

ESSB 5180 - H COMM AMD  
By Committee on Public Safety

ADOPTED 04/06/2021

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

3 **"Sec. 1.** RCW 9.94A.030 and 2020 c 296 s 2, 2020 c 252 s 4, and  
4 2020 c 137 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (b) A conviction may be removed from a defendant's criminal  
25 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,  
26 9.95.240, or a similar out-of-state statute, or if the conviction has  
27 been vacated pursuant to a governor's pardon. However, when a  
28 defendant is charged with a recidivist offense, "criminal history"  
29 includes a vacated prior conviction for the sole purpose of  
30 establishing that such vacated prior conviction constitutes an  
31 element of the present recidivist offense as provided in RCW  
32 9.94A.640(~~(+3)~~) (4)(b) and 9.96.060(~~(+6)~~) (7)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (22) "Drug offense" means:

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

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

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

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

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

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

15 (b) Active or passive global positioning system technology, which  
16 detects the location of the monitored individual and notifies the  
17 monitoring agency of the monitored individual's location and which  
18 may also include electronic monitoring with victim notification  
19 technology that is capable of notifying a victim or protected party,  
20 either directly or through a monitoring agency, if the monitored  
21 individual enters within the restricted distance of a victim or  
22 protected party, or within the restricted distance of a designated  
23 location.

24 (25) "Escape" means:

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

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

34 (26) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
37 run injury-accident (RCW 46.52.020(4)), felony driving while under  
38 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),  
39 or felony physical control of a vehicle while under the influence of  
40 intoxicating liquor or any drug (RCW 46.61.504(6)); 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 a felony  
3 traffic offense under (a) of this subsection.

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

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

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

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

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

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

24 (c) A private residence where the individual stays as a transient  
25 invitee.

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

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

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

6 (b) Assault in the second degree;

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

8 (d) Child molestation in the second degree;

9 (e) Controlled substance homicide;

10 (f) Extortion in the first degree;

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

12 (h) Indecent liberties;

13 (i) Kidnapping in the second degree;

14 (j) Leading organized crime;

15 (k) Manslaughter in the first degree;

16 (l) Manslaughter in the second degree;

17 (m) Promoting prostitution in the first degree;

18 (n) Rape in the third degree;

19 (o) Sexual exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

1 (36) "Pattern of criminal street gang activity" means:  
2 (a) The commission, attempt, conspiracy, or solicitation of, or  
3 any prior juvenile adjudication of or adult conviction of, two or  
4 more of the following criminal street gang-related offenses:  
5 (i) Any "serious violent" felony offense as defined in this  
6 section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a  
7 Child 1 (RCW 9A.36.120);  
8 (ii) Any "violent" offense as defined by this section, excluding  
9 Assault of a Child 2 (RCW 9A.36.130);  
10 (iii) Deliver or Possession with Intent to Deliver a Controlled  
11 Substance (chapter 69.50 RCW);  
12 (iv) Any violation of the firearms and dangerous weapon act  
13 (chapter 9.41 RCW);  
14 (v) Theft of a Firearm (RCW 9A.56.300);  
15 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);  
16 (vii) Hate Crime (RCW 9A.36.080);  
17 (viii) Harassment where a subsequent violation or deadly threat  
18 is made (RCW 9A.46.020(2)(b));  
19 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
20 (x) Any felony conviction by a person eighteen years of age or  
21 older with a special finding of involving a juvenile in a felony  
22 offense under RCW 9.94A.833;  
23 (xi) Residential Burglary (RCW 9A.52.025);  
24 (xii) Burglary 2 (RCW 9A.52.030);  
25 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
26 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
27 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
28 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
29 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW  
30 9A.56.070);  
31 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
32 9A.56.075);  
33 (xix) Extortion 1 (RCW 9A.56.120);  
34 (xx) Extortion 2 (RCW 9A.56.130);  
35 (xxi) Intimidating a Witness (RCW 9A.72.110);  
36 (xxii) Tampering with a Witness (RCW 9A.72.120);  
37 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
38 (xxiv) Coercion (RCW 9A.36.070);  
39 (xxv) Harassment (RCW 9A.46.020); or  
40 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

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

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

9 (37) "Persistent offender" is an offender who:

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

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

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

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

1 this subsection only when the offender was eighteen years of age or  
2 older when the offender committed the offense.

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

27 (39) "Private school" means a school regulated under chapter  
28 28A.195 or 28A.205 RCW.

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

30 (41) "Recidivist offense" means a felony offense where a prior  
31 conviction of the same offense or other specified offense is an  
32 element of the crime including, but not limited to:

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

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

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

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

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

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

1 (g) Violation of a no-contact or protection order, RCW  
2 26.50.110(5).

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

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

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

8 (iii) Domestic violence violation of a protection order under  
9 chapter 26.09, (~~26.107~~) 26.26A, 26.26B, or 26.50 RCW that is not a  
10 felony offense;

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

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

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

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

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

27 (45) "Serious traffic offense" means:

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

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

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

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

39 (ii) Homicide by abuse;

40 (iii) Murder in the second degree;

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

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

11 (47) "Sex offense" means:

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

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

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

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

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

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

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

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

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

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

37 (50) "Statutory maximum sentence" means the maximum length of  
38 time for which an offender may be confined as punishment for a crime  
39 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) "Victim of domestic violence" means an intimate partner or  
19 household member who has been subjected to the infliction of physical  
20 harm or sexual and psychological abuse by an intimate partner or  
21 household member as part of a pattern of assaultive, coercive, and  
22 controlling behaviors directed at achieving compliance from or  
23 control over that intimate partner or household member. Domestic  
24 violence includes, but is not limited to, the offenses listed in RCW  
25 10.99.020 and 26.50.010 committed by an intimate partner or household  
26 member against a victim who is an intimate partner or household  
27 member.

28 (56) "Victim of sex trafficking, prostitution, or commercial  
29 sexual abuse of a minor" means a person who has been forced or  
30 coerced to perform a commercial sex act including, but not limited  
31 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,  
32 9.68A.101, and the trafficking victims protection act of 2000, 22  
33 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a  
34 commercial sex act when they were less than 18 years of age including  
35 but not limited to the offenses defined in chapter 9.68A RCW.

36 (57) "Victim of sexual assault" means any person who is a victim  
37 of a sexual assault offense, nonconsensual sexual conduct, or  
38 nonconsensual sexual penetration and as a result suffers physical,  
39 emotional, financial, or psychological impacts. Sexual assault

1 offenses include, but are not limited to, the offenses defined in  
2 chapter 9A.44 RCW.

3 (58) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

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

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

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

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

33 ~~((56))~~ (59) "Work crew" means a program of partial confinement  
34 consisting of civic improvement tasks for the benefit of the  
35 community that complies with RCW 9.94A.725.

36 ~~((57))~~ (60) "Work ethic camp" means an alternative  
37 incarceration program as provided in RCW 9.94A.690 designed to reduce  
38 recidivism and lower the cost of corrections by requiring offenders  
39 to complete a comprehensive array of real-world job and vocational  
40 experiences, character-building work ethics training, life management

1 skills development, substance abuse rehabilitation, counseling,  
2 literacy training, and basic adult education.

3 ~~((58))~~ (61) "Work release" means a program of partial  
4 confinement available to offenders who are employed or engaged as a  
5 student in a regular course of study at school.

6 **Sec. 2.** RCW 9.94A.640 and 2019 c 331 s 3 are each amended to  
7 read as follows:

8 (1) Every offender who has been discharged under RCW 9.94A.637  
9 may apply to the sentencing court for a vacation of the offender's  
10 record of conviction. If the court finds the offender meets the tests  
11 prescribed in subsection (2) of this section, the court may clear the  
12 record of conviction by: (a) Permitting the offender to withdraw the  
13 offender's plea of guilty and to enter a plea of not guilty; or (b)  
14 if the offender has been convicted after a plea of not guilty, by the  
15 court setting aside the verdict of guilty; and (c) by the court  
16 dismissing the information or indictment against the offender.

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

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

20 (b) The offense was a violent offense as defined in RCW 9.94A.030  
21 or crime against persons as defined in RCW 43.43.830, except the  
22 following offenses may be vacated if the conviction did not include a  
23 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault  
24 in the second degree under RCW 9A.36.021; (ii) assault in the third  
25 degree under RCW 9A.36.031 when not committed against a law  
26 enforcement officer or peace officer; and (iii) robbery in the second  
27 degree under RCW 9A.56.210;

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

31 (d) The offense is a class C felony and the offender has been  
32 convicted of a new crime in this state, another state, or federal  
33 court in the five years prior to the application for vacation;

34 (e) The offense is a class B felony and less than ten years have  
35 passed since the later of: (i) The applicant's release from community  
36 custody; (ii) the applicant's release from full and partial  
37 confinement; or (iii) the applicant's sentencing date;

38 (f) The offense was a class C felony, other than a class C felony  
39 described in RCW 46.61.502(6) or 46.61.504(6), and less than five

1 years have passed since the later of: (i) The applicant's release  
2 from community custody; (ii) the applicant's release from full and  
3 partial confinement; or (iii) the applicant's sentencing date; or

4 (g) The offense was a felony described in RCW 46.61.502 or  
5 46.61.504.

6 (3) If the applicant is a victim of sex trafficking,  
7 prostitution, or commercial sexual abuse of a minor; sexual assault;  
8 or domestic violence as defined in RCW 9.94A.030, the victim or the  
9 prosecutor of the county in which the victim was sentenced may apply  
10 to the sentencing court or the sentencing court's successor to vacate  
11 the victim's record of conviction for a class B or class C felony  
12 offense using the process in section 3 of this act. When preparing or  
13 filing the petition, the prosecutor is not deemed to be providing  
14 legal advice or legal assistance on behalf of the victim, but is  
15 fulfilling an administrative function on behalf of the state in order  
16 to further their responsibility to seek to reform and improve the  
17 administration of criminal justice. A record of conviction vacated  
18 using the process in section 3 of this act is subject to subsection  
19 (4) of this section.

20 (4)(a) Except as otherwise provided, once the court vacates a  
21 record of conviction under subsection (1) of this section, the fact  
22 that the offender has been convicted of the offense shall not be  
23 included in the offender's criminal history for purposes of  
24 determining a sentence in any subsequent conviction, and the offender  
25 shall be released from all penalties and disabilities resulting from  
26 the offense. For all purposes, including responding to questions on  
27 employment applications, an offender whose conviction has been  
28 vacated may state that the offender has never been convicted of that  
29 crime. A conviction that has been vacated under this section may not  
30 be disseminated or disclosed by the state patrol or local law  
31 enforcement agency to any person, except other criminal justice  
32 enforcement agencies. Nothing in this section affects or prevents the  
33 use of an offender's prior conviction in a later criminal  
34 prosecution, and nothing in this section affects the requirements for  
35 restoring a right to possess a firearm under RCW 9.41.040.

36 (b) A conviction vacated on or after July 28, 2019, qualifies as  
37 a prior conviction for the purpose of charging a present recidivist  
38 offense occurring on or after July 28, 2019, and may be used to  
39 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 9.94A  
2    RCW to read as follows:

3        (1) (a) A victim of sex trafficking, prostitution, or commercial  
4    sexual abuse of a minor; sexual assault; or domestic violence as  
5    defined in RCW 9.94A.030 may apply to the sentencing court or the  
6    sentencing court's successor to vacate the victim's record of  
7    conviction for a class B or class C felony offense.

8        (b) The prosecutor of a county in which a victim of sex  
9    trafficking, prostitution, commercial sexual abuse of a minor; sexual  
10   assault; or domestic violence was sentenced for a class B or class C  
11   felony offense may exercise discretion to apply to the court on  
12   behalf of the state recommending that the court vacate the victim's  
13   record of conviction by submitting the information required in  
14   subsection (2) of this section. If the court finds the application  
15   meets the requirements of subsection (2) of this section, the court  
16   may decide whether to grant the application to vacate the record.

17        (2) In order to vacate a record of conviction for a class B or  
18   class C felony offense committed as a result of being a victim of sex  
19   trafficking, prostitution, or commercial sexual abuse of a minor;  
20   domestic violence; or sexual assault, the applicant must meet the  
21   following requirements:

22        (a) Provide an affidavit under penalty of perjury stating the  
23   specific facts and circumstances proving, by a preponderance of  
24   evidence, that the offense was committed as a result of being a  
25   victim of sex trafficking, prostitution, or commercial sexual abuse  
26   of a minor; domestic violence; or sexual assault;

27        (b) There are no criminal charges against the applicant pending  
28   in any court of this state or another state, or in any federal court  
29   for any offense other than prostitution;

30        (c) If the victim's offense is a class C felony, the offender has  
31   not been convicted of a new offense in this state, another state, or  
32   federal or tribal court in the five years prior to the vacation  
33   application;

34        (d) If the victim's offense is a class B felony, the offender has  
35   not been convicted of a new offense in this state, another state, or  
36   federal or tribal court in the 10 years prior to the vacation  
37   application;

38        (e) Provide proof that the crime victim penalty assessment, RCW  
39   7.68.035, has been paid in full; and

1 (f) If applicable, restitution owed to any victim, excluding  
2 restitution owed to any insurance provider under Title 48 RCW, has  
3 been paid in full.

4 (3) An applicant may not have a record of conviction for a class  
5 B or class C felony offense vacated if:

6 (a) The offense was a violent offense as defined in RCW 9.94A.030  
7 or crime against persons as defined in RCW 43.43.830, except the  
8 following offenses may be vacated if the conviction did not include a  
9 firearm, deadly weapon, or sexual motivation enhancement: (i) Assault  
10 in the second degree under RCW 9A.36.021; (ii) assault in the third  
11 degree under RCW 9A.36.031 when not committed against a law  
12 enforcement officer or peace officer; and (iii) robbery in the second  
13 degree under RCW 9A.56.210;

14 (b) The offense was a felony described in RCW 46.61.502,  
15 46.61.504, or 46.61.5055; or

16 (c) The offense was promoting prostitution in the first or second  
17 degree as described in RCW 9A.88.070 and 9A.88.080.

18 **Sec. 4.** RCW 9.96.060 and 2020 c 29 s 18 are each amended to read  
19 as follows:

20 (1) When vacating a conviction under this section, the court  
21 effectuates the vacation by: (a)(i) Permitting the applicant to  
22 withdraw the applicant's plea of guilty and to enter a plea of not  
23 guilty; or (ii) if the applicant has been convicted after a plea of  
24 not guilty, the court setting aside the verdict of guilty; and (b)  
25 the court dismissing the information, indictment, complaint, or  
26 citation against the applicant and vacating the judgment and  
27 sentence.

28 (2) Every person convicted of a misdemeanor or gross misdemeanor  
29 offense may apply to the sentencing court for a vacation of the  
30 applicant's record of conviction for the offense. If the court finds  
31 the applicant meets the requirements of this subsection, the court  
32 may in its discretion vacate the record of conviction. Except as  
33 provided in subsections (3), (4), and (5) of this section, an  
34 applicant may not have the record of conviction for a misdemeanor or  
35 gross misdemeanor offense vacated if any one of the following is  
36 present:

37 (a) The applicant has not completed all of the terms of the  
38 sentence for the offense;

1 (b) There are any criminal charges against the applicant pending  
2 in any court of this state or another state, or in any federal or  
3 tribal court, at the time of application;

4 (c) The offense was a violent offense as defined in RCW 9.94A.030  
5 or an attempt to commit a violent offense;

6 (d) The offense was a violation of RCW 46.61.502 (driving while  
7 under the influence), 46.61.504 (actual physical control while under  
8 the influence), 9.91.020 (operating a railroad, etc. while  
9 intoxicated), or the offense is considered a "prior offense" under  
10 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug  
11 violation within ten years of the date of arrest for the prior  
12 offense or less than ten years has elapsed since the date of the  
13 arrest for the prior offense;

14 (e) The offense was any misdemeanor or gross misdemeanor  
15 violation, including attempt, of chapter 9.68 RCW (obscenity and  
16 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
17 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
18 sex offender under RCW 9A.44.132;

19 (f) The applicant was convicted of a misdemeanor or gross  
20 misdemeanor offense as defined in RCW 10.99.020, or the court  
21 determines after a review of the court file that the offense was  
22 committed by one family or household member against another or by one  
23 intimate partner against another, or the court, after considering the  
24 damage to person or property that resulted in the conviction, any  
25 prior convictions for crimes defined in RCW 10.99.020, or for  
26 comparable offenses in another state or in federal court, and the  
27 totality of the records under review by the court regarding the  
28 conviction being considered for vacation, determines that the offense  
29 involved domestic violence, and any one of the following factors  
30 exist:

31 (i) The applicant has not provided written notification of the  
32 vacation petition to the prosecuting attorney's office that  
33 prosecuted the offense for which vacation is sought, or has not  
34 provided that notification to the court;

35 (ii) The applicant has two or more domestic violence convictions  
36 stemming from different incidents. For purposes of this subsection,  
37 however, if the current application is for more than one conviction  
38 that arose out of a single incident, none of those convictions counts  
39 as a previous conviction;

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

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

9 (g) For any offense other than those described in (f) of this  
10 subsection, less than three years have passed since the person  
11 completed the terms of the sentence, including any financial  
12 obligations;

13 (h) The offender has been convicted of a new crime in this state,  
14 another state, or federal or tribal court in the three years prior to  
15 the vacation application; or

16 (i) The applicant is currently restrained by a domestic violence  
17 protection order, a no-contact order, an antiharassment order, or a  
18 civil restraining order which restrains one party from contacting the  
19 other party or was previously restrained by such an order and was  
20 found to have committed one or more violations of the order in the  
21 five years prior to the vacation application.

22 (3) ~~((Subject to RCW 9.96.070, every person convicted of~~  
23 ~~prostitution under RCW 9A.88.030 who committed the offense as a~~  
24 ~~result of being a victim of trafficking, RCW 9A.40.100, promoting~~  
25 ~~prostitution in the first degree, RCW 9A.88.070, promoting commercial~~  
26 ~~sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons~~  
27 ~~under the trafficking victims protection act of 2000, 22 U.S.C. Sec.~~  
28 ~~7101 et seq. may apply to the sentencing court for vacation of the~~  
29 ~~applicant's record of conviction for the prostitution offense. An~~  
30 ~~applicant may not have the record of conviction for prostitution~~  
31 ~~vacated if any one of the following is present:~~

32 ~~(a) There are any criminal charges against the applicant pending~~  
33 ~~in any court of this state or another state, or in any federal court,~~  
34 ~~for any crime other than prostitution; or~~

35 ~~(b) The offender has been convicted of another crime, except~~  
36 ~~prostitution, in this state, another state, or federal court since~~  
37 ~~the date of conviction. The limitation in this subsection (3) (b) does~~  
38 ~~not apply to convictions where the offender proves by a preponderance~~  
39 ~~of the evidence that he or she committed the crime as a result of~~  
40 ~~being a victim of trafficking, RCW 9A.40.100, promoting prostitution~~

1 ~~in the first degree, RCW 9A.88.070, promoting commercial sexual abuse~~  
2 ~~of a minor, RCW 9.68A.101, or trafficking in persons under the~~  
3 ~~trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et~~  
4 ~~seq., according to the requirements provided in RCW 9.96.070 for each~~  
5 ~~respective conviction)) If the applicant is a victim of sex~~  
6 ~~trafficking, prostitution, or commercial sexual abuse of a minor;~~  
7 ~~sexual assault; or domestic violence as defined in RCW 9.94A.030, or~~  
8 ~~the prosecutor applies on behalf of the state, the sentencing court~~  
9 ~~may vacate the record of conviction if the application satisfies the~~  
10 ~~requirements of section 5 of this act. When preparing or filing the~~  
11 ~~petition, the prosecutor is not deemed to be providing legal advice~~  
12 ~~or legal assistance on behalf of the victim, but is fulfilling an~~  
13 ~~administrative function on behalf of the state in order to further~~  
14 ~~their responsibility to seek to reform and improve the administration~~  
15 ~~of criminal justice. A record of conviction vacated using the process~~  
16 ~~in section 5 of this act is subject to subsections (6) and (7) of~~  
17 ~~this section.~~

18 (4) Every person convicted prior to January 1, 1975, of violating  
19 any statute or rule regarding the regulation of fishing activities,  
20 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,  
21 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240  
22 who claimed to be exercising a treaty Indian fishing right, may apply  
23 to the sentencing court for vacation of the applicant's record of the  
24 misdemeanor, gross misdemeanor, or felony conviction for the offense.  
25 If the person is deceased, a member of the person's family or an  
26 official representative of the tribe of which the person was a member  
27 may apply to the court on behalf of the deceased person.  
28 Notwithstanding the requirements of RCW 9.94A.640, the court shall  
29 vacate the record of conviction if:

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

32 (b) The state has been enjoined from taking enforcement action of  
33 the statute or rule to the extent that it interferes with a treaty  
34 Indian fishing right as determined under *United States v. Washington*,  
35 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.  
36 899 (D. Oregon 1969), and any posttrial orders of those courts, or  
37 any other state supreme court or federal court decision.

38 (5) Every person convicted of a misdemeanor marijuana offense,  
39 who was twenty-one years of age or older at the time of the offense,  
40 may apply to the sentencing court for a vacation of the applicant's

1 record of conviction for the offense. A misdemeanor marijuana offense  
2 includes, but is not limited to: Any offense under RCW 69.50.4014,  
3 from July 1, 2004, onward, and its predecessor statutes, including  
4 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW  
5 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense  
6 under an equivalent municipal ordinance. If an applicant qualifies  
7 under this subsection, the court shall vacate the record of  
8 conviction.

9 (6) A person who is a family member of a homicide victim may  
10 apply to the sentencing court on the behalf of the victim for  
11 vacation of the victim's record of conviction for prostitution under  
12 RCW 9A.88.030. If an applicant qualifies under this subsection, the  
13 court shall vacate the victim's record of conviction.

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

28 (b) When a court vacates a record of domestic violence as defined  
29 in RCW 10.99.020 under this section, the state may not use the  
30 vacated conviction in a later criminal prosecution unless the  
31 conviction was for: (i) Violating the provisions of a restraining  
32 order, no-contact order, or protection order restraining or enjoining  
33 the person or restraining the person from going on to the grounds of  
34 or entering a residence, workplace, school, or day care, or  
35 prohibiting the person from knowingly coming within, or knowingly  
36 remaining within, a specified distance of a location (RCW 10.99.040,  
37 10.99.050, 26.09.300, (~~26.10.220,~~) 26.26B.050, 26.44.063,  
38 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);  
39 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this

1 section is not considered a conviction of such an offense for the  
2 purposes of 27 C.F.R. 478.11.

3 (c) A conviction vacated on or after July 28, 2019, qualifies as  
4 a prior conviction for the purpose of charging a present recidivist  
5 offense as defined in RCW 9.94A.030 occurring on or after July 28,  
6 2019.

7 ~~((7))~~ (8) The clerk of the court in which the vacation order is  
8 entered shall immediately transmit the order vacating the conviction  
9 to the Washington state patrol identification section and to the  
10 local police agency, if any, which holds criminal history information  
11 for the person who is the subject of the conviction. The Washington  
12 state patrol and any such local police agency shall immediately  
13 update their records to reflect the vacation of the conviction, and  
14 shall transmit the order vacating the conviction to the federal  
15 bureau of investigation. A conviction that has been vacated under  
16 this section may not be disseminated or disclosed by the state patrol  
17 or local law enforcement agency to any person, except other criminal  
18 justice enforcement agencies.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.96 RCW  
20 to read as follows:

21 (1)(a) A victim of sex trafficking, prostitution, or commercial  
22 sexual abuse of a minor; sexual assault; or domestic violence, as  
23 defined in RCW 9.94A.030 may apply to the sentencing court or the  
24 sentencing court's successor to vacate the applicant's record of  
25 conviction for the offense; or

26 (b) The prosecutor of a county or municipality in which a victim  
27 of sex trafficking, prostitution, or commercial sexual abuse of a  
28 minor; sexual assault; or domestic violence was sentenced for a  
29 misdemeanor or gross misdemeanor offense may exercise discretion to  
30 apply to the court on behalf of the state recommending that the court  
31 vacate the victim's record of conviction by submitting the  
32 information required in subsection (2) of this section. If the court  
33 finds the application meets the requirements of subsection (2) of  
34 this section, the court may decide whether to grant the application  
35 to vacate the record.

36 (2) In order to vacate a record of conviction for a gross  
37 misdemeanor or misdemeanor offense committed as a result of being a  
38 victim of sex trafficking, prostitution, or commercial sexual abuse

1 of a minor; sexual assault; or domestic violence as defined in RCW  
2 9.94A.030, the applicant must meet the following requirements:

3 (a) Provide an affidavit, under penalty of perjury, stating the  
4 specific facts and circumstances proving, by a preponderance of  
5 evidence that the offense was committed as a result of being a victim  
6 of sex trafficking, prostitution, or commercial sexual abuse of a  
7 minor; sexual assault; or domestic violence as defined in RCW  
8 9.94A.030;

9 (b) There are no criminal charges against the applicant pending  
10 in any court of this state or another state, or in any federal court  
11 for any crime other than prostitution;

12 (c) If the offense is a misdemeanor, the offender has not been  
13 convicted of a new crime in this state, another state, or federal or  
14 tribal court in the three years prior to the vacation application;

15 (d) Except where the conviction to be vacated is for the crime of  
16 prostitution, prostitution loitering, or stay out of area of  
17 prostitution, provide proof that the crime victim penalty assessment,  
18 RCW 7.68.035, has been paid in full;

19 (e) If applicable, restitution owed to any victim, excluding  
20 restitution owed to any insurance provider under Title 48 RCW, has  
21 been paid in full.

22 (3) An applicant may not have a record of conviction for a gross  
23 misdemeanor or misdemeanor offense vacated if:

24 (a) The offense was any misdemeanor or gross misdemeanor  
25 violation, including attempt, of chapter 9.68 RCW (obscenity and  
26 pornography), chapter 9.68A RCW (sexual exploitation of children), or  
27 chapter 9A.44 RCW (sex offenses), except for failure to register as a  
28 sex offender under RCW 9A.44.132;

29 (b) The offense was a conviction as described in RCW 46.61.5055;  
30 or

31 (c) The offense was patronizing a prostitute as described in RCW  
32 9A.88.110.

33 NEW SECTION. **Sec. 6.** RCW 9.96.070 (Vacating records of  
34 conviction—Prostitution offenses) and 2017 c 128 s 2 & 2014 c 109 s 2  
35 are each repealed."

36 Correct the title.

EFFECT: (1) Specifies that, once vacated, a qualifying victim's record of conviction is subject to provisions relating to: The victim's criminal history; disclosure of the conviction on housing and employment applications; protections against dissemination of the conviction by law enforcement; use of the conviction in a later criminal prosecution; and restoration of the right to possess a firearm.

(2) Specifies that a prosecutor who files a petition to vacate a record of conviction for a misdemeanor or gross misdemeanor on behalf of a qualifying victim is fulfilling an administrative function and is not providing legal advice or assistance.

(3) Provides that a qualifying victim may not vacate a record of conviction for any offense defined as a prior offense under the alcohol and drug violators penalty schedule.

(4) Provides that a family member of a homicide victim may apply to the sentencing court on behalf of the victim to vacate the victim's record of conviction for prostitution.

(5) Requires the sentencing court to vacate a homicide victim's record of conviction for prostitution upon the application of a qualified person.

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