

**E2SSB 5291** - H COMM AMD  
By Committee on Appropriations

**NOT CONSIDERED 12/23/2019**

1 Strike everything after the enacting clause and insert the  
2 following:

3 **"Sec. 1.** RCW 9.94A.030 and 2018 c 166 s 3 are each amended to  
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

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

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

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

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

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

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

1 (7) "Community restitution" means compulsory service, without  
2 compensation, performed for the benefit of the community by the  
3 offender.

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

5 (9) "Conviction" means an adjudication of guilt pursuant to Title  
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
7 and acceptance of a plea of guilty.

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

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

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

24 (b) A conviction may be removed from a defendant's criminal  
25 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
26 9.95.240, or a similar out-of-state statute, or if the conviction has  
27 been vacated pursuant to a governor's pardon.

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

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

1 activities of labor and bona fide nonprofit organizations or their  
2 members or agents.

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

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

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

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

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

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

1 (18) "Determinate sentence" means a sentence that states with  
2 exactitude the number of actual years, months, or days of total  
3 confinement, of partial confinement, of community custody, the number  
4 of actual hours or days of community restitution work, or dollars or  
5 terms of a legal financial obligation. The fact that an offender  
6 through earned release can reduce the actual period of confinement  
7 shall not affect the classification of the sentence as a determinate  
8 sentence.

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

21 (20) "Domestic violence" has the same meaning as defined in RCW  
22 10.99.020 and 26.50.010.

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

27 (22) "Drug offense" means:

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

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

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

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

39 (24) "Electronic monitoring" means tracking the location of an  
40 individual, whether pretrial or posttrial, through the use of

1 technology that is capable of determining or identifying the  
2 monitored individual's presence or absence at a particular location  
3 including, but not limited to:

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

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

12 (25) "Escape" means:

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

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

22 (26) "Felony traffic offense" means:

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

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

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

38 (29) "Home detention" is a subset of electronic monitoring and  
39 means a program of partial confinement available to offenders wherein  
40 the offender is confined in a private residence twenty-four hours a

1 day, unless an absence from the residence is approved, authorized, or  
2 otherwise permitted in the order by the court or other supervising  
3 agency that ordered home detention, and the offender is subject to  
4 electronic monitoring.

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

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

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

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

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

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

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

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

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

40 (f) Extortion in the first degree;

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

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

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

9 ~~((34))~~ (33) "Nonviolent offense" means an offense which is not  
10 a violent offense.

11 ~~((35))~~ (34) "Offender" means a person who has committed a  
12 felony established by state law and is eighteen years of age or older  
13 or is less than eighteen years of age but whose case is under  
14 superior court jurisdiction under RCW 13.04.030 or has been  
15 transferred by the appropriate juvenile court to a criminal court  
16 pursuant to RCW 13.40.110. In addition, for the purpose of community  
17 custody requirements under this chapter, "offender" also means a  
18 misdemeanor or gross misdemeanor probationer ordered by a superior  
19 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210  
20 and supervised by the department pursuant to RCW 9.94A.501 and  
21 9.94A.5011. Throughout this chapter, the terms "offender" and  
22 "defendant" are used interchangeably.

23 ~~((36))~~ (35) "Partial confinement" means confinement for no more  
24 than one year in a facility or institution operated or utilized under  
25 contract by the state or any other unit of government, or, if home  
26 detention, electronic monitoring, or work crew has been ordered by  
27 the court or home detention has been ordered by the department as  
28 part of the parenting program or the graduated reentry program, in an  
29 approved residence, for a substantial portion of each day with the  
30 balance of the day spent in the community. Partial confinement  
31 includes work release, home detention, work crew, electronic  
32 monitoring, and a combination of work crew, electronic monitoring,  
33 and home detention.

34 ~~((37))~~ (36) "Pattern of criminal street gang activity" means:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

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

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

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

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

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

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

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

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

4 (v) A felony violation of RCW 9A.44.132(1) (failure to register  
5 as a sex offender) if the person has been convicted of violating RCW  
6 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130  
7 prior to June 10, 2010, on at least one prior occasion;

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

11 (c) A felony with a finding of sexual motivation under RCW  
12 9.94A.835 or 13.40.135; or

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

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

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

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

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

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

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

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

1       (~~(55)~~) (54) "Violent offense" means:  
2       (a) Any of the following felonies:  
3       (i) Any felony defined under any law as a class A felony or an  
4 attempt to commit a class A felony;  
5       (ii) Criminal solicitation of or criminal conspiracy to commit a  
6 class A felony;  
7       (iii) Manslaughter in the first degree;  
8       (iv) Manslaughter in the second degree;  
9       (v) Indecent liberties if committed by forcible compulsion;  
10       (vi) Kidnapping in the second degree;  
11       (vii) Arson in the second degree;  
12       (viii) Assault in the second degree;  
13       (ix) Assault of a child in the second degree;  
14       (x) Extortion in the first degree;  
15       (xi) Robbery in the second degree;  
16       (xii) Drive-by shooting;  
17       (xiii) Vehicular assault, when caused by the operation or driving  
18 of a vehicle by a person while under the influence of intoxicating  
19 liquor or any drug or by the operation or driving of a vehicle in a  
20 reckless manner; and  
21       (xiv) Vehicular homicide, when proximately caused by the driving  
22 of any vehicle by any person while under the influence of  
23 intoxicating liquor or any drug as defined by RCW 46.61.502, or by  
24 the operation of any vehicle in a reckless manner;  
25       (b) Any conviction for a felony offense in effect at any time  
26 prior to July 1, 1976, that is comparable to a felony classified as a  
27 violent offense in (a) of this subsection; and  
28       (c) Any federal or out-of-state conviction for an offense that  
29 under the laws of this state would be a felony classified as a  
30 violent offense under (a) or (b) of this subsection.  
31       (~~(56)~~) (55) "Work crew" means a program of partial confinement  
32 consisting of civic improvement tasks for the benefit of the  
33 community that complies with RCW 9.94A.725.  
34       (~~(57)~~) (56) "Work ethic camp" means an alternative  
35 incarceration program as provided in RCW 9.94A.690 designed to reduce  
36 recidivism and lower the cost of corrections by requiring offenders  
37 to complete a comprehensive array of real-world job and vocational  
38 experiences, character-building work ethics training, life management  
39 skills development, substance abuse rehabilitation, counseling,  
40 literacy training, and basic adult education.

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

4       **Sec. 2.** RCW 9.94A.655 and 2018 c 58 s 45 are each amended to  
5 read as follows:

6       (1) An offender is eligible for the parenting sentencing  
7 alternative if:

8       (a) The high end of the standard sentence range for the current  
9 offense is greater than one year;

10       (b) The offender has no prior or current conviction for a felony  
11 (~~that is a~~) sex offense or a serious violent offense;

12       (c) The offender has (~~not been found by the United States~~  
13 ~~attorney general to be subject to a deportation detainer or order and~~  
14 ~~does not become subject to a deportation order during the period of~~  
15 ~~the sentence~~) no prior or current conviction for a violent offense,  
16 or where the offender has a prior or current conviction for a violent  
17 offense, he or she has been determined to be a low risk to reoffend;

18       (d) The offender signs any release of information waivers  
19 required to allow information regarding current or prior child  
20 welfare cases to be shared with the department and the court; and

21       (e) The offender (~~has physical custody of his or her minor child~~  
22 ~~or is a legal guardian or custodian with physical custody of a child~~  
23 ~~under the age of eighteen at the time of the current offense~~) is:

24       (i) A parent with physical custody of a minor child;

25       (ii) An expectant parent;

26       (iii) A legal guardian of a minor child; or

27       (iv) A biological parent, adoptive parent, custodian, or  
28 stepparent with a proven, established, ongoing, and substantial  
29 relationship with a minor child that existed at the time of the  
30 offense.

31       (2) Prior juvenile adjudications are not considered offenses when  
32 considering eligibility under this section.

33       (3) To assist the court in making its determination, the court  
34 may order the department to complete (~~either~~) a risk assessment  
35 report, including a family impact statement or a chemical dependency  
36 screening report as provided in RCW 9.94A.500, (~~or both reports~~)  
37 prior to sentencing.

38       (~~(3)~~) (4) If the court is considering this alternative, the  
39 court shall request that the department contact the department of

1 children, youth, and families to determine if the agency has an open  
2 child welfare case or prior substantiated referral of abuse or  
3 neglect involving the offender or if the agency is aware of any  
4 substantiated case of abuse or neglect with a tribal child welfare  
5 agency involving the offender.

6 (a) If the offender has an open child welfare case, the  
7 department will provide the release of information waiver and request  
8 that the department of children, youth, and families or the tribal  
9 child welfare agency provide a report to the court. The department of  
10 children, youth, and families shall ~~((provide a report))~~, within  
11 seven business days of the request: Provide a copy of the most recent  
12 court order entered in a proceeding under chapter 13.34 or 13.36 RCW  
13 pertaining to the offender; or, if there is no court order or there  
14 has been no court involvement, provide a report that includes, at the  
15 minimum, the following:

16 (i) Legal status of the child welfare case or child protective  
17 services response;

18 (ii) Length of time the department of children, youth, and  
19 families has ~~((been involved with))~~ had an open child welfare case,  
20 or child protective services response involving the offender;

21 (iii) Legal status of the case ~~((and permanent plan));~~ and

22 (iv) Any special needs of the child(~~(+~~

23 ~~(v) Whether or not the offender has been cooperative with~~  
24 ~~services ordered by a juvenile court under a child welfare case;~~  
25 ~~and)).~~

26 ~~((vi))~~ (b) The department shall report if the offender has been  
27 convicted of a crime against a child.

28 ~~((b))~~ (c) If a report is required from a tribal child welfare  
29 agency, the department shall attempt to obtain information that is  
30 similar to what is required for the report provided by the department  
31 of children, youth, and families in a timely manner.

32 ~~((e))~~ (d) If the offender does not have an open child welfare  
33 case with the department of children, youth, and families or with a  
34 tribal child welfare agency but has prior involvement, the department  
35 will obtain information from the department of children, youth, and  
36 families on the number and type of past substantiated referrals of  
37 abuse or neglect and report that information to the court. If the  
38 department of children, youth, and families has never had any  
39 substantiated referrals or an open case with the offender, the  
40 department will inform the court.



1        ~~((4))~~ (e) The existence of a prior substantiated referral of  
2 child abuse or neglect or of an open child welfare case shall not,  
3 alone, disqualify an offender from applying or participating in this  
4 alternative. The court shall consider whether the child-parent  
5 relationship can be readily maintained during parental incarceration;  
6 and whether due to the existence of an open child welfare case,  
7 parental incarceration exacerbates the likelihood of termination of  
8 the child-parent relationship.

9        (f) The state and its agencies, officers, agents, or employees  
10 are not liable for the acts of offenders participating in the  
11 sentencing alternative under this section unless the state or its  
12 agencies, officers, agents, or employees act with willful disregard  
13 of a known risk of immediate harm.

14        (5) If the sentencing court determines that the offender is  
15 eligible for a sentencing alternative under this section and that the  
16 sentencing alternative is appropriate and should be imposed, the  
17 court shall waive imposition of a sentence within the standard  
18 sentence range and impose a sentence consisting of twelve months of  
19 community custody. The court shall consider the offender's criminal  
20 history when determining if the alternative is appropriate. The court  
21 shall also give great weight to the minor child's best interest,  
22 which must include a determination by the juvenile court presiding  
23 over the minor child's proceedings under chapter 13.34 RCW, if any.

24        ~~((5))~~ (6) When a court imposes a sentence of community custody  
25 under this section:

26        (a) The court may impose conditions as provided in RCW 9.94A.703  
27 and may impose other affirmative conditions as the court considers  
28 appropriate.

29        (b) The department may impose conditions as authorized in RCW  
30 9.94A.704 that may include, but are not limited to:

- 31        (i) Parenting classes;
- 32        (ii) Chemical dependency treatment;
- 33        (iii) Mental health treatment;
- 34        (iv) Vocational training;
- 35        (v) ~~((Offender))~~ Change programs;
- 36        (vi) Life skills classes.

37        (c) The department shall report to the court if the offender  
38 commits any violations of his or her sentence conditions.

39        ~~((6))~~ (7) The department shall provide the court with quarterly  
40 progress reports regarding the offender's progress in required

1 programming, treatment, and other supervision conditions. When an  
2 offender has an open child welfare case, the department will seek to  
3 coordinate services with the department of children, youth, and  
4 families.

5 ~~((7))~~ (8)(a) The court may bring any offender sentenced under  
6 this section back into court at any time during the period of  
7 community custody on its own initiative to evaluate the offender's  
8 progress in treatment, or to determine if any violations of the  
9 conditions of the sentence have occurred.

10 (b) At the commencement of such a hearing, the court shall advise  
11 the offender sentenced under this section of his or her right to  
12 assistance of counsel and, if the offender is indigent, appoint  
13 counsel.

14 (c) If the offender is brought back to court, the court may  
15 modify the conditions of community custody or impose sanctions under  
16 ~~((e))~~ (d) of this subsection, including extending the length of  
17 community custody, by no more than six months. The court shall also  
18 consider modification to the offender's support and rehabilitation  
19 plan as needed.

20 ~~((e))~~ (d) The court may order the offender to serve a term of  
21 total confinement within the standard range of the offender's current  
22 offense at any time during the period of community custody, if the  
23 offender violates the conditions or requirements of the sentence or  
24 if the offender is failing to make satisfactory progress in  
25 treatment.

26 ~~((d))~~ (e) An offender ordered to serve a term of total  
27 confinement under ~~((e))~~ (d) of this subsection shall receive credit  
28 for any time previously served in confinement under this section.

29 (f) An offender sentenced under this section is subject to all  
30 rules relating to earned release time with respect to any period  
31 served in total confinement.

32 (9) For the purposes of this section:

33 (a) "Expectant parent" means a pregnant or other parent awaiting  
34 the birth of his or her child, or an adoptive parent or person in  
35 process of a final adoption.

36 (b) "Minor child" means a child under the age of eighteen at the  
37 time of the current offense.

38 **Sec. 3.** RCW 9.94A.6551 and 2018 c 58 s 47 are each amended to  
39 read as follows:

1 For an offender(~~s~~) not sentenced under RCW 9.94A.655, but  
2 otherwise eligible under this section, no more than the final twelve  
3 months of the offender's term of confinement may be served in partial  
4 confinement as home detention as part of the parenting program  
5 developed by the department.

6 (1) The secretary may transfer an offender from a correctional  
7 facility to home detention in the community if it is determined that  
8 the parenting program is an appropriate placement and when all of the  
9 following conditions exist:

10 (a) The offender is serving a sentence in which the high end of  
11 the range is greater than one year;

12 (b) The offender has no current conviction for a felony (~~that is~~  
13 a)) sex offense or a serious violent offense;

14 (c) Where the offender has a current conviction for a violent  
15 offense, he or she has been determined to not be a high risk to  
16 reoffend;

17 ~~(d) The offender ((has not been found by the United States~~  
18 ~~attorney general to be subject to a deportation detainer or order and~~  
19 ~~does not become subject to a deportation order during the period of~~  
20 ~~the sentence)):~~

21 (i) Is a parent with physical or legal custody of a minor child;

22 (ii) Is a biological parent, adoptive parent, custodian, or  
23 stepparent with a proven, established, ongoing, and substantial  
24 relationship with a minor child that existed at the time of the  
25 offense;

26 (iii) Is the legal guardian of a minor child; or

27 (iv) Is an expectant parent;

28 ~~((d))~~ (e) The offender signs any release of information waivers  
29 required to allow information regarding current or prior child  
30 welfare cases to be shared with the department and the court;

31 ~~((e) The offender:~~

32 ~~(i) Has physical or legal custody of a minor child;~~

33 ~~(ii) Has a proven, established, ongoing, and substantial~~  
34 ~~relationship with his or her minor child that existed prior to the~~  
35 ~~commission of the current offense; or~~

36 ~~(iii) Is a legal guardian of a child that was under the age of~~  
37 ~~eighteen at the time of the current offense;)) and~~

38 (f) The department determines that ~~((such a placement))~~ the  
39 offender's participation in the parenting program is in the best

1 interests of the child. Nothing in this section provides the  
2 department with authority to determine placement of a minor child.

3 (2) Prior juvenile adjudications are not considered offenses when  
4 considering eligibility under this section.

5 (3) When the department is considering partial confinement as  
6 part of the parenting program for an offender, the department shall  
7 inquire of the ~~((individual))~~ offender and the department of  
8 children, youth, and families whether the agency has an open child  
9 welfare case or prior substantiated referral for abuse or neglect  
10 involving the offender. If the department of children, youth, and  
11 families or a tribal jurisdiction has an open child welfare case, the  
12 department will seek input from the department of children, youth,  
13 and families or the involved tribal jurisdiction as to: (a) The  
14 status of the child welfare case; and (b) recommendations regarding  
15 placement of the offender ~~((and services required of the department~~  
16 ~~and the court governing))~~, services agreed to by the offender working  
17 voluntarily with the department, or services ordered by the court  
18 within the ~~((individual's))~~ offender's child welfare case. The  
19 department and its officers, agents, and employees are not liable for  
20 the acts of offenders participating in the parenting program unless  
21 the department or its officers, agents, and employees acted with  
22 willful and wanton disregard.

23 ~~((3))~~ (4) All offenders placed on home detention as part of the  
24 parenting program shall provide an approved residence and living  
25 arrangement prior to transfer to home detention.

26 ~~((4))~~ (5) While in the community on home detention as part of  
27 the parenting program, the department shall:

28 (a) Require the offender to be placed on electronic home  
29 monitoring;

30 (b) Require the offender to participate in programming and  
31 treatment that the department and offender collectively  
32 determine ~~((s))~~ is needed;

33 (c) Assign a community corrections officer who will monitor the  
34 offender's compliance with conditions of partial confinement and  
35 programming requirements; and

36 (d) If the offender has an open child welfare case with the  
37 department of children, youth, and families, collaborate and  
38 communicate with the identified social worker in the provision of  
39 services.

1       (~~(5)~~) (6) The department has the authority to return any  
2 offender serving partial confinement in the parenting program to  
3 total confinement if the offender is not complying with sentence  
4 requirements.

5       (7) For the purposes of this section:

6       (a) "Expectant parent" means a pregnant or other parent awaiting  
7 the birth of his or her child, or an adoptive parent or person in the  
8 process of a final adoption.

9       (b) "Minor child" means a child under the age of eighteen at the  
10 time of the current offense.

11       NEW SECTION. Sec. 4. If specific funding for the purposes of  
12 this act, referencing this act by bill or chapter number, is not  
13 provided by June 30, 2019, in the omnibus appropriations act, this  
14 act is null and void."

15       Correct the title.

EFFECT: (1) Modifies the eligibility criteria for the court-based parenting sentencing alternative (PSA) by clarifying that the requirement to be low risk applies to offenders with a prior or current violent offense who are otherwise eligible.

(2) Requires the court to give great weight to the minor child's best interest when determining whether to impose the PSA, which must include a determination by the juvenile court presiding over the minor child's dependency proceedings, if any. Specifies that the requirement for the Department of Children, Youth, and Families to provide a copy of any recent court orders relates to dependency and guardianship proceedings.

(3) Specifies that the state and its agencies, officers, agents, or employees are not liable for the acts of offenders participating in the PSA unless the state or its agencies, officers, agents, or employees act with willful disregard of a known risk of immediate harm.

(4) Modifies the eligibility criteria for the Department of Corrections (DOC)-based community parenting alternative (CPA) by clarifying that the requirement related to risk applies to offenders with a current violent offense who are otherwise eligible. Specifies that an offender with a conviction for a current violent offense is eligible if he or she is determined to not be a high risk to reoffend (rather than determined to be a low risk to reoffend).

(5) Modifies the CPA by specifying that a person may participate only if the DOC determines that the offender's participation in the program is in the best interests of the child (rather than if the DOC determines that "the placement" is in the best interests of the child). Adds language specifying that nothing in the underlying bill provides the DOC with authority to determine placement of a minor child.

(6) Removes a provision from the underlying bill specifying that prior termination of a child-parent relationship does not preclude an application for the CPA.

(7) Replaces references to "child abuse or neglect investigations" with "child protective services response." Replaces references to "individual" or "person" in amendatory provisions with "offender" to provide consistency throughout the section. Reorganizes subsections and moves definitions to pertinent sections. Makes technical corrections.

(8) Adds a null and void clause. The bill is null and void unless funded in the budget.

--- END ---