this section, a  
2 person commits the crime of sending or bringing into the state  
3 depictions of a minor engaged in sexually explicit conduct in the  
4 first degree when he or she knowingly sends or causes to be sent, or  
5 brings or causes to be brought, into this state for sale or  
6 distribution, a visual or printed matter that depicts a minor engaged  
7 in sexually explicit conduct as defined in RCW 9.68A.011(4) (a)  
8 through (e).

9           (b) Sending or bringing into the state depictions of a minor  
10 engaged in sexually explicit conduct in the first degree is a class B  
11 felony punishable under chapter 9A.20 RCW.

12           (c) For the purposes of determining the unit of prosecution under  
13 this subsection, each depiction or image of visual or printed matter  
14 constitutes a separate offense.

15           (2)(a) Except as provided in subsection (3) of this section, a  
16 person commits the crime of sending or bringing into the state  
17 depictions of a minor engaged in sexually explicit conduct in the  
18 second degree when he or she knowingly sends or causes to be sent, or  
19 brings or causes to be brought, into this state for sale or  
20 distribution, any visual or printed matter that depicts a minor  
21 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)  
22 (f) or (g).

23           (b) Sending or bringing into the state depictions of a minor  
24 engaged in sexually explicit conduct in the second degree is a class  
25 B felony punishable under chapter 9A.20 RCW.

26           (c) For the purposes of determining the unit of prosecution under  
27 this subsection, each incident of sending or bringing into the state  
28 one or more depictions or images of visual or printed matter  
29 constitutes a separate offense.

30           (3) This section does not apply to a minor who knowingly sends or  
31 causes to be sent, or brings or causes to be brought, into this state  
32 for distribution, visual or printed matter depicting any minor over  
33 the age of twelve engaged in sexually explicit conduct.

34           **Sec. 3.** RCW 9.68A.070 and 2017 c 126 s 2 are each amended to  
35 read as follows:

36           (1)(a) Except as provided in subsection (3) of this section, a  
37 person commits the crime of possession of depictions of a minor  
38 engaged in sexually explicit conduct in the first degree when he or  
39 she knowingly possesses a visual or printed matter depicting a minor

1 engaged in sexually explicit conduct as defined in RCW 9.68A.011(4)  
2 (a) through (e).

3 (b) Possession of depictions of a minor engaged in sexually  
4 explicit conduct in the first degree is a class B felony punishable  
5 under chapter 9A.20 RCW.

6 (c) For the purposes of determining the unit of prosecution under  
7 this subsection, each depiction or image of visual or printed matter  
8 constitutes a separate offense.

9 (2)(a) Except as provided in subsection (3) of this section, a  
10 person commits the crime of possession of depictions of a minor  
11 engaged in sexually explicit conduct in the second degree when he or  
12 she knowingly possesses any visual or printed matter depicting a  
13 minor engaged in sexually explicit conduct as defined in RCW  
14 9.68A.011(4) (f) or (g).

15 (b) Possession of depictions of a minor engaged in sexually  
16 explicit conduct in the second degree is a class B felony punishable  
17 under chapter 9A.20 RCW.

18 (c) For the purposes of determining the unit of prosecution under  
19 this subsection, each incident of possession of one or more  
20 depictions or images of visual or printed matter constitutes a  
21 separate offense.

22 (3) This section shall not apply to a minor's possession of  
23 visual or printed matter depicting any minor over the age of twelve  
24 engaged in sexually explicit conduct.

25 **Sec. 4.** RCW 9.68A.075 and 2010 c 227 s 7 are each amended to  
26 read as follows:

27 (1) Except as provided in subsection (5) of this section, a  
28 person who intentionally views over the internet visual or printed  
29 matter depicting a minor engaged in sexually explicit conduct as  
30 defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing  
31 depictions of a minor engaged in sexually explicit conduct in the  
32 first degree, a class B felony punishable under chapter 9A.20 RCW.

33 (2) Except as provided in subsection (5) of this section, a  
34 person who intentionally views over the internet visual or printed  
35 matter depicting a minor engaged in sexually explicit conduct as  
36 defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing  
37 depictions of a minor engaged in sexually explicit conduct in the  
38 second degree, a class C felony punishable under chapter 9A.20 RCW.

1 (3) For the purposes of determining whether a person  
2 intentionally viewed over the internet a visual or printed matter  
3 depicting a minor engaged in sexually explicit conduct in subsection  
4 (1) or (2) of this section, the trier of fact shall consider the  
5 title, text, and content of the visual or printed matter, as well as  
6 the internet history, search terms, thumbnail images, downloading  
7 activity, expert computer forensic testimony, number of visual or  
8 printed matter depicting minors engaged in sexually explicit conduct,  
9 defendant's access to and control over the electronic device and its  
10 contents upon which the visual or printed matter was found, or any  
11 other relevant evidence. The state must prove beyond a reasonable  
12 doubt that the viewing was initiated by the user of the computer  
13 where the viewing occurred.

14 (4) For the purposes of this section, each separate internet  
15 session of intentionally viewing over the internet visual or printed  
16 matter depicting a minor engaged in sexually explicit conduct  
17 constitutes a separate offense.

18 (5) This section shall not apply to a minor who intentionally  
19 views over the internet visual or printed matter depicting a minor  
20 over the age of twelve engaged in sexually explicit conduct.

21 **Sec. 5.** RCW 13.40.070 and 2017 c 292 s 2 are each amended to  
22 read as follows:

23 (1) Complaints referred to the juvenile court alleging the  
24 commission of an offense shall be referred directly to the  
25 prosecutor. The prosecutor, upon receipt of a complaint, shall screen  
26 the complaint to determine whether:

27 (a) The alleged facts bring the case within the jurisdiction of  
28 the court; and

29 (b) On a basis of available evidence there is probable cause to  
30 believe that the juvenile did commit the offense.

31 (2) If the identical alleged acts constitute an offense under  
32 both the law of this state and an ordinance of any city or county of  
33 this state, state law shall govern the prosecutor's screening and  
34 charging decision for both filed and diverted cases.

35 (3) If the requirements of subsections (1)(a) and (b) of this  
36 section are met, the prosecutor shall either file an information in  
37 juvenile court or divert the case, as set forth in subsections (5),  
38 (6), and (8) of this section. If the prosecutor finds that the  
39 requirements of subsection (1)(a) and (b) of this section are not

1 met, the prosecutor shall maintain a record, for one year, of such  
2 decision and the reasons therefor. In lieu of filing an information  
3 or diverting an offense a prosecutor may file a motion to modify  
4 community supervision where such offense constitutes a violation of  
5 community supervision.

6 (4) An information shall be a plain, concise, and definite  
7 written statement of the essential facts constituting the offense  
8 charged. It shall be signed by the prosecuting attorney and conform  
9 to chapter 10.37 RCW.

10 (5) Except as provided in RCW 13.40.213 and subsection (7) of  
11 this section, where a case is legally sufficient, the prosecutor  
12 shall file an information with the juvenile court if:

13 (a) An alleged offender is accused of a class A felony, a class B  
14 felony, an attempt to commit a class B felony, a class C felony  
15 listed in RCW 9.94A.411(2) as a crime against persons or listed in  
16 RCW 9A.46.060 as a crime of harassment, or a class C felony that is a  
17 violation of RCW 9.41.080 or 9.41.040(2)(a)(iv); or

18 (b) An alleged offender is accused of a felony and has a criminal  
19 history of any felony, or at least two gross misdemeanors, or at  
20 least two misdemeanors, other than diversions; or

21 (c) An alleged offender has previously been committed to the  
22 department; or

23 (d) An alleged offender has been referred by a diversion unit for  
24 prosecution or desires prosecution instead of diversion; or

25 ~~(e) ((An alleged offender has three or more diversion agreements  
26 on the alleged offender's criminal history; or~~

27 ~~(f))~~ A special allegation has been filed that the offender or an  
28 accomplice was armed with a firearm when the offense was committed.

29 (6) Where a case is legally sufficient the prosecutor shall  
30 divert the case if the alleged offense is a misdemeanor or gross  
31 misdemeanor or violation and the alleged offense is the offender's  
32 first offense or violation. If the alleged offender is charged with a  
33 related offense that must or may be filed under subsections (5) and  
34 (8) of this section, a case under this subsection may also be filed.

35 (7) Where a case is legally sufficient to charge an alleged  
36 offender with:

37 (a) Either prostitution or prostitution loitering and the alleged  
38 offense is the offender's first prostitution or prostitution  
39 loitering offense, the prosecutor shall divert the case; ~~((e))~~

1       (b) Disclosing intimate images and the alleged offense is the  
2 offender's first disclosing intimate images offense, the prosecutor  
3 shall divert the case;

4       (c) A distribution, transfer, dissemination, or exchange of  
5 sexually explicit images of other minors over the age of twelve is a  
6 violation as provided in RCW 9.68A.050(4) and the alleged offense is  
7 the offender's first violation of RCW 9.68A.050(4), the prosecutor  
8 shall divert the case; or

9       (d) Voyeurism in the second degree, the offender is under  
10 seventeen years of age, and the alleged offense is the offender's  
11 first voyeurism in the second degree offense, the prosecutor shall  
12 divert the case, unless the offender has received two diversions for  
13 any offense in the previous two years.

14       (8) Where a case is legally sufficient and falls into neither  
15 subsection (5) nor (6) of this section, it may be filed or diverted.  
16 In deciding whether to file or divert an offense under this section  
17 the prosecutor shall be guided only by the length, seriousness, and  
18 recency of the alleged offender's criminal history and the  
19 circumstances surrounding the commission of the alleged offense.

20       (9) Whenever a juvenile is placed in custody or, where not placed  
21 in custody, referred to a diversion interview, the parent or legal  
22 guardian of the juvenile shall be notified as soon as possible  
23 concerning the allegation made against the juvenile and the current  
24 status of the juvenile. Where a case involves victims of crimes  
25 against persons or victims whose property has not been recovered at  
26 the time a juvenile is referred to a diversion unit, the victim shall  
27 be notified of the referral and informed how to contact the unit.

28       (10) The responsibilities of the prosecutor under subsections (1)  
29 through (9) of this section may be performed by a juvenile court  
30 probation counselor for any complaint referred to the court alleging  
31 the commission of an offense which would not be a felony if committed  
32 by an adult, if the prosecutor has given sufficient written notice to  
33 the juvenile court that the prosecutor will not review such  
34 complaints.

35       (11) The prosecutor, juvenile court probation counselor, or  
36 diversion unit may, in exercising their authority under this section  
37 or RCW 13.40.080, refer juveniles to mediation or victim offender  
38 reconciliation programs. Such mediation or victim offender  
39 reconciliation programs shall be voluntary for victims.

1        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 13.40  
2    RCW to read as follows:

3        (1) The legislature finds that exchange of intimate images by  
4    minors is increasingly common, and that such actions may lead to harm  
5    and long-term consequences. The legislature intends to develop age-  
6    appropriate prevention and interventions to prevent harm and to hold  
7    accountable youth who harm others through exchange of intimate  
8    images.

9        (2) The Washington coalition of sexual assault programs, in  
10    consultation with the office of the superintendent of public  
11    instruction, the Washington association for the treatment of sexual  
12    abusers, the department of children, youth, and families, the  
13    Washington association of prosecuting attorneys, representatives from  
14    public defense, and other relevant stakeholders, shall convene a work  
15    group to make recommendations to the legislature regarding age-  
16    appropriate prevention and intervention strategies to address  
17    potential harms caused by exchange of intimate images by minors.

18        (3) By November 1, 2018, the work group shall make a report to  
19    the legislature identifying education, prevention, and other  
20    responses to the harms that may be associated with exchange of  
21    intimate images by minors.

22        (4) This section expires July 1, 2019.

23        **Sec. 7.**    RCW 9.94A.030 and 2016 c 81 s 16 are each amended to  
24    read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (b) A conviction may be removed from a defendant's criminal  
37 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
38 9.95.240, or a similar out-of-state statute, or if the conviction has  
39 been vacated pursuant to a governor's pardon.

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

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

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

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

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

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

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

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

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

36 (f) To provide the gang with any advantage in, or any control or  
37 dominance over any criminal market sector, including, but not limited  
38 to, manufacturing, delivering, or selling any controlled substance  
39 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
40 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88

1 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
2 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
3 9.68 RCW).

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

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

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

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

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

34 (20) "Domestic violence" has the same meaning as defined in RCW  
35 10.99.020 and 26.50.010.

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

40 (22) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession  
2 of a controlled substance (RCW 69.50.4013) or forged prescription for  
3 a controlled substance (RCW 69.50.403);

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

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

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

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

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

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

25 (25) "Escape" means:

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

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

35 (26) "Felony traffic offense" means:

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

1 or felony physical control of a vehicle while under the influence of  
2 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

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

26 (c) A private residence where the individual stays as a transient  
27 invitee.

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

1 the expense of an emergency response to the incident resulting in the  
2 conviction, subject to RCW 38.52.430.

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

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

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

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

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

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Robbery in the second degree;

25 (p) Sexual exploitation;

26 (q) Vehicular assault, when caused by the operation or driving of  
27 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;

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

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

36 (t) Any other felony with a deadly weapon verdict under RCW  
37 9.94A.825;

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

1 that under the laws of this state would be a felony classified as a  
2 most serious offense under this subsection;

3 (v)(i) A prior conviction for indecent liberties under RCW  
4 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
5 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
6 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
7 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
8 until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW  
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
11 if: (A) The crime was committed against a child under the age of  
12 fourteen; or (B) the relationship between the victim and perpetrator  
13 is included in the definition of indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
15 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
16 1993, through July 27, 1997;

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

23 (34) "Nonviolent offense" means an offense which is not a violent  
24 offense.

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

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

1 home detention has been ordered by the department as part of the  
2 parenting program, in an approved residence, for a substantial  
3 portion of each day with the balance of the day spent in the  
4 community. Partial confinement includes work release, home detention,  
5 work crew, electronic monitoring, and a combination of work crew,  
6 electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
36 9A.56.070);

37 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
38 9A.56.075);

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

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

1 (xxi) Intimidating a Witness (RCW 9A.72.110);  
2 (xxii) Tampering with a Witness (RCW 9A.72.120);  
3 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
4 (xxiv) Coercion (RCW 9A.36.070);  
5 (xxv) Harassment (RCW 9A.46.020); or  
6 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
7 (b) That at least one of the offenses listed in (a) of this  
8 subsection shall have occurred after July 1, 2008;  
9 (c) That the most recent committed offense listed in (a) of this  
10 subsection occurred within three years of a prior offense listed in  
11 (a) of this subsection; and  
12 (d) Of the offenses that were committed in (a) of this  
13 subsection, the offenses occurred on separate occasions or were  
14 committed by two or more persons.  
15 (38) "Persistent offender" is an offender who:  
16 (a)(i) Has been convicted in this state of any felony considered  
17 a most serious offense; and  
18 (ii) Has, before the commission of the offense under (a) of this  
19 subsection, been convicted as an offender on at least two separate  
20 occasions, whether in this state or elsewhere, of felonies that under  
21 the laws of this state would be considered most serious offenses and  
22 would be included in the offender score under RCW 9.94A.525; provided  
23 that of the two or more previous convictions, at least one conviction  
24 must have occurred before the commission of any of the other most  
25 serious offenses for which the offender was previously convicted; or  
26 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
27 of a child in the first degree, child molestation in the first  
28 degree, rape in the second degree, rape of a child in the second  
29 degree, or indecent liberties by forcible compulsion; (B) any of the  
30 following offenses with a finding of sexual motivation: Murder in the  
31 first degree, murder in the second degree, homicide by abuse,  
32 kidnapping in the first degree, kidnapping in the second degree,  
33 assault in the first degree, assault in the second degree, assault of  
34 a child in the first degree, assault of a child in the second degree,  
35 or burglary in the first degree; or (C) an attempt to commit any  
36 crime listed in this subsection (38)(b)(i); and  
37 (ii) Has, before the commission of the offense under (b)(i) of  
38 this subsection, been convicted as an offender on at least one  
39 occasion, whether in this state or elsewhere, of an offense listed in  
40 (b)(i) of this subsection or any federal or out-of-state offense or

1 offense under prior Washington law that is comparable to the offenses  
2 listed in (b)(i) of this subsection. A conviction for rape of a child  
3 in the first degree constitutes a conviction under (b)(i) of this  
4 subsection only when the offender was sixteen years of age or older  
5 when the offender committed the offense. A conviction for rape of a  
6 child in the second degree constitutes a conviction under (b)(i) of  
7 this subsection only when the offender was eighteen years of age or  
8 older when the offender committed the offense.

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

33 (40) "Private school" means a school regulated under chapter  
34 28A.195 or 28A.205 RCW.

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

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

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

39 (ii) Domestic violence violation of a no-contact order under  
40 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.050(4) and 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 NEW SECTION. **Sec. 8.** A new section is added to chapter 9.68A  
15 RCW to read as follows:

16 A minor who possesses any depiction or depictions of any other  
17 minor engaged in an act of sexually explicit conduct shall be deemed  
18 to forfeit any right to continued possession of the depiction or  
19 depictions and may be ordered by a court of competent jurisdiction to  
20 forfeit possession of the depiction or depictions to the custody of  
21 law enforcement.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 9A.86  
23 RCW to read as follows:

24 A minor who possesses any image of any other minor which  
25 constitutes an intimate image as defined in RCW 9A.86.010 shall be  
26 deemed to forfeit any right to continued possession of the image and  
27 may be ordered by a court of competent jurisdiction to forfeit  
28 possession of the image.

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