

2SSB 6211 - H COMM AMD
By Committee on Public Safety

ADOPTED 03/05/2020

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

3 **"Sec. 1.** RCW 9.94A.660 and 2019 c 325 s 5002 and 2019 c 263 s
4 502 are each reenacted and amended to read as follows:

5 (1) An offender is eligible for the special drug offender
6 sentencing alternative if:

7 (a) The offender is convicted of a felony that is not a violent
8 offense (~~(or sex offense)~~) and the violation does not involve a
9 sentence enhancement under RCW 9.94A.533 (3) or (4);

10 (b) The offender is convicted of a felony that is not a felony
11 driving while under the influence of intoxicating liquor or any drug
12 under RCW 46.61.502(6) or felony physical control of a vehicle while
13 under the influence of intoxicating liquor or any drug under RCW
14 46.61.504(6);

15 (c) The offender has no current or prior convictions for a sex
16 offense (~~(at any time or)~~) for which the offender is currently or may
17 be required to register pursuant to RCW 9A.44.130;

18 (d) The offender has no prior convictions in this state, and no
19 prior convictions for an equivalent out-of-state or federal offense,
20 for the following offenses during the following time frames:

21 (i) Robbery in the second degree that did not involve the use of
22 a firearm and was not reduced from robbery in the first degree within
23 seven years before conviction of the current offense; or

24 (ii) Any other violent offense within ten years before conviction
25 of the current offense(~~(, in this state, another state, or the United~~
26 States));

27 ~~((d))~~ (e) For a violation of the Uniform Controlled Substances
28 Act under chapter 69.50 RCW or a criminal solicitation to commit such
29 a violation under chapter 9A.28 RCW, the offense involved only a
30 small quantity of the particular controlled substance as determined
31 by the judge upon consideration of such factors as the weight,

1 purity, packaging, sale price, and street value of the controlled
2 substance;

3 ~~((e))~~ (f) The offender has not been found by the United States
4 attorney general to be subject to a deportation detainer or order and
5 does not become subject to a deportation order during the period of
6 the sentence; and

7 ~~((f) The end of the standard sentence range for the current
8 offense is greater than one year; and))~~

9 (g) The offender has not received a drug offender sentencing
10 alternative more than once in the prior ten years before the current
11 offense.

12 (2) A motion for a special drug offender sentencing alternative
13 may be made by the court, the offender, or the state.

14 (3) If the sentencing court determines that the offender is
15 eligible for an alternative sentence under this section and that the
16 alternative sentence is appropriate, the court shall waive imposition
17 of a sentence within the standard sentence range and impose a
18 sentence consisting of either a prison-based alternative under RCW
19 9.94A.662 or a residential substance use disorder treatment-based
20 alternative under RCW 9.94A.664. The residential substance use
21 disorder treatment-based alternative is only available if the
22 midpoint of the standard range is ~~((twenty-four))~~ twenty-six months
23 or less.

24 (4) (a) To assist the court in making its determination, the court
25 may order the department to complete either or both a risk assessment
26 report and a substance use disorder screening report as provided in
27 RCW 9.94A.500.

28 (b) To assist the court in making its determination in domestic
29 violence cases, the court shall order the department to complete a
30 presentence investigation and a chemical dependency screening report
31 as provided in RCW 9.94A.500, unless otherwise specifically waived by
32 the court.

33 (5) ~~((a))~~ If the court is considering imposing a sentence under
34 the residential substance use disorder treatment-based alternative,
35 the court may order an examination of the offender by the department.
36 The examination must be performed by an agency certified by the
37 department of health to provide substance use disorder services. The
38 examination shall, at a minimum, address the following issues:

39 ~~((i))~~ (a) Whether the offender suffers from ~~((drug addiction))~~
40 a substance use disorder;

1 ~~((ii))~~ (b) Whether the ~~((addiction))~~ substance use disorder is
2 such that there is a probability that criminal behavior will occur in
3 the future;

4 ~~((iii))~~ (c) Whether effective treatment for the offender's
5 ~~((addiction))~~ substance use disorder is available from a provider
6 that has been licensed or certified by the department of health, and
7 where applicable, whether effective domestic violence perpetrator
8 treatment is available from a state-certified domestic violence
9 treatment provider pursuant to chapter 26.50 RCW; and

10 ~~((iv))~~ (d) Whether the offender and the community will benefit
11 from the use of the alternative.

12 ~~((b) The examination report must contain:~~

13 ~~(i) A proposed monitoring plan, including any requirements~~
14 ~~regarding living conditions, lifestyle requirements, and monitoring~~
15 ~~by family members and others; and~~

16 ~~(ii) Recommended crime-related prohibitions and affirmative~~
17 ~~conditions.))~~

18 (6) When a court imposes a sentence of community custody under
19 this section:

20 (a) The court may impose conditions as provided in RCW 9.94A.703
21 and may impose other affirmative conditions as the court considers
22 appropriate. In addition, an offender may be required to pay thirty
23 dollars per month while on community custody to offset the cost of
24 monitoring for alcohol or controlled substances, or in cases of
25 domestic violence for monitoring with global positioning system
26 technology for compliance with a no-contact order.

27 (b) The department may impose conditions and sanctions as
28 authorized in RCW 9.94A.704 and 9.94A.737.

29 (7)(a) The court may bring any offender sentenced under this
30 section back into court at any time on its own initiative to evaluate
31 the offender's progress in treatment or to determine if any
32 violations of the conditions of the sentence have occurred.

33 (b) If the offender is brought back to court, the court may
34 modify the conditions of the community custody or impose sanctions
35 under (c) of this subsection.

36 (c) The court may order the offender to serve a term of total
37 confinement within the standard range of the offender's current
38 offense at any time during the period of community custody if the
39 offender violates the conditions or requirements of the sentence or

1 if the offender is failing to make satisfactory progress in
2 treatment.

3 (d) An offender ordered to serve a term of total confinement
4 under (c) of this subsection shall receive credit for ~~((any))~~ time
5 previously served in total or partial confinement and inpatient
6 treatment under this section, and shall receive fifty percent credit
7 for time previously served in community custody under this section.

8 (8) In serving a term of community custody imposed upon failure
9 to complete, or administrative termination from, the special drug
10 offender sentencing alternative program, the offender shall receive
11 no credit for time served in community custody prior to termination
12 of the offender's participation in the program.

13 (9) An offender sentenced under this section shall be subject to
14 all rules relating to earned release time with respect to any period
15 served in total confinement.

16 ~~((Costs of examinations and preparing treatment plans under~~
17 ~~a special drug offender sentencing alternative may be paid, at the~~
18 ~~option of the county, from funds provided to the county from the~~
19 ~~criminal justice treatment account under RCW 71.24.580)) The
20 Washington state institute for public policy shall submit a report to
21 the governor and the appropriate committees of the legislature by
22 November 1, 2022, analyzing the effectiveness of the drug offender
23 sentencing alternative in reducing recidivism among various offender
24 populations. An additional report is due November 1, 2028, and every
25 five years thereafter. The Washington state institute for public
26 policy may coordinate with the department and the caseload forecast
27 council in tracking data and preparing the report.~~

28 **Sec. 2.** RCW 9.94A.662 and 2019 c 263 s 503 are each amended to
29 read as follows:

30 (1) The court may only order a prison-based special drug offender
31 sentencing alternative if the high end of the standard sentence range
32 for the current offense is greater than one year.

33 (2) A sentence for a prison-based special drug offender
34 sentencing alternative shall include:

35 (a) A period of total confinement in a state facility for one-
36 half the midpoint of the standard sentence range or twelve months,
37 whichever is greater;

38 (b) One-half the midpoint of the standard sentence range as a
39 term of community custody, which must include appropriate substance

1 ~~((abuse))~~ use disorder treatment in a program that has been approved
2 by the ~~((division of alcohol and substance abuse of the))~~ department
3 of ~~((social and))~~ health ~~((services))~~, and for co-occurring drug and
4 domestic violence cases, must also include an appropriate domestic
5 violence treatment program by a state-certified domestic violence
6 treatment provider pursuant to chapter 26.50 RCW;

7 (c) Crime-related prohibitions, including a condition not to use
8 illegal controlled substances;

9 (d) A requirement to submit to urinalysis or other testing to
10 monitor that status; and

11 (e) A term of community custody pursuant to RCW 9.94A.701 to be
12 imposed upon the failure to complete or administrative termination
13 from the special drug offender sentencing alternative program.

14 ~~((+2))~~ (3)(a) During incarceration in the state facility,
15 offenders sentenced under this section shall undergo a comprehensive
16 substance ~~((abuse))~~ use disorder assessment and receive, within
17 available resources, treatment services appropriate for the offender.
18 The substance ~~((abuse))~~ use disorder treatment services shall be
19 ~~((designed))~~ licensed by the ~~((division of alcohol and substance~~
20 ~~abuse of the))~~ department of ~~((social and))~~ health ~~((services, in~~
21 ~~cooperation with the department of corrections))~~.

22 (b) When applicable for cases involving domestic violence,
23 domestic violence treatment must be provided by a state-certified
24 domestic violence treatment provider pursuant to chapter 26.50 RCW
25 during the term of community custody.

26 ~~((+3))~~ (4) If the department finds that conditions of community
27 custody have been willfully violated, the offender may be
28 reclassified to serve the remaining balance of the original sentence.
29 An offender who fails to complete the program or who is
30 administratively terminated from the program shall be reclassified to
31 serve the unexpired term of his or her sentence as ordered by the
32 sentencing court.

33 ~~((+4))~~ (5) If an offender sentenced to the prison-based
34 alternative under this section is found by the United States attorney
35 general to be subject to a deportation order, a hearing shall be held
36 by the department unless waived by the offender, and, if the
37 department finds that the offender is subject to a valid deportation
38 order, the department may administratively terminate the offender
39 from the program and reclassify the offender to serve the remaining
40 balance of the original sentence.

1 **Sec. 3.** RCW 9.94A.664 and 2019 c 325 s 5003 and 2019 c 263 s 504
2 are each reenacted and amended to read as follows:

3 (1) (a) A sentence for a residential substance use disorder
4 treatment-based alternative shall include a term of community custody
5 equal to one-half the midpoint of the standard sentence range or two
6 years, whichever is greater, conditioned on the offender entering and
7 remaining in a residential substance use disorder treatment program
8 certified by the department of health for a period set by the court
9 ((between three and)) up to six months with treatment completion and
10 continued care delivered in accordance with rules established by the
11 health care authority. In establishing rules pursuant to this
12 subsection, the health care authority must consider criteria
13 established by the American society of addiction medicine.

14 (b) The sentence may include an indeterminate term of confinement
15 of no more than thirty days in a facility operated or utilized under
16 contract by the county in order to facilitate direct transfer to a
17 residential substance use disorder treatment facility.

18 (2) (a) During any period of community custody, the court shall
19 impose ~~((, as conditions of community custody,))~~ treatment and other
20 conditions ~~((as proposed in the examination report completed pursuant~~
21 ~~to RCW 9.94A.660))~~ .

22 (b) ~~((If the court imposes a term of community custody, the))~~ The
23 department shall, within available resources, make substance use
24 disorder assessment and treatment services available to the offender
25 during ~~((the))~~ any term of community custody, and within available
26 resources, make domestic violence treatment services available to a
27 domestic violence offender during the term of community custody.

28 (3) (a) If the court imposes a sentence under this section, the
29 treatment provider must send the treatment plan to the court within
30 thirty days of the offender's arrival to the residential substance
31 use disorder treatment program and, when applicable, the domestic
32 violence treatment program.

33 (b) Upon receipt of the plan, the court shall schedule a progress
34 hearing during the period of ~~((residential substance use disorder))~~
35 treatment, and schedule a treatment termination hearing for three
36 months before the expiration of the term of community custody.

37 (c) Before the progress hearing and treatment termination
38 hearing, the treatment provider and the department shall submit
39 written reports to the court and parties regarding the offender's

1 compliance with treatment and monitoring requirements, and
2 recommendations regarding termination from treatment.

3 (4) At a progress hearing or treatment termination hearing, the
4 court may:

5 (a) Authorize the department to terminate the offender's
6 community custody status on the expiration date determined under
7 subsection (1) of this section;

8 (b) Continue the hearing to a date before the expiration date of
9 community custody, with or without modifying the conditions of
10 community custody; or

11 (c) Impose a term of total confinement equal to one-half the
12 midpoint of the standard sentence range, followed by a term of
13 community custody under RCW 9.94A.701.

14 (5) If the court imposes a term of total confinement, the
15 department shall, within available resources, make substance use
16 disorder assessment and treatment services available to the offender
17 during the term of total confinement and subsequent term of community
18 custody.

19 **Sec. 4.** RCW 9.94A.030 and 2019 c 331 s 5, 2019 c 271 s 6, 2019 c
20 187 s 1, and 2019 c 46 s 5007 are each reenacted and amended to read
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

13 (9) "Conviction" means an adjudication of guilt pursuant to Title
14 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
15 and acceptance of a plea of guilty.

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

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

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

32 (b) A conviction may be removed from a defendant's criminal
33 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
34 9.95.240, or a similar out-of-state statute, or if the conviction has
35 been vacated pursuant to a governor's pardon. However, when a
36 defendant is charged with a recidivist offense, "criminal history"
37 includes a vacated prior conviction for the sole purpose of
38 establishing that such vacated prior conviction constitutes an
39 element of the present recidivist offense as provided in RCW
40 9.94A.640(3)(b) and 9.96.060(~~(+5)~~) (6)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (22) "Drug offense" means:

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

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

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

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

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

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

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

25 (25) "Escape" means:

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

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

35 (26) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

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

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (xxi) Intimidating a Witness (RCW 9A.72.110);
- 2 (xxii) Tampering with a Witness (RCW 9A.72.120);
- 3 (xxiii) Reckless Endangerment (RCW 9A.36.050);
- 4 (xxiv) Coercion (RCW 9A.36.070);
- 5 (xxv) Harassment (RCW 9A.46.020); or
- 6 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

9 (c) That the most recent committed offense listed in (a) of this
10 subsection occurred within three years of a prior offense listed in
11 (a) of this subsection; and

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

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

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

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

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

37 (ii) Has, before the commission of the offense under (b) (i) of
38 this subsection, been convicted as an offender on at least one
39 occasion, whether in this state or elsewhere, of an offense listed in
40 (b) (i) of this subsection or any federal or out-of-state offense or

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

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

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

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

36 (42) "Recidivist offense" means a felony offense where a prior
37 conviction of the same offense or other specified offense is an
38 element of the crime including, but not limited to:

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

1 (b) Cyberstalking, RCW 9.61.260(3)(a);
2 (c) Harassment, RCW 9A.46.020(2)(b)(i);
3 (d) Indecent exposure, RCW 9A.88.010(2)(c);
4 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);
5 (f) Telephone harassment, RCW 9.61.230(2)(a); and
6 (g) Violation of a no-contact or protection order, RCW
7 26.50.110(5).

8 (43) "Repetitive domestic violence offense" means any:

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

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

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

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

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

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

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

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

32 (46) "Serious traffic offense" means:

33 (a) Nonfelony driving while under the influence of intoxicating
34 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
35 while under the influence of intoxicating liquor or any drug (RCW
36 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
37 attended vehicle (RCW 46.52.020(5)); or

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

1 (47) "Serious violent offense" is a subcategory of violent
2 offense and means:

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

4 (ii) Homicide by abuse;

5 (iii) Murder in the second degree;

6 (iv) Manslaughter in the first degree;

7 (v) Assault in the first degree;

8 (vi) Kidnapping in the first degree;

9 (vii) Rape in the first degree;

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

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

13 (b) 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
15 serious violent offense under (a) of this subsection.

16 (48) "Sex offense" means:

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

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

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

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

25 (v) A felony violation of RCW 9A.44.132(1) (failure to register
26 as a sex offender) if the person has been convicted of violating RCW
27 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
28 prior to June 10, 2010, on at least one prior occasion;

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

32 (c) A felony with a finding of sexual motivation under RCW
33 9.94A.835 or 13.40.135; or

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

37 (49) "Sexual motivation" means that one of the purposes for which
38 the defendant committed the crime was for the purpose of his or her
39 sexual gratification.

1 (50) "Standard sentence range" means the sentencing court's
2 discretionary range in imposing a nonappealable sentence.

3 (51) "Statutory maximum sentence" means the maximum length of
4 time for which an offender may be confined as punishment for a crime
5 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute
6 defining the crime, or other statute defining the maximum penalty for
7 a crime.

8 (52) "Stranger" means that the victim did not know the offender
9 twenty-four hours before the offense.

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

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

20 (55) "Victim" means any person who has sustained emotional,
21 psychological, physical, or financial injury to person or property as
22 a direct result of the crime charged.

23 (56) "Violent offense" means:

24 (a) Any of the following felonies:

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

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

29 (iii) Manslaughter in the first degree;

30 (iv) Manslaughter in the second degree;

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

32 (vi) Kidnapping in the second degree;

33 (vii) Arson in the second degree;

34 (viii) Assault in the second degree;

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

36 (x) Extortion in the first degree;

37 (xi) Robbery in the second degree;

38 (xii) Drive-by shooting;

39 (xiii) Vehicular assault, when caused by the operation or driving
40 of a vehicle by a person while under the influence of intoxicating

1 liquor or any drug or by the operation or driving of a vehicle in a
2 reckless manner; and

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

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

10 (c) 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 violent offense under (a) or (b) of this subsection.

13 (57) "Work crew" means a program of partial confinement
14 consisting of civic improvement tasks for the benefit of the
15 community that complies with RCW 9.94A.725.

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

23 (59) "Work release" means a program of partial confinement
24 available to offenders who are employed or engaged as a student in a
25 regular course of study at school.

26 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2021."

27 Correct the title.

EFFECT: (1) Removes the addition of offenses involving specified impaired driving-related felony sentencing enhancements in the list of offenses for which a person is disqualified from DOSA participation (but retains the underlying law's prohibition on participation by persons whose current offense is a felony impaired driving offense or violent offense).

(2) Modifies the DOSA eligibility provisions for clarity.

(3) Removes the provision stating that treatment completion and continued care for purposes of residential DOSA treatment must be in accordance with American Society of Addiction Medicine (ASAM) criteria. Instead provides that treatment completion and continued care must be delivered in accordance with rules established by the Health Care Authority, and requires the Health Care Authority to consider ASAM criteria in rule making.

(4) Shifts the primary responsibility for reporting on the effectiveness of the DOSA to the Washington State Institute for Public Policy (rather than the Department of Corrections), and changes the due date of the second report to November 1, 2028 (rather than November 1, 2027).

(5) Removes statutory language stating that the costs of DOSA examinations and preparing recommended service delivery plans may be paid, at the option of the county, from funds provided through the Criminal Justice Treatment Account.

(6) Amends the Sentencing Reform Act's definition of the DOSA to align with other provisions of the bill.

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