

E2SSB 5291 - H COMM AMD
By Committee on Public Safety

ADOPTED AS AMENDED 03/03/2020

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

3 **"Sec. 1.** RCW 9.94A.030 and 2019 c 331 s 5, 2019 c 271 s 6, 2019
4 c 187 s 1, and 2019 c 46 s 5007 are each reenacted and amended to
5 read as follows:

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

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

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

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

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

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

29 (6) "Community protection zone" means the area within eight
30 hundred eighty feet of the facilities and grounds of a public or
31 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. However, when a
28 defendant is charged with a recidivist offense, "criminal history"
29 includes a vacated prior conviction for the sole purpose of
30 establishing that such vacated prior conviction constitutes an
31 element of the present recidivist offense as provided in RCW
32 9.94A.640(3)(b) and 9.96.060(5)(c).

33 (c) The determination of a defendant's criminal history is
34 distinct from the determination of an offender score. A prior
35 conviction that was not included in an offender score calculated
36 pursuant to a former version of the sentencing reform act remains
37 part of the defendant's criminal history.

38 (12) "Criminal street gang" means any ongoing organization,
39 association, or group of three or more persons, whether formal or
40 informal, having a common name or common identifying sign or symbol,

1 having as one of its primary activities the commission of criminal
2 acts, and whose members or associates individually or collectively
3 engage in or have engaged in a pattern of criminal street gang
4 activity. This definition does not apply to employees engaged in
5 concerted activities for their mutual aid and protection, or to the
6 activities of labor and bona fide nonprofit organizations or their
7 members or agents.

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

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

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

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

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

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

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

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

27 (20) "Domestic violence" has the same meaning as defined in RCW
28 10.99.020 and 26.50.010.

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

33 (22) "Drug offense" means:

34 (a) Any felony violation of chapter 69.50 RCW except possession
35 of a controlled substance (RCW 69.50.4013) or forged prescription for
36 a controlled substance (RCW 69.50.403);

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

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

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

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

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

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

19 (25) "Escape" means:

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

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

29 (26) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

21 (c) A private residence where the individual stays as a transient
22 invitee.

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

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

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

3 (a) Any felony defined under any law as a class A felony or
4 criminal solicitation of or criminal conspiracy to commit a class A
5 felony;

6 (b) Assault in the second degree;

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

8 (d) Child molestation in the second degree;

9 (e) Controlled substance homicide;

10 (f) Extortion in the first degree;

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

12 (h) Indecent liberties;

13 (i) Kidnapping in the second degree;

14 (j) Leading organized crime;

15 (k) Manslaughter in the first degree;

16 (l) Manslaughter in the second degree;

17 (m) Promoting prostitution in the first degree;

18 (n) Rape in the third degree;

19 (o) Sexual exploitation;

20 (p) Vehicular assault, when caused by the operation or driving of
21 a vehicle by a person while under the influence of intoxicating
22 liquor or any drug or by the operation or driving of a vehicle in a
23 reckless manner;

24 (q) Vehicular homicide, when proximately caused by the driving of
25 any vehicle by any person while under the influence of intoxicating
26 liquor or any drug as defined by RCW 46.61.502, or by the operation
27 of any vehicle in a reckless manner;

28 (r) Any other class B felony offense with a finding of sexual
29 motivation;

30 (s) Any other felony with a deadly weapon verdict under RCW
31 9.94A.825;

32 (t) Any felony offense in effect at any time prior to December 2,
33 1993, that is comparable to a most serious offense under this
34 subsection, or any federal or out-of-state conviction for an offense
35 that under the laws of this state would be a felony classified as a
36 most serious offense under this subsection;

37 (u) (i) A prior conviction for indecent liberties under RCW
38 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
39 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
40 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW

1 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
2 until July 1, 1988;

3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator
7 is included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
9 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
10 1993, through July 27, 1997;

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

17 (~~(34)~~) (33) "Nonviolent offense" means an offense which is not
18 a violent offense.

19 (~~(35)~~) (34) "Offender" means a person who has committed a
20 felony established by state law and is eighteen years of age or older
21 or is less than eighteen years of age but whose case is under
22 superior court jurisdiction under RCW 13.04.030 or has been
23 transferred by the appropriate juvenile court to a criminal court
24 pursuant to RCW 13.40.110. In addition, for the purpose of community
25 custody requirements under this chapter, "offender" also means a
26 misdemeanor or gross misdemeanor probationer ordered by a superior
27 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
28 and supervised by the department pursuant to RCW 9.94A.501 and
29 9.94A.5011. Throughout this chapter, the terms "offender" and
30 "defendant" are used interchangeably.

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

1 monitoring, and a combination of work crew, electronic monitoring,
2 and home detention.

3 (~~(37)~~) (36) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

18 (vii) Hate Crime (RCW 9A.36.080);

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

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

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

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

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

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

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

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

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

31 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
32 9A.56.070);

33 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
34 9A.56.075);

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

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

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

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

39 (xxiii) Reckless Endangerment (RCW 9A.36.050);

40 (xxiv) Coercion (RCW 9A.36.070);

1 (xxv) Harassment (RCW 9A.46.020); or

2 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

3 (b) That at least one of the offenses listed in (a) of this
4 subsection shall have occurred after July 1, 2008;

5 (c) That the most recent committed offense listed in (a) of this
6 subsection occurred within three years of a prior offense listed in
7 (a) of this subsection; and

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

11 (~~(38)~~) (37) "Persistent offender" is an offender who:

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

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

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

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

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

5 ~~((39))~~ (38) "Predatory" means: (a) The perpetrator of the crime
6 was a stranger to the victim, as defined in this section; (b) the
7 perpetrator established or promoted a relationship with the victim
8 prior to the offense and the victimization of the victim was a
9 significant reason the perpetrator established or promoted the
10 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
11 volunteer, or other person in authority in any public or private
12 school and the victim was a student of the school under his or her
13 authority or supervision. For purposes of this subsection, "school"
14 does not include home-based instruction as defined in RCW
15 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
16 authority in any recreational activity and the victim was a
17 participant in the activity under his or her authority or
18 supervision; (iii) a pastor, elder, volunteer, or other person in
19 authority in any church or religious organization, and the victim was
20 a member or participant of the organization under his or her
21 authority; or (iv) a teacher, counselor, volunteer, or other person
22 in authority providing home-based instruction and the victim was a
23 student receiving home-based instruction while under his or her
24 authority or supervision. For purposes of this subsection: (A) "Home-
25 based instruction" has the same meaning as defined in RCW
26 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
27 in authority" does not include the parent or legal guardian of the
28 victim.

29 ~~((40))~~ (39) "Private school" means a school regulated under
30 chapter 28A.195 or 28A.205 RCW.

31 ~~((41))~~ (40) "Public school" has the same meaning as in RCW
32 28A.150.010.

33 ~~((42))~~ (41) "Recidivist offense" means a felony offense where a
34 prior conviction of the same offense or other specified offense is an
35 element of the crime including, but not limited to:

36 (a) Assault in the fourth degree where domestic violence is
37 pleaded and proven, RCW 9A.36.041(3);

38 (b) Cyberstalking, RCW 9.61.260(3)(a);

39 (c) Harassment, RCW 9A.46.020(2)(b)(i);

40 (d) Indecent exposure, RCW 9A.88.010(2)(c);

1 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);
2 (f) Telephone harassment, RCW 9.61.230(2)(a); and
3 (g) Violation of a no-contact or protection order, RCW
4 26.50.110(5).

5 (~~(43)~~) (42) "Repetitive domestic violence offense" means any:

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

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

10 (iii) Domestic violence violation of a protection order under
11 chapter 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that is not a
12 felony offense;

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

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

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

21 (~~(44)~~) (43) "Restitution" means a specific sum of money ordered
22 by the sentencing court to be paid by the offender to the court over
23 a specified period of time as payment of damages. The sum may include
24 both public and private costs.

25 (~~(45)~~) (44) "Risk assessment" means the application of the risk
26 instrument recommended to the department by the Washington state
27 institute for public policy as having the highest degree of
28 predictive accuracy for assessing an offender's risk of reoffense.

29 (~~(46)~~) (45) "Serious traffic offense" means:

30 (a) Nonfelony driving while under the influence of intoxicating
31 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
32 while under the influence of intoxicating liquor or any drug (RCW
33 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
34 attended vehicle (RCW 46.52.020(5)); or

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

38 (~~(47)~~) (46) "Serious violent offense" is a subcategory of
39 violent offense and means:

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

1 (ii) Homicide by abuse;
2 (iii) Murder in the second degree;
3 (iv) Manslaughter in the first degree;
4 (v) Assault in the first degree;
5 (vi) Kidnapping in the first degree;
6 (vii) Rape in the first degree;
7 (viii) Assault of a child in the first degree; or
8 (ix) An attempt, criminal solicitation, or criminal conspiracy to
9 commit one of these felonies; or

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

13 (~~(48)~~) (47) "Sex offense" means:

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

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

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

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

22 (v) A felony violation of RCW 9A.44.132(1) (failure to register
23 as a sex offender) if the person has been convicted of violating RCW
24 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
25 prior to June 10, 2010, on at least one prior occasion;

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

29 (c) A felony with a finding of sexual motivation under RCW
30 9.94A.835 or 13.40.135; or

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

34 (~~(49)~~) (48) "Sexual motivation" means that one of the purposes
35 for which the defendant committed the crime was for the purpose of
36 his or her sexual gratification.

37 (~~(50)~~) (49) "Standard sentence range" means the sentencing
38 court's discretionary range in imposing a nonappealable sentence.

39 (~~(51)~~) (50) "Statutory maximum sentence" means the maximum
40 length of time for which an offender may be confined as punishment

1 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
2 statute defining the crime, or other statute defining the maximum
3 penalty for a crime.

4 ~~((52))~~ (51) "Stranger" means that the victim did not know the
5 offender twenty-four hours before the offense.

6 ~~((53))~~ (52) "Total confinement" means confinement inside the
7 physical boundaries of a facility or institution operated or utilized
8 under contract by the state or any other unit of government for
9 twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

10 ~~((54))~~ (53) "Transition training" means written and verbal
11 instructions and assistance provided by the department to the
12 offender during the two weeks prior to the offender's successful
13 completion of the work ethic camp program. The transition training
14 shall include instructions in the offender's requirements and
15 obligations during the offender's period of community custody.

16 ~~((55))~~ (54) "Victim" means any person who has sustained
17 emotional, psychological, physical, or financial injury to person or
18 property as a direct result of the crime charged.

19 ~~((56))~~ (55) "Violent offense" means:

20 (a) Any of the following felonies:

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

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

25 (iii) Manslaughter in the first degree;

26 (iv) Manslaughter in the second degree;

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

28 (vi) Kidnapping in the second degree;

29 (vii) Arson in the second degree;

30 (viii) Assault in the second degree;

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

32 (x) Extortion in the first degree;

33 (xi) Robbery in the second degree;

34 (xii) Drive-by shooting;

35 (xiii) Vehicular assault, when caused by the operation or driving
36 of a vehicle by a person while under the influence of intoxicating
37 liquor or any drug or by the operation or driving of a vehicle in a
38 reckless manner; and

39 (xiv) Vehicular homicide, when proximately caused by the driving
40 of any vehicle by any person while under the influence of

1 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
2 the operation of any vehicle in a reckless manner;

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

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

9 ~~((57))~~ (56) "Work crew" means a program of partial confinement
10 consisting of civic improvement tasks for the benefit of the
11 community that complies with RCW 9.94A.725.

12 ~~((58))~~ (57) "Work ethic camp" means an alternative
13 incarceration program as provided in RCW 9.94A.690 designed to reduce
14 recidivism and lower the cost of corrections by requiring offenders
15 to complete a comprehensive array of real-world job and vocational
16 experiences, character-building work ethics training, life management
17 skills development, substance abuse rehabilitation, counseling,
18 literacy training, and basic adult education.

19 ~~((59))~~ (58) "Work release" means a program of partial
20 confinement available to offenders who are employed or engaged as a
21 student in a regular course of study at school.

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

24 (1) An offender is eligible for the parenting sentencing
25 alternative if:

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

28 (b) The offender has no prior or current conviction for a felony
29 that is classified as a sex offense or a serious violent offense;

30 (c) The offender has ~~((not been found by the United States
31 attorney general to be subject to a deportation detainer or order and
32 does not become subject to a deportation order during the period of
33 the sentence))~~ no current conviction for a violent offense;

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

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

1 (i) A parent with physical custody of a minor child;
2 (ii) An expectant parent;
3 (iii) A legal guardian of a minor child; or
4 (iv) A biological parent, adoptive parent, custodian, or
5 stepparent with a proven, established, ongoing, and substantial
6 relationship with a minor child that existed at the time of the
7 offense.

8 (2) Except for sex offenses and serious violent offenses, prior
9 juvenile adjudications are not considered offenses when considering
10 eligibility under this section.

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

16 ~~((3))~~ (4) If the court is considering this alternative, the
17 court shall request that the department contact the department of
18 children, youth, and families to determine if the agency has an open
19 child welfare case or prior substantiated referral of abuse or
20 neglect involving the offender or if the agency is aware of any
21 substantiated case of abuse or neglect with a tribal child welfare
22 agency involving the offender.

23 (a) If the offender has an open child welfare case or child abuse
24 or neglect investigation, the department will provide the release of
25 information waiver and request that the department of children,
26 youth, and families or the tribal child welfare agency provide a
27 report to the court. The department of children, youth, and families
28 shall ~~((provide a report))~~, within seven business days of the
29 request: Provide a copy of the most recent court order entered in
30 proceedings under chapter 13.34 or 13.36 RCW pertaining to the
31 offender, and provide a report regarding whether the offender has
32 been cooperative with services ordered by the court in those
33 proceedings; or, if there is no court order or there has not been
34 court involvement, provide a report that includes, at the minimum,
35 the following:

36 (i) Legal status of the child welfare case or child protective
37 services response;

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

1 ~~(iii) ((Legal status of the case and permanent plan;~~
2 ~~(iv)) Any special needs of the child((~~
3 ~~(v) Whether or not the offender has been cooperative with~~
4 ~~services ordered by a juvenile court under a child welfare case; and~~
5 ~~(vi) If the offender)).~~

6 (b) The department shall report to the court if the offender has
7 been convicted of a crime against a child.

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

12 ~~((e))~~ (d) If the offender does not have an open child welfare
13 case with the department of children, youth, and families or with a
14 tribal child welfare agency but has prior involvement, the department
15 will obtain information from the department of children, youth, and
16 families on the number and type of past substantiated referrals of
17 abuse or neglect and report that information to the court. If the
18 department of children, youth, and families has never had any
19 substantiated referrals or an open case with the offender, the
20 department will inform the court.

21 ~~((4))~~ (e) The existence of a prior substantiated referral of
22 child abuse or neglect or of an open child welfare case does not,
23 alone, disqualify the parent from applying or participating in this
24 alternative. The court shall consider whether the child-parent
25 relationship can be readily maintained during parental incarceration,
26 and whether, due to the existence of an open child welfare case,
27 parental incarceration exacerbates the likelihood of termination of
28 the child-parent relationship.

29 (5) If the sentencing court determines that the offender is
30 eligible for a sentencing alternative under this section and that the
31 sentencing alternative is appropriate and should be imposed, the
32 court shall waive imposition of a sentence within the standard
33 sentence range and impose a sentence consisting of twelve months of
34 community custody. The court shall consider the offender's criminal
35 history when determining if the alternative is appropriate. The court
36 shall also give great weight to the minor child's best interest.

37 ~~((5))~~ (6) When a court imposes a sentence of community custody
38 under this section:

1 (a) The court may impose conditions as provided in RCW 9.94A.703
2 and may impose other affirmative conditions as the court considers
3 appropriate.

4 (b) The department may impose conditions as authorized in RCW
5 9.94A.704 that may include, but are not limited to:

- 6 (i) Parenting classes;
- 7 (ii) Chemical dependency treatment;
- 8 (iii) Mental health treatment;
- 9 (iv) Vocational training;
- 10 (v) (~~Offender change~~) Change programs;
- 11 (vi) Life skills classes.

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

14 (~~(6)~~) (7) The department shall provide the court with quarterly
15 progress reports regarding the offender's progress in required
16 programming, treatment, and other supervision conditions. When an
17 offender has an open child welfare case, the department will seek to
18 coordinate services with the department of children, youth, and
19 families.

20 (~~(7)~~) (8)(a) The court may bring any offender sentenced under
21 this section back into court at any time during the period of
22 community custody on its own initiative to evaluate the offender's
23 progress in treatment, or to determine if any violations of the
24 conditions of the sentence have occurred.

25 (b) At the commencement of such a hearing, the court shall advise
26 the offender sentenced under this section of the offender's right to
27 assistance of counsel and appoint counsel if the offender is
28 indigent.

29 (c) If the offender is brought back to court, the court may
30 modify the conditions of community custody or impose sanctions under
31 (~~(e)~~) (d) of this subsection, including extending the length of
32 participation in the alternative program by no more than six months.

33 (~~(e)~~) (d) The court may order the offender to serve a term of
34 total confinement within the standard range of the offender's current
35 offense at any time during the period of community custody, if the
36 offender violates the conditions or requirements of the sentence or
37 if the offender is failing to make satisfactory progress in
38 treatment.

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

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

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

12 (10) For the purposes of this section:

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

16 (b) "Minor child" means a child under the age of eighteen.

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

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

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

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

30 (b) The offender has no current conviction for a felony that is
31 classified as a sex offense or a serious violent offense;

32 (c) The offender has ~~((not been found by the United States~~
33 ~~attorney general to be subject to a deportation detainer or order and~~
34 ~~does not become subject to a deportation order during the period of~~
35 ~~the sentence))~~ no current conviction for a violent offense, or where
36 the offender has a current conviction for a violent offense, he or
37 she has not been determined to be a high risk to reoffend;

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

4 (e) The offender is:

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

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

9 ~~(iii) Is a legal guardian of a child that was under the age of
10 eighteen at the time of the current offense)) A parent with
11 guardianship or legal custody of a minor child;~~

12 (ii) An expectant parent; or

13 (iii) A biological parent, adoptive parent, custodian, or
14 stepparent with a proven, established, ongoing, and substantial
15 relationship with a minor child that existed at the time of the
16 offense; and

17 (f) The department determines that ~~((such a placement))~~ the
18 offender's participation in the parenting program is in the best
19 interests of the child. Nothing in this section provides the
20 department with authority to determine placement of a minor child.

21 (2) Except for sex offenses and serious violent offenses, prior
22 juvenile adjudications are not considered offenses when considering
23 eligibility for the parenting program developed by the department.

24 (3) When the department is considering partial confinement as
25 part of the parenting program for an offender, the department shall
26 inquire of the individual and the department of children, youth, and
27 families whether the agency has an open child welfare case or prior
28 substantiated referral for abuse or neglect involving the offender.

29 (4) If the department of children, youth, and families or a
30 tribal jurisdiction has an open child welfare case, the department
31 will seek input from the department of children, youth, and families
32 or the involved tribal jurisdiction as to: (a) The status of the
33 child welfare case; and (b) recommendations regarding placement of
34 the offender ~~((and services required of the department and the court
35 governing)), services agreed to by the offender working voluntarily
36 with the department, or services ordered by the court within the
37 ((individual's)) offender's child welfare case. The department and
38 its officers, agents, and employees are not liable for the acts of
39 offenders participating in the parenting program unless the~~

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

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

6 ~~((4))~~ (6) While in the community on home detention as part of
7 the parenting program, the department shall:

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

10 (b) Require the offender to participate in programming and
11 treatment that the department determines is needed after
12 consideration of the offender's stated needs;

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

16 (d) If the offender has an open child welfare case with the
17 department of children, youth, and families, collaborate and
18 communicate with the identified social worker in the provision of
19 services.

20 ~~((5))~~ (7) The department has the authority to return any
21 offender serving partial confinement in the parenting program to
22 total confinement if the offender is not complying with sentence
23 requirements.

24 (8) For the purposes of this section:

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

28 (b) "Minor child" means a child under the age of eighteen."

29 Correct the title.

EFFECT: (1) Restores current law restricting a person with a current violent offense from being eligible for the court-based parenting sentencing alternative (PSA). Removes the requirement that a person with a prior violent offense must have a certain risk classification to be eligible for the PSA (rather than requiring the person to be a low risk to reoffend). Prohibits a person with a prior juvenile adjudication of a sex offense or serious violent offense from participating in the PSA (rather than prohibiting the court from considering those prior offenses when determining eligibility), but otherwise retains the provision providing that other juvenile adjudications are not considered prior offenses for the purposes of determining eligibility.

(2) Requires the court to give great weight to the minor child's best interest when determining whether to impose the PSA. Specifies that the requirement for the Department of Children, Youth, and Families (DCYF) to provide a copy of any recent court orders relates to dependency and guardianship proceedings, and further restores the requirement that DCYF report to the court regarding whether an offender has cooperated with services ordered through those proceedings. Removes language specifying that the court may consider modifying an offender's support and rehabilitation plan when he or she is returned to court for potential violations.

(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 Department of Corrections (DOC)-based community parenting alternative (CPA) by specifying 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). Prohibits a person with a prior juvenile adjudication of a sex offense or serious violent offense from participating in the CPA (rather than prohibiting the DOC from considering those prior offenses when determining eligibility), but otherwise retains the provision providing that other juvenile adjudications are not considered prior offenses for the purposes of determining eligibility. Modifies the types of qualifying familial relationships for the CPA by removing language specifying that a parent with physical custody of a minor child is eligible and adding language specifying that a parent with guardianship of a minor child is eligible.

(5) Modifies the CPA by specifying that an offender 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. Provides that the DOC may require an offender in the CPA program to participate in programming and treatment that the DOC determines is needed after consideration of the offender's stated needs (rather than programming and treatment that the DOC and offender collectively determine is needed as provided in the underlying bill). Removes a provision from the underlying bill specifying that prior termination of a child-parent relationship does not preclude an application for the CPA.

(6) Modifies amendatory provisions to account for changes to the underlying statutes in the 2019 regular legislative session. Replaces certain 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 underlying bill. Reorganizes subsections and moves definitions to pertinent sections. Removes redundant language.

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