

SSB 5180 - S AMD 77

By Senators Dhingra, Padden

ADOPTED 02/24/2021

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)(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.

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

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

38 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A
39 RCW to read as follows:

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

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

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

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

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

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

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

36 (e) Provide proof that the crime victim penalty assessment, RCW
37 7.68.035, has been paid in full; and

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

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

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

11 (b) The offense was a felony described in RCW 46.61.502 or
12 46.61.504; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (g) For any offense other than those described in (f) of this
6 subsection, less than three years have passed since the person
7 completed the terms of the sentence, including any financial
8 obligations;

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

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

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

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

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

1 ~~respective conviction))~~ If the applicant is a victim of sex
2 trafficking, prostitution, or commercial sexual abuse of a minor;
3 sexual assault; or domestic violence as defined in RCW 9.94A.030, or
4 the prosecutor applies on behalf of the state, the sentencing court
5 may vacate the record of conviction if the application satisfies the
6 requirements of section 5 of this act.

7 (4) Every person convicted prior to January 1, 1975, of violating
8 any statute or rule regarding the regulation of fishing activities,
9 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
10 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
11 who claimed to be exercising a treaty Indian fishing right, may apply
12 to the sentencing court for vacation of the applicant's record of the
13 misdemeanor, gross misdemeanor, or felony conviction for the offense.
14 If the person is deceased, a member of the person's family or an
15 official representative of the tribe of which the person was a member
16 may apply to the court on behalf of the deceased person.
17 Notwithstanding the requirements of RCW 9.94A.640, the court shall
18 vacate the record of conviction if:

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

21 (b) The state has been enjoined from taking enforcement action of
22 the statute or rule to the extent that it interferes with a treaty
23 Indian fishing right as determined under *United States v. Washington*,
24 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
25 899 (D. Oregon 1969), and any posttrial orders of those courts, or
26 any other state supreme court or federal court decision.

27 (5) Every person convicted of a misdemeanor marijuana offense,
28 who was twenty-one years of age or older at the time of the offense,
29 may apply to the sentencing court for a vacation of the applicant's
30 record of conviction for the offense. A misdemeanor marijuana offense
31 includes, but is not limited to: Any offense under RCW 69.50.4014,
32 from July 1, 2004, onward, and its predecessor statutes, including
33 RCW 69.50.401(e), from March 21, 1979, to July 1, 2004, and RCW
34 69.50.401(d), from May 21, 1971, to March 21, 1979, and any offense
35 under an equivalent municipal ordinance. If an applicant qualifies
36 under this subsection, the court shall vacate the record of
37 conviction.

38 (6)(a) Except as provided in (c) of this subsection, once the
39 court vacates a record of conviction under this section, the person
40 shall be released from all penalties and disabilities resulting from

1 the offense and the fact that the person has been convicted of the
2 offense shall not be included in the person's criminal history for
3 purposes of determining a sentence in any subsequent conviction. For
4 all purposes, including responding to questions on employment or
5 housing applications, a person whose conviction has been vacated
6 under this section may state that he or she has never been convicted
7 of that crime. However, nothing in this section affects the
8 requirements for restoring a right to possess a firearm under RCW
9 9.41.040. Except as provided in (b) of this subsection, nothing in
10 this section affects or prevents the use of an offender's prior
11 conviction in a later criminal prosecution.

12 (b) When a court vacates a record of domestic violence as defined
13 in RCW 10.99.020 under this section, the state may not use the
14 vacated conviction in a later criminal prosecution unless the
15 conviction was for: (i) Violating the provisions of a restraining
16 order, no-contact order, or protection order restraining or enjoining
17 the person or restraining the person from going on to the grounds of
18 or entering a residence, workplace, school, or day care, or
19 prohibiting the person from knowingly coming within, or knowingly
20 remaining within, a specified distance of a location (RCW 10.99.040,
21 10.99.050, 26.09.300, (~~26.10.220,~~) 26.26B.050, 26.44.063,
22 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
23 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this
24 section is not considered a conviction of such an offense for the
25 purposes of 27 C.F.R. 478.11.

26 (c) A conviction vacated on or after July 28, 2019, qualifies as
27 a prior conviction for the purpose of charging a present recidivist
28 offense as defined in RCW 9.94A.030 occurring on or after July 28,
29 2019.

30 (7) The clerk of the court in which the vacation order is entered
31 shall immediately transmit the order vacating the conviction to the
32 Washington state patrol identification section and to the local
33 police agency, if any, which holds criminal history information for
34 the person who is the subject of the conviction. The Washington state
35 patrol and any such local police agency shall immediately update
36 their records to reflect the vacation of the conviction, and shall
37 transmit the order vacating the conviction to the federal bureau of
38 investigation. A conviction that has been vacated under this section
39 may not be disseminated or disclosed by the state patrol or local law

1 enforcement agency to any person, except other criminal justice
2 enforcement agencies.

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

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

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

20 (2) In order to vacate a record of conviction for a gross
21 misdemeanor or misdemeanor offense committed as a result of being a
22 victim of sex trafficking, prostitution, or commercial sexual abuse
23 of a minor; sexual assault; or domestic violence as defined in RCW
24 9.94A.030, the applicant must meet the following requirements:

25 (a) Provide an affidavit, under penalty of perjury, stating the
26 specific facts and circumstances proving, by a preponderance of
27 evidence that the offense was committed as a result of being a victim
28 of sex trafficking, prostitution, or commercial sexual abuse of a
29 minor; sexual assault; or domestic violence as defined in RCW
30 9.94A.030;

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

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

37 (d) Except where the conviction to be vacated is for the crime of
38 prostitution, prostitution loitering, or stay out of area of

1 prostitution, provide proof that the crime victim penalty assessment,
2 RCW 7.68.035, has been paid in full;

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

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

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

13 (b) The offense was a gross misdemeanor as described in RCW
14 46.61.502 or 46.61.504; or

15 (c) The offense was patronizing a prostitute as described in RCW
16 9A.88.110.

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

SSB 5180 - S AMD 77

By Senators Dhingra, Padden

ADOPTED 02/24/2021

20 On page 1, line 1 of the title, after "convictions;" strike the
21 remainder of the title and insert "amending RCW 9.94A.640 and
22 9.96.060; reenacting and amending RCW 9.94A.030; adding a new section
23 to chapter 9.94A RCW; adding a new section to chapter 9.96 RCW; and
24 repealing RCW 9.96.070."

EFFECT: (1) Excludes the felony crimes of promoting prostitution
in the 1st or 2nd degree from being vacated.

(2) Excludes the gross misdemeanor crimes driving under the
influence, and physical control of a vehicle under the influence from
being vacated.

(3) Excludes the misdemeanor of patronizing a prostitute from
being vacated.

(4) Requires proof of payment of the victim penalty assessment.

(5) Requires payment of any restitution owed to any victim.

--- **END** ---