

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE SENATE BILL 6211

66th Legislature
2020 Regular Session

Passed by the Senate March 10, 2020
Yeas 49 Nays 0

President of the Senate

Passed by the House March 5, 2020
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE SENATE BILL 6211** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE SENATE BILL 6211

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

By Senate Ways & Means (originally sponsored by Senators Dhingra, Padden, Nguyen, Das, and Hasegawa)

READ FIRST TIME 02/11/20.

1 AN ACT Relating to drug offender sentencing; amending RCW
2 9.94A.662; reenacting and amending RCW 9.94A.660, 9.94A.664, and
3 9.94A.030; and providing an effective date.

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

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

7 (1) An offender is eligible for the special drug offender
8 sentencing alternative if:

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

12 (b) The offender is convicted of a felony that is not a felony
13 driving while under the influence of intoxicating liquor or any drug
14 under RCW 46.61.502(6) or felony physical control of a vehicle while
15 under the influence of intoxicating liquor or any drug under RCW
16 46.61.504(6);

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

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

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

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

10 ~~((d))~~ (e) For a violation of the Uniform Controlled Substances
11 Act under chapter 69.50 RCW or a criminal solicitation to commit such
12 a violation under chapter 9A.28 RCW, the offense involved only a
13 small quantity of the particular controlled substance as determined
14 by the judge upon consideration of such factors as the weight,
15 purity, packaging, sale price, and street value of the controlled
16 substance;

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

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

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

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

28 (3) If the sentencing court determines that the offender is
29 eligible for an alternative sentence under this section and that the
30 alternative sentence is appropriate, the court shall waive imposition
31 of a sentence within the standard sentence range and impose a
32 sentence consisting of either a prison-based alternative under RCW
33 9.94A.662 or a residential substance use disorder treatment-based
34 alternative under RCW 9.94A.664. The residential substance use
35 disorder treatment-based alternative is only available if the
36 midpoint of the standard range is ~~((twenty-four))~~ twenty-six months
37 or less.

38 (4) (a) To assist the court in making its determination, the court
39 may order the department to complete either or both a risk assessment

1 report and a substance use disorder screening report as provided in
2 RCW 9.94A.500.

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

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

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

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

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

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

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

28 ~~(i) A proposed monitoring plan, including any requirements~~
29 ~~regarding living conditions, lifestyle requirements, and monitoring~~
30 ~~by family members and others; and~~

31 ~~(ii) Recommended crime-related prohibitions and affirmative~~
32 ~~conditions.)~~

33 (6) When a court imposes a sentence of community custody under
34 this section:

35 (a) The court may impose conditions as provided in RCW 9.94A.703
36 and may impose other affirmative conditions as the court considers
37 appropriate. In addition, an offender may be required to pay thirty
38 dollars per month while on community custody to offset the cost of
39 monitoring for alcohol or controlled substances, or in cases of

1 domestic violence for monitoring with global positioning system
2 technology for compliance with a no-contact order.

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

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

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

12 (c) The court may order the offender to serve a term of total
13 confinement within the standard range of the offender's current
14 offense at any time during the period of community custody if the
15 offender violates the conditions or requirements of the sentence or
16 if the offender is failing to make satisfactory progress in
17 treatment.

18 (d) An offender ordered to serve a term of total confinement
19 under (c) of this subsection shall receive credit for ~~((any))~~ time
20 previously served in total or partial confinement and inpatient
21 treatment under this section, and shall receive fifty percent credit
22 for time previously served in community custody under this section.

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

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

31 ~~((Costs of examinations and preparing treatment plans under~~
32 ~~a special drug offender sentencing alternative may be paid, at the~~
33 ~~option of the county, from funds provided to the county from the~~
34 ~~criminal justice treatment account under RCW 71.24.580)) The
35 Washington state institute for public policy shall submit a report to
36 the governor and the appropriate committees of the legislature by
37 November 1, 2022, analyzing the effectiveness of the drug offender
38 sentencing alternative in reducing recidivism among various offender
39 populations. An additional report is due November 1, 2028, and every
40 five years thereafter. The Washington state institute for public~~

1 policy may coordinate with the department and the caseload forecast
2 council in tracking data and preparing the report.

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

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

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

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

13 (b) One-half the midpoint of the standard sentence range as a
14 term of community custody, which must include appropriate substance
15 ~~((abuse))~~ use disorder treatment in a program that has been approved
16 by the ~~((division of alcohol and substance abuse of the))~~ department
17 of ~~((social and))~~ health ~~((services))~~, and for co-occurring drug and
18 domestic violence cases, must also include an appropriate domestic
19 violence treatment program by a state-certified domestic violence
20 treatment provider pursuant to chapter 26.50 RCW;

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

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

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

28 ~~((+2))~~ (3)(a) During incarceration in the state facility,
29 offenders sentenced under this section shall undergo a comprehensive
30 substance ~~((abuse))~~ use disorder assessment and receive, within
31 available resources, treatment services appropriate for the offender.
32 The substance ~~((abuse))~~ use disorder treatment services shall be
33 ~~((designed))~~ licensed by the ~~((division of alcohol and substance~~
34 ~~abuse of the))~~ department of ~~((social and))~~ health ~~((services, in~~
35 ~~cooperation with the department of corrections))~~.

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

1 ~~((3))~~ (4) If the department finds that conditions of community
2 custody have been willfully violated, the offender may be
3 reclassified to serve the remaining balance of the original sentence.
4 An offender who fails to complete the program or who is
5 administratively terminated from the program shall be reclassified to
6 serve the unexpired term of his or her sentence as ordered by the
7 sentencing court.

8 ~~((4))~~ (5) If an offender sentenced to the prison-based
9 alternative under this section is found by the United States attorney
10 general to be subject to a deportation order, a hearing shall be held
11 by the department unless waived by the offender, and, if the
12 department finds that the offender is subject to a valid deportation
13 order, the department may administratively terminate the offender
14 from the program and reclassify the offender to serve the remaining
15 balance of the original sentence.

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

18 (1) (a) A sentence for a residential substance use disorder
19 treatment-based alternative shall include a term of community custody
20 equal to one-half the midpoint of the standard sentence range or two
21 years, whichever is greater, conditioned on the offender entering and
22 remaining in a residential substance use disorder treatment program
23 certified by the department of health for a period set by the court
24 (~~between three and~~) up to six months with treatment completion and
25 continued care delivered in accordance with rules established by the
26 health care authority. In establishing rules pursuant to this
27 subsection, the health care authority must consider criteria
28 established by the American society of addiction medicine.

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

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

37 (b) ~~((If the court imposes a term of community custody, the))~~ The
38 department shall, within available resources, make substance use
39 disorder assessment and treatment services available to the offender

1 during (~~the~~) any term of community custody, and within available
2 resources, make domestic violence treatment services available to a
3 domestic violence offender during the term of community custody.

4 (3) (a) If the court imposes a sentence under this section, the
5 treatment provider must send the treatment plan to the court within
6 thirty days of the offender's arrival to the residential substance
7 use disorder treatment program and, when applicable, the domestic
8 violence treatment program.

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

13 (c) Before the progress hearing and treatment termination
14 hearing, the treatment provider and the department shall submit
15 written reports to the court and parties regarding the offender's
16 compliance with treatment and monitoring requirements, and
17 recommendations regarding termination from treatment.

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

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

23 (b) Continue the hearing to a date before the expiration date of
24 community custody, with or without modifying the conditions of
25 community custody; or

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

29 (5) If the court imposes a term of total confinement, the
30 department shall, within available resources, make substance use
31 disorder assessment and treatment services available to the offender
32 during the term of total confinement and subsequent term of community
33 custody.

34 **Sec. 4.** RCW 9.94A.030 and 2019 c 331 s 5, 2019 c 271 s 6, 2019 c
35 187 s 1, and 2019 c 46 s 5007 are each reenacted and amended to read
36 as follows:

37 Unless the context clearly requires otherwise, the definitions in
38 this section apply throughout this chapter.

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

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

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

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

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

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

25 (7) "Community restitution" means compulsory service, without
26 compensation, performed for the benefit of the community by the
27 offender.

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

29 (9) "Conviction" means an adjudication of guilt pursuant to Title
30 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
31 and acceptance of a plea of guilty.

32 (10) "Crime-related prohibition" means an order of a court
33 prohibiting conduct that directly relates to the circumstances of the
34 crime for which the offender has been convicted, and shall not be
35 construed to mean orders directing an offender affirmatively to
36 participate in rehabilitative programs or to otherwise perform
37 affirmative conduct. However, affirmative acts necessary to monitor
38 compliance with the order of a court may be required by the
39 department.

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

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

9 (b) A conviction may be removed from a defendant's criminal
10 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
11 9.95.240, or a similar out-of-state statute, or if the conviction has
12 been vacated pursuant to a governor's pardon. However, when a
13 defendant is charged with a recidivist offense, "criminal history"
14 includes a vacated prior conviction for the sole purpose of
15 establishing that such vacated prior conviction constitutes an
16 element of the present recidivist offense as provided in RCW
17 9.94A.640(3)(b) and 9.96.060(~~(+5+)~~) (6)(c).

18 (c) The determination of a defendant's criminal history is
19 distinct from the determination of an offender score. A prior
20 conviction that was not included in an offender score calculated
21 pursuant to a former version of the sentencing reform act remains
22 part of the defendant's criminal history.

23 (12) "Criminal street gang" means any ongoing organization,
24 association, or group of three or more persons, whether formal or
25 informal, having a common name or common identifying sign or symbol,
26 having as one of its primary activities the commission of criminal
27 acts, and whose members or associates individually or collectively
28 engage in or have engaged in a pattern of criminal street gang
29 activity. This definition does not apply to employees engaged in
30 concerted activities for their mutual aid and protection, or to the
31 activities of labor and bona fide nonprofit organizations or their
32 members or agents.

33 (13) "Criminal street gang associate or member" means any person
34 who actively participates in any criminal street gang and who
35 intentionally promotes, furthers, or assists in any criminal act by
36 the criminal street gang.

37 (14) "Criminal street gang-related offense" means any felony or
38 misdemeanor offense, whether in this state or elsewhere, that is
39 committed for the benefit of, at the direction of, or in association
40 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or
2 is committed for one or more of the following reasons:

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

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

6 (c) To exact revenge or retribution for the gang or any member of
7 the gang;

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

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

13 (f) To provide the gang with any advantage in, or any control or
14 dominance over any criminal market sector, including, but not limited
15 to, manufacturing, delivering, or selling any controlled substance
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
18 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
19 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
20 9.68 RCW).

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

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

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

31 (18) "Determinate sentence" means a sentence that states with
32 exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community custody, the number
34 of actual hours or days of community restitution work, or dollars or
35 terms of a legal financial obligation. The fact that an offender
36 through earned release can reduce the actual period of confinement
37 shall not affect the classification of the sentence as a determinate
38 sentence.

39 (19) "Disposable earnings" means that part of the earnings of an
40 offender remaining after the deduction from those earnings of any

1 amount required by law to be withheld. For the purposes of this
2 definition, "earnings" means compensation paid or payable for
3 personal services, whether denominated as wages, salary, commission,
4 bonuses, or otherwise, and, notwithstanding any other provision of
5 law making the payments exempt from garnishment, attachment, or other
6 process to satisfy a court-ordered legal financial obligation,
7 specifically includes periodic payments pursuant to pension or
8 retirement programs, or insurance policies of any type, but does not
9 include payments made under Title 50 RCW, except as provided in RCW
10 50.40.020 and 50.40.050, or Title 74 RCW.

11 (20) "Domestic violence" has the same meaning as defined in RCW
12 10.99.020 and 26.50.010.

13 (21) "Drug offender sentencing alternative" is a sentencing
14 option available to persons convicted of a felony offense (~~either~~
15 ~~than a violent offense or a sex offense and~~) who are eligible for
16 the option under RCW 9.94A.660.

17 (22) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession
19 of a controlled substance (RCW 69.50.4013) or forged prescription for
20 a controlled substance (RCW 69.50.403);

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

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

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

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

34 (a) Radio frequency signaling technology, which detects if the
35 monitored individual is or is not at an approved location and
36 notifies the monitoring agency of the time that the monitored
37 individual either leaves the approved location or tampers with or
38 removes the monitoring device; or

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

4 (25) "Escape" means:

5 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
6 the first degree (RCW 9A.76.110), escape in the second degree (RCW
7 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
8 willful failure to return from work release (RCW 72.65.070), or
9 willful failure to be available for supervision by the department
10 while in community custody (RCW 72.09.310); 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 an
13 escape under (a) of this subsection.

14 (26) "Felony traffic offense" means:

15 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
16 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
17 run injury-accident (RCW 46.52.020(4)), felony driving while under
18 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
19 or felony physical control of a vehicle while under the influence of
20 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

30 (29) "Home detention" is a subset of electronic monitoring and
31 means a program of partial confinement available to offenders wherein
32 the offender is confined in a private residence twenty-four hours a
33 day, unless an absence from the residence is approved, authorized, or
34 otherwise permitted in the order by the court or other supervising
35 agency that ordered home detention, and the offender is subject to
36 electronic monitoring.

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

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

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

5 (c) A private residence where the individual stays as a transient
6 invitee.

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

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

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

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

40 (m) Promoting prostitution in the first degree;

1 (n) Rape in the third degree;

2 (o) Sexual exploitation;

3 (p) Vehicular assault, when caused by the operation or driving of
4 a vehicle by a person while under the influence of intoxicating
5 liquor or any drug or by the operation or driving of a vehicle in a
6 reckless manner;

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

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

13 (s) Any other felony with a deadly weapon verdict under RCW
14 9.94A.825;

15 (t) Any felony offense in effect at any time prior to December 2,
16 1993, that is comparable to a most serious offense under this
17 subsection, or any federal or out-of-state conviction for an offense
18 that under the laws of this state would be a felony classified as a
19 most serious offense under this subsection;

20 (u)(i) A prior conviction for indecent liberties under RCW
21 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
22 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
23 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
24 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
25 until July 1, 1988;

26 (ii) A prior conviction for indecent liberties under RCW
27 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
28 if: (A) The crime was committed against a child under the age of
29 fourteen; or (B) the relationship between the victim and perpetrator
30 is included in the definition of indecent liberties under RCW
31 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
32 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
33 1993, through July 27, 1997;

34 (v) Any out-of-state conviction for a felony offense with a
35 finding of sexual motivation if the minimum sentence imposed was ten
36 years or more; provided that the out-of-state felony offense must be
37 comparable to a felony offense under this title and Title 9A RCW and
38 the out-of-state definition of sexual motivation must be comparable
39 to the definition of sexual motivation contained in this section.

1 (34) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (35) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior
6 court jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. In addition, for the purpose of community custody
9 requirements under this chapter, "offender" also means a misdemeanor
10 or gross misdemeanor probationer ordered by a superior court to
11 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
12 supervised by the department pursuant to RCW 9.94A.501 and
13 9.94A.5011. Throughout this chapter, the terms "offender" and
14 "defendant" are used interchangeably.

15 (36) "Partial confinement" means confinement for no more than one
16 year in a facility or institution operated or utilized under contract
17 by the state or any other unit of government, or, if home detention,
18 electronic monitoring, or work crew has been ordered by the court or
19 home detention has been ordered by the department as part of the
20 parenting program or the graduated reentry program, in an approved
21 residence, for a substantial portion of each day with the balance of
22 the day spent in the community. Partial confinement includes work
23 release, home detention, work crew, electronic monitoring, and a
24 combination of work crew, electronic monitoring, and home detention.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
14 9A.56.070);

15 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
16 9A.56.075);

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

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

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

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

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

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

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

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

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

27 (c) That the most recent committed offense listed in (a) of this
28 subsection occurred within three years of a prior offense listed in
29 (a) of this subsection; and

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

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

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

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under
39 the laws of this state would be considered most serious offenses and
40 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction
2 must have occurred before the commission of any of the other most
3 serious offenses for which the offender was previously convicted; or

4 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
5 of a child in the first degree, child molestation in the first
6 degree, rape in the second degree, rape of a child in the second
7 degree, or indecent liberties by forcible compulsion; (B) any of the
8 following offenses with a finding of sexual motivation: Murder in the
9 first degree, murder in the second degree, homicide by abuse,
10 kidnapping in the first degree, kidnapping in the second degree,
11 assault in the first degree, assault in the second degree, assault of
12 a child in the first degree, assault of a child in the second degree,
13 or burglary in the first degree; or (C) an attempt to commit any
14 crime listed in this subsection (38) (b) (i); and

15 (ii) Has, before the commission of the offense under (b) (i) of
16 this subsection, been convicted as an offender on at least one
17 occasion, whether in this state or elsewhere, of an offense listed in
18 (b) (i) of this subsection or any federal or out-of-state offense or
19 offense under prior Washington law that is comparable to the offenses
20 listed in (b) (i) of this subsection. A conviction for rape of a child
21 in the first degree constitutes a conviction under (b) (i) of this
22 subsection only when the offender was sixteen years of age or older
23 when the offender committed the offense. A conviction for rape of a
24 child in the second degree constitutes a conviction under (b) (i) of
25 this subsection only when the offender was eighteen years of age or
26 older when the offender committed the offense.

27 (39) "Predatory" means: (a) The perpetrator of the crime was a
28 stranger to the victim, as defined in this section; (b) the
29 perpetrator established or promoted a relationship with the victim
30 prior to the offense and the victimization of the victim was a
31 significant reason the perpetrator established or promoted the
32 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
33 volunteer, or other person in authority in any public or private
34 school and the victim was a student of the school under his or her
35 authority or supervision. For purposes of this subsection, "school"
36 does not include home-based instruction as defined in RCW
37 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
38 authority in any recreational activity and the victim was a
39 participant in the activity under his or her authority or
40 supervision; (iii) a pastor, elder, volunteer, or other person in

1 authority in any church or religious organization, and the victim was
2 a member or participant of the organization under his or her
3 authority; or (iv) a teacher, counselor, volunteer, or other person
4 in authority providing home-based instruction and the victim was a
5 student receiving home-based instruction while under his or her
6 authority or supervision. For purposes of this subsection: (A) "Home-
7 based instruction" has the same meaning as defined in RCW
8 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
9 in authority" does not include the parent or legal guardian of the
10 victim.

11 (40) "Private school" means a school regulated under chapter
12 28A.195 or 28A.205 RCW.

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

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

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

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

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

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

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

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

24 (g) Violation of a no-contact or protection order, RCW
25 26.50.110(5).

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

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

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

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

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

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

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

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

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

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

11 (46) "Serious traffic offense" means:

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

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

20 (47) "Serious violent offense" is a subcategory of violent
21 offense and means:

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

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

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

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

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

35 (48) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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