

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1041**

66th Legislature  
2019 Regular Session

Passed by the House April 18, 2019  
Yeas 95 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 3, 2019  
Yeas 48 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1041** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1041**

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AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

**State of Washington                      66th Legislature                      2019 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Hansen, Irwin, Ryu, Jinkins, Wylie, Santos, and Caldier)

READ FIRST TIME 02/11/19.

1            AN ACT Relating to promoting successful reentry by modifying the  
2 process for obtaining certificates of discharge and vacating  
3 conviction records; amending RCW 9.94A.640 and 9.94A.030; reenacting  
4 and amending RCW 9.94A.637 and 9.96.060; and creating a new section.

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

6            NEW SECTION.    **Sec. 1.** This act may be known and cited as the new  
7 hope act.

8            **Sec. 2.** RCW 9.94A.637 and 2009 c 325 s 3 and 2009 c 288 s 2 are  
9 each reenacted and amended to read as follows:

10            (1) (~~(a)~~) When an offender has completed all requirements of the  
11 sentence, including any and all legal financial obligations, and  
12 while under the custody (~~and~~) or supervision of the department, the  
13 secretary or the secretary's designee shall notify the sentencing  
14 court, which shall discharge the offender and provide the offender  
15 with a certificate of discharge by issuing the certificate to the  
16 offender in person or by mailing the certificate to the offender's  
17 last known address. A certificate of discharge issued under this  
18 subsection (1) is effective on the date the offender completed all  
19 conditions of his or her sentence.

1        ~~((b)(i))~~ (2)(a) When an offender has reached the end of his or  
2 her supervision with the department and has completed all the  
3 requirements of the sentence except his or her legal financial  
4 obligations, the secretary's designee shall provide the county clerk  
5 with a notice that the offender has completed all nonfinancial  
6 requirements of the sentence. The notice must list the specific  
7 sentence requirements that have been completed, so that it is clear  
8 to the sentencing court that the offender is entitled to discharge  
9 upon completion of the legal financial obligations of the sentence.

10        ~~((ii))~~ (b) When the department has provided the county clerk  
11 with notice under (a) of this subsection showing that an offender has  
12 completed all the requirements of the sentence and the offender  
13 subsequently satisfies all legal financial obligations under the  
14 sentence, the county clerk shall promptly notify the sentencing  
15 court ~~(, including the notice from the department, which)~~. Upon  
16 receipt of the notice under this subsection (2)(b), the court shall  
17 discharge the offender and provide the offender with a certificate of  
18 discharge ~~((by issuing the certificate to the offender in person or~~  
19 ~~by mailing the certificate to the offender's last known address))~~. A  
20 certificate of discharge issued under this subsection (2) is  
21 effective on the date the offender completed all conditions of his or  
22 her sentence.

23        ~~((c) When an offender who is subject to requirements of the~~  
24 ~~sentence in addition to the payment of legal financial obligations~~  
25 ~~either is not subject to supervision by the department or does not~~  
26 ~~complete the requirements while under supervision of the department,~~  
27 ~~it is the offender's responsibility to provide the court with~~  
28 ~~verification of the completion of the sentence conditions other than~~  
29 ~~the payment of legal financial obligations. When the offender~~  
30 ~~satisfies all legal financial obligations under the sentence, the~~  
31 ~~county clerk shall notify the sentencing court that the legal~~  
32 ~~financial obligations have been satisfied. When the court has~~  
33 ~~received both notification from the clerk and adequate verification~~  
34 ~~from the offender that the sentence requirements have been completed,~~  
35 ~~the court shall discharge the offender and provide the offender~~  
36 ~~with))~~

37        (3) In the absence of a certificate of discharge issued under  
38 subsection (1) or (2) of this section, the offender may file a motion  
39 with the sentencing court for a certificate of discharge. The  
40 sentencing court shall issue a certificate of discharge upon

1 verification of completion of all sentencing conditions, including  
2 any and all legal financial obligations. A certificate of discharge  
3 issued under this subsection (3) is effective on the date the  
4 offender completed all conditions of his or her sentence.

5 (4) In the absence of a certificate of discharge issued under  
6 subsection (1), (2), or (3) of this section, the offender may file a  
7 motion with the sentencing court for a certificate of discharge and  
8 shall provide verification of completion of all nonfinancial  
9 conditions of his or her sentence, unless the court finds good cause  
10 to waive this requirement. A certificate of discharge issued under  
11 this subsection (4) is effective on the later of: (a) Five years  
12 after completion of community custody, or if the offender was not  
13 required to serve community custody, after the completion of full and  
14 partial confinement; or (b) the date any and all legal financial  
15 obligations were satisfied.

16 (5) The court shall issue a certificate of discharge by issuing  
17 the certificate to the offender in person or by mailing the  
18 certificate to the offender's last known address.

19 ~~((2))~~ (6) (a) ((For purposes of this subsection (2),) A no-  
20 contact order is not a requirement of the offender's sentence. An  
21 offender who has completed all requirements of the sentence,  
22 including any and all legal financial obligations, is eligible for a  
23 certificate of discharge even if the offender has an existing no-  
24 contact order that excludes or prohibits the offender from having  
25 contact with a specified person or ~~((business))~~ entity or coming  
26 within a set distance of any specified location.

27 ~~((b))~~ In the case of an eligible offender who has a no-contact  
28 order as part of the judgment and sentence, the offender may petition  
29 the sentencing court to issue a certificate of discharge and a  
30 separate no-contact order ~~((by filing a petition in the sentencing~~  
31 ~~court and))~~, which must include paying the appropriate filing fee  
32 ~~((associated with the petition))~~ for the separate no-contact order.  
33 This filing fee does not apply to an offender seeking a certificate  
34 of discharge when the offender has a no-contact order separate from  
35 the judgment and sentence.

36 ~~((i) (A) The court shall issue a certificate of discharge and a~~  
37 ~~separate no-contact order under this subsection (2) if the court~~  
38 ~~determines that the offender has completed all requirements of the~~  
39 ~~sentence, including all legal financial obligations.))~~ The court  
40 shall reissue the no-contact order separately under a new civil cause

1 number for the remaining term and under the same conditions as  
2 contained in the judgment and sentence.

3 ~~((B))~~ (b) The clerk of the court shall send a copy of the new  
4 no-contact order to the individuals or entities protected by the no-  
5 contact order, along with an explanation of the reason for the  
6 change, if there is an address available in the court file. If no  
7 address is available, the clerk of the court shall forward a copy of  
8 the order to the prosecutor, who shall send a copy of the no-contact  
9 order with an explanation of the reason for the change to the last  
10 known address of the protected individuals or entities.

11 ~~((ii) Whenever an order under this subsection (2) is issued,))~~  
12 (c) The clerk of the court shall forward a copy of the order to the  
13 appropriate law enforcement agency specified in the order on or  
14 before the next judicial day. The clerk shall also include a cover  
15 sheet that indicates the case number of the judgment and sentence  
16 that has been discharged. Upon receipt of the copy of the order and  
17 cover sheet, the law enforcement agency shall enter the order into  
18 any computer-based criminal intelligence information system available  
19 in this state used by law enforcement agencies to list outstanding  
20 warrants. The order shall remain in this system until it expires. The  
21 new order, and case number of the discharged judgment and sentence,  
22 shall be linked in the criminal intelligence information system for  
23 purposes of enforcing the no-contact order.

24 ~~((iii))~~ (d) A separately issued no-contact order may be  
25 enforced under chapter 26.50 RCW.

26 ~~((iv))~~ (e) A separate no-contact order issued under this  
27 subsection ~~((2))~~ (6) is not a modification of the offender's  
28 sentence.

29 ~~((3))~~ (7) Every signed certificate and order of discharge shall  
30 be filed with the county clerk of the sentencing county. In addition,  
31 the court shall send to the department a copy of every signed  
32 certificate and order of discharge for offender sentences under the  
33 authority of the department. The county clerk shall enter into a  
34 database maintained by the administrator for the courts the names of  
35 all felons who have been issued certificates of discharge, the date  
36 of discharge, and the date of conviction and offense.

37 ~~((4))~~ (8) An offender who is not convicted of a violent offense  
38 or a sex offense and is sentenced to a term involving community  
39 supervision may be considered for a discharge of sentence by the  
40 sentencing court prior to the completion of community supervision,

1 provided that the offender has completed at least one-half of the  
2 term of community supervision and has met all other sentence  
3 requirements.

4 ~~((+5))~~ (9) The discharge shall have the effect of restoring all  
5 civil rights not already restored by RCW 29A.08.520, and the  
6 certificate of discharge shall so state. Nothing in this section  
7 prohibits the use of an offender's prior record for purposes of  
8 determining sentences for later offenses as provided in this chapter.  
9 Nothing in this section affects or prevents use of the offender's  
10 prior conviction in a later criminal prosecution either as an element  
11 of an offense or for impeachment purposes. A certificate of discharge  
12 is not based on a finding of rehabilitation.

13 ~~((+6))~~ (10) Unless otherwise ordered by the sentencing court, a  
14 certificate of discharge shall not terminate the offender's  
15 obligation to comply with an order that excludes or prohibits the  
16 offender from having contact with a specified person or coming within  
17 a set distance of any specified location that was contained in the  
18 judgment and sentence. An offender who violates such an order after a  
19 certificate of discharge has been issued shall be subject to  
20 prosecution according to the chapter under which the order was  
21 originally issued.

22 ~~((+7))~~ (11) Upon release from custody, the offender may apply to  
23 the department for counseling and help in adjusting to the community.  
24 This voluntary help may be provided for up to one year following the  
25 release from custody.

26 **Sec. 3.** RCW 9.94A.640 and 2012 c 183 s 3 are each amended to  
27 read as follows:

28 (1) Every offender who has been discharged under RCW 9.94A.637  
29 may apply to the sentencing court for a vacation of the offender's  
30 record of conviction. If the court finds the offender meets the tests  
31 prescribed in subsection (2) of this section, the court may clear the  
32 record of conviction by: (a) Permitting the offender to withdraw the  
33 offender's plea of guilty and to enter a plea of not guilty; or (b)  
34 if the offender has been convicted after a plea of not guilty, by the  
35 court setting aside the verdict of guilty; and (c) by the court  
36 dismissing the information or indictment against the offender.

37 (2) An offender may not have the record of conviction cleared if:

38 (a) There are any criminal charges against the offender pending  
39 in any court of this state or another state, or in any federal court;

1 (b) The offense was a violent offense as defined in RCW  
2 9.94A.030 (~~(b)~~)

3 ~~(c) the offense was a~~) or crime against persons as defined in  
4 RCW 43.43.830, except the following offenses may be vacated if the  
5 conviction did not include a firearm, deadly weapon, or sexual  
6 motivation enhancement: (i) Assault in the second degree under RCW  
7 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when  
8 not committed against a law enforcement officer or peace officer; and  
9 (iii) robbery in the second degree under RCW 9A.56.210;

10 ~~((d))~~ (c) The offense is a class B felony and the offender has  
11 been convicted of a new crime in this state, another state, or  
12 federal court in the ten years prior to the application for vacation;

13 (d) The offense is a class C felony and the offender has been  
14 convicted of a new crime in this state, another state, or federal  
15 court (~~(since the date of the offender's discharge under RCW~~  
16 ~~9.94A.637)) in the five years prior to the application for vacation;~~

17 (e) The offense is a class B felony and less than ten years have  
18 passed since the (~~(date the applicant was discharged under RCW~~  
19 ~~9.94A.637)) later of: (i) The applicant's release from community  
20 custody; (ii) the applicant's release from full and partial  
21 confinement; or (iii) the applicant's sentencing date;~~

22 (f) The offense was a class C felony, other than a class C felony  
23 described in RCW 46.61.502(6) or 46.61.504(6), and less than five  
24 years have passed since the (~~(date the applicant was discharged under~~  
25 ~~RCW 9.94A.637)) later of: (i) The applicant's release from community  
26 custody; (ii) the applicant's release from full and partial  
27 confinement; or (iii) the applicant's sentencing date; or~~

28 (g) The offense was a (~~(class C))~~ felony described in RCW  
29 46.61.502 (~~((6))~~) or 46.61.504 (~~((6))~~).

30 (3) (a) Except as otherwise provided, once the court vacates a  
31 record of conviction under subsection (1) of this section, the fact  
32 that the offender has been convicted of the offense shall not be  
33 included in the offender's criminal history for purposes of  
34 determining a sentence in any subsequent conviction, and the offender  
35 shall be released from all penalties and disabilities resulting from  
36 the offense. For all purposes, including responding to questions on  
37 employment applications, an offender whose conviction has been  
38 vacated may state that the offender has never been convicted of that  
39 crime. A conviction that has been vacated under this section may not  
40 be disseminated or disclosed by the state patrol or local law

1 enforcement agency to any person, except other criminal justice  
2 enforcement agencies. Nothing in this section affects or prevents the  
3 use of an offender's prior conviction in a later criminal  
4 prosecution, and nothing in this section affects the requirements for  
5 restoring a right to possess a firearm under RCW 9.41.040.

6 (b) A conviction vacated on or after the effective date of this  
7 section qualifies as a prior conviction for the purpose of charging a  
8 present recidivist offense occurring on or after the effective date  
9 of this section, and may be used to establish an ongoing pattern of  
10 abuse for purposes of RCW 9.94A.535.

11 **Sec. 4.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and  
12 2017 c 128 s 1 are each reenacted and amended to read as follows:

13 (1) Every person convicted of a misdemeanor or gross misdemeanor  
14 offense who has completed all of the terms of the sentence for the  
15 misdemeanor or gross misdemeanor offense may apply to the sentencing  
16 court for a vacation of the applicant's record of conviction for the  
17 offense. If the court finds the applicant meets the tests prescribed  
18 in subsection (2) of this section, the court may in its discretion  
19 vacate the record of conviction by: (a) (i) Permitting the applicant  
20 to withdraw the applicant's plea of guilty and to enter a plea of not  
21 guilty; or (ii) if the applicant has been convicted after a plea of  
22 not guilty, the court setting aside the verdict of guilty; and (b)  
23 the court dismissing the information, indictment, complaint, or  
24 citation against the applicant and vacating the judgment and  
25 sentence.

26 (2) An applicant may not have the record of conviction for a  
27 misdemeanor or gross misdemeanor offense vacated if any one of the  
28 following is present:

29 (a) There are any criminal charges against the applicant pending  
30 in any court of this state or another state, or in any federal or  
31 tribal court, at the time of application;

32 (b) The offense was a violent offense as defined in RCW 9.94A.030  
33 or an attempt to commit a violent offense;

34 (c) The offense was a violation of RCW 46.61.502 (driving while  
35 under the influence), 46.61.504 (actual physical control while under  
36 the influence), 9.91.020 (operating a railroad, etc. while  
37 intoxicated), or the offense is considered a "prior offense" under  
38 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
39 violation within ten years of the date of arrest for the prior



1 offense or less than ten years has elapsed since the date of the  
2 arrest for the prior offense;

3 (d) The offense was any misdemeanor or gross misdemeanor  
4 violation, including attempt, of chapter 9.68 RCW (obscenity and  
5 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
6 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
7 sex offender under RCW 9A.44.132;

8 (e) The applicant was convicted of a misdemeanor or gross  
9 misdemeanor offense as defined in RCW 10.99.020, or the court  
10 determines after a review of the court file that the offense was  
11 committed by one family member or household member against another,  
12 or the court, after considering the damage to person or property that  
13 resulted in the conviction, any prior convictions for crimes defined  
14 in RCW 10.99.020, or for comparable offenses in another state or in  
15 federal court, and the totality of the records under review by the  
16 court regarding the conviction being considered for vacation,  
17 determines that the offense involved domestic violence, and any one  
18 of the following factors exist:

19 (i) The applicant has not provided written notification of the  
20 vacation petition to the prosecuting attorney's office that  
21 prosecuted the offense for which vacation is sought, or has not  
22 provided that notification to the court;

23 (ii) The applicant has (~~previously had a conviction for domestic~~  
24 ~~violence~~) two or more domestic violence convictions stemming from  
25 different incidents. For purposes of this subsection, however, if the  
26 current application is for more than one conviction that arose out of  
27 a single incident, none of those convictions counts as a previous  
28 conviction;

29 (iii) The applicant has signed an affidavit under penalty of  
30 perjury affirming that the applicant has not previously had a  
31 conviction for a domestic violence offense, and a criminal history  
32 check reveals that the applicant has had such a conviction; or

33 (iv) Less than five years have elapsed since the person completed  
34 the terms of the original conditions of the sentence, including any  
35 financial obligations and successful completion of any treatment  
36 ordered as a condition of sentencing;

37 (f) For any offense other than those described in (e) of this  
38 subsection, less than three years have passed since the person  
39 completed the terms of the sentence, including any financial  
40 obligations;

1 (g) The offender has been convicted of a new crime in this state,  
2 another state, or federal or tribal court (~~(since the date of~~  
3 ~~conviction)~~) in the three years prior to the vacation application; or

4 (h) (~~The applicant has ever had the record of another conviction~~  
5 ~~vacated; or~~

6 ~~(i))~~) The applicant is currently restrained(~~(, or has been~~  
7 ~~restrained within five years prior to the vacation application,)~~) by  
8 a domestic violence protection order, a no-contact order, an  
9 antiharassment order, or a civil restraining order which restrains  
10 one party from contacting the other party or was previously  
11 restrained by such an order and was found to have committed one or  
12 more violations of the order in the five years prior to the vacation  
13 application.

14 (3) Subject to RCW 9.96.070, every person convicted of  
15 prostitution under RCW 9A.88.030 who committed the offense as a  
16 result of being a victim of trafficking, RCW 9A.40.100, promoting  
17 prostitution in the first degree, RCW 9A.88.070, promoting commercial  
18 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons  
19 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.  
20 7101 et seq. may apply to the sentencing court for vacation of the  
21 applicant's record of conviction for the prostitution offense. An  
22 applicant may not have the record of conviction for prostitution  
23 vacated if any one of the following is present:

24 (a) There are any criminal charges against the applicant pending  
25 in any court of this state or another state, or in any federal court,  
26 for any crime other than prostitution; or

27 (b) The offender has been convicted of another crime, except  
28 prostitution, in this state, another state, or federal court since  
29 the date of conviction. The limitation in this subsection (3)(b) does  
30 not apply to convictions where the offender proves by a preponderance  
31 of the evidence that he or she committed the crime as a result of  
32 being a victim of trafficking, RCW 9A.40.100, promoting prostitution  
33 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse  
34 of a minor, RCW 9.68A.101, or trafficking in persons under the  
35 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et  
36 seq., according to the requirements provided in RCW 9.96.070 for each  
37 respective conviction.

38 (4) Every person convicted prior to January 1, 1975, of violating  
39 any statute or rule regarding the regulation of fishing activities,  
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
2 who claimed to be exercising a treaty Indian fishing right, may apply  
3 to the sentencing court for vacation of the applicant's record of the  
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
5 If the person is deceased, a member of the person's family or an  
6 official representative of the tribe of which the person was a member  
7 may apply to the court on behalf of the deceased person.  
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
9 vacate the record of conviction if:

10 (a) The applicant is a member of a tribe that may exercise treaty  
11 Indian fishing rights at the location where the offense occurred; and

12 (b) The state has been enjoined from taking enforcement action of  
13 the statute or rule to the extent that it interferes with a treaty  
14 Indian fishing right as determined under *United States v. Washington*,  
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
17 any other state supreme court or federal court decision.

18 (5) (a) Except as provided in (c) of this subsection, once the  
19 court vacates a record of conviction under this section, the person  
20 shall be released from all penalties and disabilities resulting from  
21 the offense and the fact that the person has been convicted of the  
22 offense shall not be included in the person's criminal history for  
23 purposes of determining a sentence in any subsequent conviction. For  
24 all purposes, including responding to questions on employment or  
25 housing applications, a person whose conviction has been vacated  
26 under this section may state that he or she has never been convicted  
27 of that crime. However, nothing in this section affects the  
28 requirements for restoring a right to possess a firearm under RCW  
29 9.41.040. Except as provided in (b) of this subsection, nothing in  
30 this section affects or prevents the use of an offender's prior  
31 conviction in a later criminal prosecution.

32 (b) When a court vacates a record of domestic violence as defined  
33 in RCW 10.99.020 under this section, the state may not use the  
34 vacated conviction in a later criminal prosecution unless the  
35 conviction was for: (i) Violating the provisions of a restraining  
36 order, no-contact order, or protection order restraining or enjoining  
37 the person or restraining the person from going on to the grounds of  
38 or entering a residence, workplace, school, or day care, or  
39 prohibiting the person from knowingly coming within, or knowingly  
40 remaining within, a specified distance of a location (RCW 10.99.040,

1 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,  
2 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
3 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this  
4 section is not considered a conviction of such an offense for the  
5 purposes of 27 C.F.R. 478.11.

6 ~~((6) All costs incurred by the court and probation services  
7 shall be paid by the person making the motion to vacate the record  
8 unless a determination is made pursuant to chapter 10.101 RCW that  
9 the person making the motion is indigent, at the time the motion is  
10 brought.~~

11 ~~(7))~~ (c) A conviction vacated on or after the effective date of  
12 this section qualifies as a prior conviction for the purpose of  
13 charging a present recidivist offense as defined in RCW 9.94A.030  
14 occurring on or after the effective date of this section.

15 (6) The clerk of the court in which the vacation order is entered  
16 shall immediately transmit the order vacating the conviction to the  
17 Washington state patrol identification section and to the local  
18 police agency, if any, which holds criminal history information for  
19 the person who is the subject of the conviction. The Washington state  
20 patrol and any such local police agency shall immediately update  
21 their records to reflect the vacation of the conviction, and shall  
22 transmit the order vacating the conviction to the federal bureau of  
23 investigation. A conviction that has been vacated under this section  
24 may not be disseminated or disclosed by the state patrol or local law  
25 enforcement agency to any person, except other criminal justice  
26 enforcement agencies.

27 **Sec. 5.** RCW 9.94A.030 and 2018 c 166 s 3 are each amended to  
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in  
30 this section apply throughout this chapter.

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

33 (2) "Collect," or any derivative thereof, "collect and remit," or  
34 "collect and deliver," when used with reference to the department,  
35 means that the department, either directly or through a collection  
36 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
37 and enforcing the offender's sentence with regard to the legal  
38 financial obligation, receiving payment thereof from the offender,  
39 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental  
2 account.

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

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

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

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

16 (7) "Community restitution" means compulsory service, without  
17 compensation, performed for the benefit of the community by the  
18 offender.

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

20 (9) "Conviction" means an adjudication of guilt pursuant to Title  
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,  
22 and acceptance of a plea of guilty.

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

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

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

39 (b) A conviction may be removed from a defendant's criminal  
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has  
2 been vacated pursuant to a governor's pardon. However, when a  
3 defendant is charged with a recidivist offense, "criminal history"  
4 includes a vacated prior conviction for the sole purpose of  
5 establishing that such vacated prior conviction constitutes an  
6 element of the present recidivist offense as provided in RCW  
7 9.94A.640(3)(b) and 9.96.060(5)(c).

8 (c) The determination of a defendant's criminal history is  
9 distinct from the determination of an offender score. A prior  
10 conviction that was not included in an offender score calculated  
11 pursuant to a former version of the sentencing reform act remains  
12 part of the defendant's criminal history.

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

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

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

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

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

36 (c) To exact revenge or retribution for the gang or any member of  
37 the gang;

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

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

4 (f) To provide the gang with any advantage in, or any control or  
5 dominance over any criminal market sector, including, but not limited  
6 to, manufacturing, delivering, or selling any controlled substance  
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual  
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter  
11 9.68 RCW).

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

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

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

22 (18) "Determinate sentence" means a sentence that states with  
23 exactitude the number of actual years, months, or days of total  
24 confinement, of partial confinement, of community custody, the number  
25 of actual hours or days of community restitution work, or dollars or  
26 terms of a legal financial obligation. The fact that an offender  
27 through earned release can reduce the actual period of confinement  
28 shall not affect the classification of the sentence as a determinate  
29 sentence.

30 (19) "Disposable earnings" means that part of the earnings of an  
31 offender remaining after the deduction from those earnings of any  
32 amount required by law to be withheld. For the purposes of this  
33 definition, "earnings" means compensation paid or payable for  
34 personal services, whether denominated as wages, salary, commission,  
35 bonuses, or otherwise, and, notwithstanding any other provision of  
36 law making the payments exempt from garnishment, attachment, or other  
37 process to satisfy a court-ordered legal financial obligation,  
38 specifically includes periodic payments pursuant to pension or  
39 retirement programs, or insurance policies of any type, but does not

1 include payments made under Title 50 RCW, except as provided in RCW  
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) "Domestic violence" has the same meaning as defined in RCW  
4 10.99.020 and 26.50.010.

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

9 (22) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession  
11 of a controlled substance (RCW 69.50.4013) or forged prescription for  
12 a controlled substance (RCW 69.50.403);

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

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

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

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

26 (a) Radio frequency signaling technology, which detects if the  
27 monitored individual is or is not at an approved location and  
28 notifies the monitoring agency of the time that the monitored  
29 individual either leaves the approved location or tampers with or  
30 removes the monitoring device; or

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

34 (25) "Escape" means:

35 (a) Sexually violent predator escape (RCW 9A.76.115), escape in  
36 the first degree (RCW 9A.76.110), escape in the second degree (RCW  
37 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
38 willful failure to return from work release (RCW 72.65.070), or  
39 willful failure to be available for supervision by the department  
40 while in community custody (RCW 72.09.310); or



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

4 (26) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
6 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
7 run injury-accident (RCW 46.52.020(4)), felony driving while under  
8 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
9 or felony physical control of a vehicle while under the influence of  
10 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

20 (29) "Home detention" is a subset of electronic monitoring and  
21 means a program of partial confinement available to offenders wherein  
22 the offender is confined in a private residence twenty-four hours a  
23 day, unless an absence from the residence is approved, authorized, or  
24 otherwise permitted in the order by the court or other supervising  
25 agency that ordered home detention, and the offender is subject to  
26 electronic monitoring.

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

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

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

34 (c) A private residence where the individual stays as a transient  
35 invitee.

36 (31) "Legal financial obligation" means a sum of money that is  
37 ordered by a superior court of the state of Washington for legal  
38 financial obligations which may include restitution to the victim,  
39 statutorily imposed crime victims' compensation fees as assessed  
40 pursuant to RCW 7.68.035, court costs, county or interlocal drug

1 funds, court-appointed attorneys' fees, and costs of defense, fines,  
2 and any other financial obligation that is assessed to the offender  
3 as a result of a felony conviction. Upon conviction for vehicular  
4 assault while under the influence of intoxicating liquor or any drug,  
5 RCW 46.61.522(1)(b), or vehicular homicide while under the influence  
6 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal  
7 financial obligations may also include payment to a public agency of  
8 the expense of an emergency response to the incident resulting in the  
9 conviction, subject to RCW 38.52.430.

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

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

15 (a) Any felony defined under any law as a class A felony or  
16 criminal solicitation of or criminal conspiracy to commit a class A  
17 felony;

18 (b) Assault in the second degree;

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

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

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

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

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

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

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

3 (t) Any other felony with a deadly weapon verdict under RCW  
4 9.94A.825;

5 (u) Any felony offense in effect at any time prior to December 2,  
6 1993, that is comparable to a most serious offense under this  
7 subsection, or any federal or out-of-state conviction for an offense  
8 that under the laws of this state would be a felony classified as a  
9 most serious offense under this subsection;

10 (v)(i) A prior conviction for indecent liberties under RCW  
11 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.  
12 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),  
13 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW  
14 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,  
15 until July 1, 1988;

16 (ii) A prior conviction for indecent liberties under RCW  
17 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
18 if: (A) The crime was committed against a child under the age of  
19 fourteen; or (B) the relationship between the victim and perpetrator  
20 is included in the definition of indecent liberties under RCW  
21 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
22 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
23 1993, through July 27, 1997;

24 (w) Any out-of-state conviction for a felony offense with a  
25 finding of sexual motivation if the minimum sentence imposed was ten  
26 years or more; provided that the out-of-state felony offense must be  
27 comparable to a felony offense under this title and Title 9A RCW and  
28 the out-of-state definition of sexual motivation must be comparable  
29 to the definition of sexual motivation contained in this section.

30 (34) "Nonviolent offense" means an offense which is not a violent  
31 offense.

32 (35) "Offender" means a person who has committed a felony  
33 established by state law and is eighteen years of age or older or is  
34 less than eighteen years of age but whose case is under superior  
35 court jurisdiction under RCW 13.04.030 or has been transferred by the  
36 appropriate juvenile court to a criminal court pursuant to RCW  
37 13.40.110. In addition, for the purpose of community custody  
38 requirements under this chapter, "offender" also means a misdemeanor  
39 or gross misdemeanor probationer ordered by a superior court to  
40 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and

1 supervised by the department pursuant to RCW 9.94A.501 and  
2 9.94A.5011. Throughout this chapter, the terms "offender" and  
3 "defendant" are used interchangeably.

4 (36) "Partial confinement" means confinement for no more than one  
5 year in a facility or institution operated or utilized under contract  
6 by the state or any other unit of government, or, if home detention,  
7 electronic monitoring, or work crew has been ordered by the court or  
8 home detention has been ordered by the department as part of the  
9 parenting program or the graduated reentry program, in an approved  
10 residence, for a substantial portion of each day with the balance of  
11 the day spent in the community. Partial confinement includes work  
12 release, home detention, work crew, electronic monitoring, and a  
13 combination of work crew, electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
2 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
3 9A.56.070);  
4 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
5 9A.56.075);  
6 (xix) Extortion 1 (RCW 9A.56.120);  
7 (xx) Extortion 2 (RCW 9A.56.130);  
8 (xxi) Intimidating a Witness (RCW 9A.72.110);  
9 (xxii) Tampering with a Witness (RCW 9A.72.120);  
10 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
11 (xxiv) Coercion (RCW 9A.36.070);  
12 (xxv) Harassment (RCW 9A.46.020); or  
13 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

16 (c) That the most recent committed offense listed in (a) of this  
17 subsection occurred within three years of a prior offense listed in  
18 (a) of this subsection; and

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

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

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

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

33 (b) (i) Has been convicted of: (A) Rape in the first degree, rape  
34 of a child in the first degree, child molestation in the first  
35 degree, rape in the second degree, rape of a child in the second  
36 degree, or indecent liberties by forcible compulsion; (B) any of the  
37 following offenses with a finding of sexual motivation: Murder in the  
38 first degree, murder in the second degree, homicide by abuse,  
39 kidnapping in the first degree, kidnapping in the second degree,  
40 assault in the first degree, assault in the second degree, assault of

1 a child in the first degree, assault of a child in the second degree,  
2 or burglary in the first degree; or (C) an attempt to commit any  
3 crime listed in this subsection (38)(b)(i); and

4 (ii) Has, before the commission of the offense under (b)(i) of  
5 this subsection, been convicted as an offender on at least one  
6 occasion, whether in this state or elsewhere, of an offense listed in  
7 (b)(i) of this subsection or any federal or out-of-state offense or  
8 offense under prior Washington law that is comparable to the offenses  
9 listed in (b)(i) of this subsection. A conviction for rape of a child  
10 in the first degree constitutes a conviction under (b)(i) of this  
11 subsection only when the offender was sixteen years of age or older  
12 when the offender committed the offense. A conviction for rape of a  
13 child in the second degree constitutes a conviction under (b)(i) of  
14 this subsection only when the offender was eighteen years of age or  
15 older when the offender committed the offense.

16 (39) "Predatory" means: (a) The perpetrator of the crime was a  
17 stranger to the victim, as defined in this section; (b) the  
18 perpetrator established or promoted a relationship with the victim  
19 prior to the offense and the victimization of the victim was a  
20 significant reason the perpetrator established or promoted the  
21 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
22 volunteer, or other person in authority in any public or private  
23 school and the victim was a student of the school under his or her  
24 authority or supervision. For purposes of this subsection, "school"  
25 does not include home-based instruction as defined in RCW  
26 28A.225.010; (ii) a coach, trainer, volunteer, or other person in  
27 authority in any recreational activity and the victim was a  
28 participant in the activity under his or her authority or  
29 supervision; (iii) a pastor, elder, volunteer, or other person in  
30 authority in any church or religious organization, and the victim was  
31 a member or participant of the organization under his or her  
32 authority; or (iv) a teacher, counselor, volunteer, or other person  
33 in authority providing home-based instruction and the victim was a  
34 student receiving home-based instruction while under his or her  
35 authority or supervision. For purposes of this subsection: (A) "Home-  
36 based instruction" has the same meaning as defined in RCW  
37 28A.225.010; and (B) "teacher, counselor, volunteer, or other person  
38 in authority" does not include the parent or legal guardian of the  
39 victim.

1 (40) "Private school" means a school regulated under chapter  
2 28A.195 or 28A.205 RCW.

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

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

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

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

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

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

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

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

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

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

28 (45) "Serious traffic offense" means:

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

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

37 (46) "Serious violent offense" is a subcategory of violent  
38 offense and means:

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

40 (ii) Homicide by abuse;

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

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

12 (47) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

38 (50) "Statutory maximum sentence" means the maximum length of  
39 time for which an offender may be confined as punishment for a crime  
40 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute



1 defining the crime, or other statute defining the maximum penalty for  
2 a crime.

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

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

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

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

18 (55) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

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

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

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

22 (59) "Recidivist offense" means a felony offense where a prior  
23 conviction of the same offense or other specified offense is an  
24 element of the crime including, but not limited to:

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

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

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

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

30 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);

31 (f) Telephone harassment, RCW 9.61.230(2)(a); and

32 (g) Violation of a no-contact or protection order, RCW  
33 26.50.110(5).

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