

SHB 1268 - S COMM AMD

By Committee on Law & Justice

NOT CONSIDERED 05/17/2023

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

3 **"Sec. 1.** RCW 9.94A.030 and 2022 c 231 s 11 are each amended to
4 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 880 feet of
29 the facilities and grounds of a public or private school.

30 (7) "Community restitution" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

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

2 (9) "Conviction" means an adjudication of guilt pursuant to Title
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
4 and acceptance of a plea of guilty.

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

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

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

21 (b) A conviction may be removed from a defendant's criminal
22 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
23 9.95.240, or a similar out-of-state statute, or if the conviction has
24 been vacated pursuant to a governor's pardon. However, when a
25 defendant is charged with a recidivist offense, "criminal history"
26 includes a vacated prior conviction for the sole purpose of
27 establishing that such vacated prior conviction constitutes an
28 element of the present recidivist offense as provided in RCW
29 9.94A.640(4)(b) and 9.96.060(7)(c).

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

35 (12) "Criminal street gang" means any ongoing organization,
36 association, or group of three or more persons, whether formal or
37 informal, having a common name or common identifying sign or symbol,
38 having as one of its primary activities the commission of criminal
39 acts, and whose members or associates individually or collectively
40 engage in or have engaged in a pattern of criminal street gang

1 activity. This definition does not apply to employees engaged in
2 concerted activities for their mutual aid and protection, or to the
3 activities of labor and bona fide nonprofit organizations or their
4 members or agents.

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

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

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

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

18 (c) To exact revenge or retribution for the gang or any member of
19 the gang;

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

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

25 (f) To provide the gang with any advantage in, or any control or
26 dominance over any criminal market sector, including, but not limited
27 to, manufacturing, delivering, or selling any controlled substance
28 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
29 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
30 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
31 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
32 9.68 RCW).

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

37 (16) "Day reporting" means a program of enhanced supervision
38 designed to monitor the offender's daily activities and compliance
39 with sentence conditions, and in which the offender is required to

1 report daily to a specific location designated by the department or
2 the sentencing court.

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

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

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

24 (20)(a) "Domestic violence" has the same meaning as defined in
25 RCW 10.99.020.

26 (b) "Domestic violence" also means: (i) Physical harm, bodily
27 injury, assault, or the infliction of fear of imminent physical harm,
28 bodily injury, or assault, sexual assault, or stalking, as defined in
29 RCW 9A.46.110, of one intimate partner by another intimate partner as
30 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
31 assault, or the infliction of fear of imminent physical harm, bodily
32 injury, or assault, sexual assault, or stalking, as defined in RCW
33 9A.46.110, of one family or household member by another family or
34 household member as defined in RCW 10.99.020.

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

38 (22) "Drug offense" means:

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

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

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

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

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

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

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

30 (25) "Escape" means:

31 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
32 the first degree (RCW 9A.76.110), escape in the second degree (RCW
33 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
34 willful failure to return from work release (RCW 72.65.070), or
35 willful failure to be available for supervision by the department
36 while in community custody (RCW 72.09.310); or

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

40 (26) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
3 run injury-accident (RCW 46.52.020(4)), felony driving while under
4 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
5 or felony physical control of a vehicle while under the influence of
6 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

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

30 (c) A private residence where the individual stays as a transient
31 invitee.

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

1 RCW 46.61.522(1)(b), or vehicular homicide while under the influence
2 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal
3 financial obligations may also include payment to a public agency of
4 the expense of an emergency response to the incident resulting in the
5 conviction, subject to RCW 38.52.430.

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

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

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

16 (g) Incest when committed against a child under age 14;

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Sexual exploitation;

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

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

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

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

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

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

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

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

17 (v) Any out-of-state conviction for a felony offense with a
18 finding of sexual motivation if the minimum sentence imposed was 10
19 years or more; provided that the out-of-state felony offense must be
20 comparable to a felony offense under this title and Title 9A RCW and
21 the out-of-state definition of sexual motivation must be comparable
22 to the definition of sexual motivation contained in this section.

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

25 (34) "Offender" means a person who has committed a felony
26 established by state law and is 18 years of age or older or is less
27 than 18 years of age but whose case is under superior court
28 jurisdiction under RCW 13.04.030 or has been transferred by the
29 appropriate juvenile court to a criminal court pursuant to RCW
30 13.40.110. In addition, for the purpose of community custody
31 requirements under this chapter, "offender" also means a misdemeanor
32 or gross misdemeanor probationer ordered by a superior court to
33 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
34 supervised by the department pursuant to RCW 9.94A.501 and
35 9.94A.5011. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ~~(x) ((Any felony conviction by a person 18 years of age or older
27 with a special finding of involving a juvenile in a felony offense
28 under RCW 9.94A.833;~~

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

30 ~~((xi))~~ (xi) Burglary 2 (RCW 9A.52.030);

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

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

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

34 ~~((xvi))~~ (xv) Possession of a Stolen Motor Vehicle (RCW
35 9A.56.068);

36 ~~((xvii))~~ (xvi) Taking a Motor Vehicle Without Permission 1 (RCW
37 9A.56.070);

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

40 ~~((xix))~~ (xviii) Extortion 1 (RCW 9A.56.120);

1 (~~(xx)~~) (xix) Extortion 2 (RCW 9A.56.130);
2 (~~(xxi)~~) (xx) Intimidating a Witness (RCW 9A.72.110);
3 (~~(xxii)~~) (xxi) Tampering with a Witness (RCW 9A.72.120);
4 (~~(xxiii)~~) (xxii) Reckless Endangerment (RCW 9A.36.050);
5 (~~(xxiv)~~) (xxiii) Coercion (RCW 9A.36.070);
6 (~~(xxv)~~) (xxiv) Harassment (RCW 9A.46.020); or
7 (~~(xxvi)~~) (xxv) Malicious Mischief 3 (RCW 9A.48.090);

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

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

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

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

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

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

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

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

1 (b)(i) of this subsection or any federal or out-of-state offense or
2 offense under prior Washington law that is comparable to the offenses
3 listed in (b)(i) of this subsection. A conviction for rape of a child
4 in the first degree constitutes a conviction under (b)(i) of this
5 subsection only when the offender was 16 years of age or older when
6 the offender committed the offense. A conviction for rape of a child
7 in the second degree constitutes a conviction under (b)(i) of this
8 subsection only when the offender was 18 years of age or older when
9 the offender committed the offense.

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

34 (39) "Private school" means a school regulated under chapter
35 28A.195 or 28A.205 RCW.

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

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

1 (a) Assault in the fourth degree where domestic violence is
2 pleaded and proven, RCW 9A.36.041(3);
3 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);
4 (c) Harassment, RCW 9A.46.020(2)(b)(i);
5 (d) Indecent exposure, RCW 9A.88.010(2)(c);
6 (e) Stalking, RCW 9A.46.110(5)(b)(i) and (iii);
7 (f) Telephone harassment, RCW 9.61.230(2)(a); and
8 (g) Violation of a no-contact or protection order, RCW 7.105.450
9 or former RCW 26.50.110(5).

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

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

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

15 (iii) Domestic violence violation of a protection order under
16 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
17 violation of a domestic violence protection order under chapter 7.105
18 RCW, that is not a felony offense;

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

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

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

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

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

35 (45) "Serious traffic offense" means:

36 (a) Nonfelony driving while under the influence of intoxicating
37 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
38 while under the influence of intoxicating liquor or any drug (RCW
39 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
40 attended vehicle (RCW 46.52.020(5)); or

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

4 (46) "Serious violent offense" is a subcategory of violent
5 offense and means:

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

7 (ii) Homicide by abuse;

8 (iii) Murder in the second degree;

9 (iv) Manslaughter in the first degree;

10 (v) Assault in the first degree;

11 (vi) Kidnapping in the first degree;

12 (vii) Rape in the first degree;

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

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

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

19 (47) "Sex offense" means:

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

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

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

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

28 (v) A felony violation of RCW 9A.44.132(1) (failure to register
29 as a sex offender) if the person has been convicted of violating RCW
30 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
31 prior to June 10, 2010, on at least one prior occasion;

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

35 (c) A felony with a finding of sexual motivation under RCW
36 9.94A.835 or 13.40.135; or

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

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

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

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

11 (51) "Stranger" means that the victim did not know the offender
12 24 hours before the offense.

13 (52) "Total confinement" means confinement inside the physical
14 boundaries of a facility or institution operated or utilized under
15 contract by the state or any other unit of government for 24 hours a
16 day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

26 (55) "Victim of domestic violence" means an intimate partner or
27 household member who has been subjected to the infliction of physical
28 harm or sexual and psychological abuse by an intimate partner or
29 household member as part of a pattern of assaultive, coercive, and
30 controlling behaviors directed at achieving compliance from or
31 control over that intimate partner or household member. Domestic
32 violence includes, but is not limited to, the offenses listed in RCW
33 10.99.020 and 26.50.010 committed by an intimate partner or household
34 member against a victim who is an intimate partner or household
35 member.

36 (56) "Victim of sex trafficking, prostitution, or commercial
37 sexual abuse of a minor" means a person who has been forced or
38 coerced to perform a commercial sex act including, but not limited
39 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
40 9.68A.101, and the trafficking victims protection act of 2000, 22

1 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
2 commercial sex act when they were less than 18 years of age including
3 but not limited to the offenses defined in chapter 9.68A RCW.

4 (57) "Victim of sexual assault" means any person who is a victim
5 of a sexual assault offense, nonconsensual sexual conduct, or
6 nonconsensual sexual penetration and as a result suffers physical,
7 emotional, financial, or psychological impacts. Sexual assault
8 offenses include, but are not limited to, the offenses defined in
9 chapter 9A.44 RCW.

10 (58) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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

37 (c) Any federal or out-of-state conviction for an offense that
38 under the laws of this state would be a felony classified as a
39 violent offense under (a) or (b) of this subsection.

1 (59) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the
3 community that complies with RCW 9.94A.725.

4 (60) "Work ethic camp" means an alternative incarceration program
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
6 the cost of corrections by requiring offenders to complete a
7 comprehensive array of real-world job and vocational experiences,
8 character-building work ethics training, life management skills
9 development, substance abuse rehabilitation, counseling, literacy
10 training, and basic adult education.

11 (61) "Work release" means a program of partial confinement
12 available to offenders who are employed or engaged as a student in a
13 regular course of study at school.

14 **Sec. 2.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
15 each reenacted and amended to read as follows:

16 (1) The provisions of this section apply to the standard sentence
17 ranges determined by RCW 9.94A.510 or 9.94A.517.

18 (2) For persons convicted of the anticipatory offenses of
19 criminal attempt, solicitation, or conspiracy under chapter 9A.28
20 RCW, the standard sentence range is determined by locating the
21 sentencing grid sentence range defined by the appropriate offender
22 score and the seriousness level of the completed crime, and
23 multiplying the range by (~~seventy-five~~) 75 percent.

24 (3) The following additional times shall be added to the standard
25 sentence range for felony crimes committed after July 23, 1995, if
26 the offender or an accomplice was armed with a firearm as defined in
27 RCW 9.41.010 and the offender is being sentenced for one of the
28 crimes listed in this subsection as eligible for any firearm
29 enhancements based on the classification of the completed felony
30 crime. If the offender is being sentenced for more than one offense,
31 the firearm enhancement or enhancements must be added to the total
32 period of confinement for all offenses, regardless of which
33 underlying offense is subject to a firearm enhancement. If the
34 offender or an accomplice was armed with a firearm as defined in RCW
35 9.41.010 and the offender is being sentenced for an anticipatory
36 offense under chapter 9A.28 RCW to commit one of the crimes listed in
37 this subsection as eligible for any firearm enhancements, the
38 following additional times shall be added to the standard sentence

1 range determined under subsection (2) of this section based on the
2 felony crime of conviction as classified under RCW 9A.28.020:

3 (a) Five years for any felony defined under any law as a class A
4 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
5 years, or both, and not covered under (f) of this subsection;

6 (b) Three years for any felony defined under any law as a class B
7 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
8 both, and not covered under (f) of this subsection;

9 (c) Eighteen months for any felony defined under any law as a
10 class C felony or with a statutory maximum sentence of five years, or
11 both, and not covered under (f) of this subsection;

12 (d) If the offender is being sentenced for any firearm
13 enhancements under (a), (b), and/or (c) of this subsection and the
14 offender has previously been sentenced for any deadly weapon
15 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
16 subsection or subsection (4)(a), (b), and/or (c) of this section, or
17 both, all firearm enhancements under this subsection shall be twice
18 the amount of the enhancement listed;

19 (e) (i) Notwithstanding any other provision of law, all firearm
20 enhancements under this section are mandatory (~~, shall be served in~~
21 ~~total confinement, and shall run consecutively to all other~~
22 ~~sentencing provisions, including other firearm or deadly weapon~~
23 ~~enhancements, for all offenses sentenced under this chapter. However,~~
24 ~~whether~~). For any person sentenced to multiple firearm enhancements
25 on or after the effective date of this section, the court may order
26 the enhancements to run consecutively.

27 (ii) Whether or not a mandatory minimum term has expired, an
28 offender serving a sentence under this subsection may be:

29 (~~(i)~~) (A) Granted an extraordinary medical placement when
30 authorized under RCW 9.94A.728(1)(c); or

31 (~~(ii)~~) (B) Released under the provisions of RCW 9.94A.730;

32 (f) The firearm enhancements in this section shall apply to all
33 felony crimes except the following: Possession of a machine gun or
34 bump-fire stock, possessing a stolen firearm, drive-by shooting,
35 theft of a firearm, unlawful possession of a firearm in the first and
36 second degree, and use of a machine gun or bump-fire stock in a
37 felony;

38 (g) If the standard sentence range under this section exceeds the
39 statutory maximum sentence for the offense, the statutory maximum
40 sentence shall be the presumptive sentence unless the offender is a

1 persistent offender. If the addition of a firearm enhancement
2 increases the sentence so that it would exceed the statutory maximum
3 for the offense, the portion of the sentence representing the
4 enhancement may not be reduced.

5 (4) The following additional times shall be added to the standard
6 sentence range for felony crimes committed after July 23, 1995, if
7 the offender or an accomplice was armed with a deadly weapon other
8 than a firearm as defined in RCW 9.41.010 and the offender is being
9 sentenced for one of the crimes listed in this subsection as eligible
10 for any deadly weapon enhancements based on the classification of the
11 completed felony crime. If the offender is being sentenced for more
12 than one offense, the deadly weapon enhancement or enhancements must
13 be added to the total period of confinement for all offenses,
14 regardless of which underlying offense is subject to a deadly weapon
15 enhancement. If the offender or an accomplice was armed with a deadly
16 weapon other than a firearm as defined in RCW 9.41.010 and the
17 offender is being sentenced for an anticipatory offense under chapter
18 9A.28 RCW to commit one of the crimes listed in this subsection as
19 eligible for any deadly weapon enhancements, the following additional
20 times shall be added to the standard sentence range determined under
21 subsection (2) of this section based on the felony crime of
22 conviction as classified under RCW 9A.28.020:

23 (a) Two years for any felony defined under any law as a class A
24 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
25 years, or both, and not covered under (f) of this subsection;

26 (b) One year for any felony defined under any law as a class B
27 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
28 both, and not covered under (f) of this subsection;

29 (c) Six months for any felony defined under any law as a class C
30 felony or with a statutory maximum sentence of five years, or both,
31 and not covered under (f) of this subsection;

32 (d) If the offender is being sentenced under (a), (b), and/or (c)
33 of this subsection for any deadly weapon enhancements and the
34 offender has previously been sentenced for any deadly weapon
35 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
36 subsection or subsection (3)(a), (b), and/or (c) of this section, or
37 both, all deadly weapon enhancements under this subsection shall be
38 twice the amount of the enhancement listed;

39 (e) (i) Notwithstanding any other provision of law, all deadly
40 weapon enhancements under this section are mandatory(~~, shall be~~

1 ~~served in total confinement, and shall run consecutively to all other~~
2 ~~sentencing provisions, including other firearm or deadly weapon~~
3 ~~enhancements, for all offenses sentenced under this chapter. However,~~
4 ~~whether)). For any person sentenced to multiple deadly weapon~~
5 ~~enhancements on or after the effective date of this section, the~~
6 ~~court may order the enhancements to run consecutively.~~

7 (ii) Whether or not a mandatory minimum term has expired, an
8 offender serving a sentence under this subsection may be:

9 ~~((i))~~ (A) Granted an extraordinary medical placement when
10 authorized under RCW 9.94A.728(1)(c); or

11 ~~((ii))~~ (B) Released under the provisions of RCW 9.94A.730;

12 (f) The deadly weapon enhancements in this section shall apply to
13 all felony crimes except the following: Possession of a machine gun
14 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
15 theft of a firearm, unlawful possession of a firearm in the first and
16 second degree, and use of a machine gun or bump-fire stock in a
17 felony;

18 (g) If the standard sentence range under this section exceeds the
19 statutory maximum sentence for the offense, the statutory maximum
20 sentence shall be the presumptive sentence unless the offender is a
21 persistent offender. If the addition of a deadly weapon enhancement
22 increases the sentence so that it would exceed the statutory maximum
23 for the offense, the portion of the sentence representing the
24 enhancement may not be reduced.

25 (5) The following additional times shall be added to the standard
26 sentence range if the offender or an accomplice committed the offense
27 while in a county jail or state correctional facility and the
28 offender is being sentenced for one of the crimes listed in this
29 subsection. If the offender or an accomplice committed one of the
30 crimes listed in this subsection while in a county jail or state
31 correctional facility, and the offender is being sentenced for an
32 anticipatory offense under chapter 9A.28 RCW to commit one of the
33 crimes listed in this subsection, the following additional times
34 shall be added to the standard sentence range determined under
35 subsection (2) of this section:

36 (a) Eighteen months for offenses committed under RCW 69.50.401(2)

37 (a) or (b) or 69.50.410;

38 (b) Fifteen months for offenses committed under RCW 69.50.401(2)

39 (c), (d), or (e);

40 (c) Twelve months for offenses committed under RCW 69.50.4013.

1 For the purposes of this subsection, all of the real property of
2 a state correctional facility or county jail shall be deemed to be
3 part of that facility or county jail.

4 (6) An additional (~~twenty-four~~) 24 months shall be added to the
5 standard sentence range for any ranked offense involving a violation
6 of chapter 69.50 RCW if the offense was also a violation of RCW
7 69.50.435 or 9.94A.827. (~~All enhancements under this subsection
8 shall run consecutively to all other sentencing provisions, for all
9 offenses sentenced under this chapter.~~)

10 (7) An additional two years shall be added to the standard
11 sentence range for vehicular homicide committed while under the
12 influence of intoxicating liquor or any drug as defined by RCW
13 46.61.502 for each prior offense as defined in RCW 46.61.5055.

14 Notwithstanding any other provision of law, all impaired driving
15 enhancements under this subsection are mandatory(~~(, shall be served
16 in total confinement,)~~) and shall run consecutively to all other
17 sentencing provisions, including other impaired driving enhancements,
18 for all offenses sentenced under this chapter. If the offender has
19 been convicted of two or more prior offenses as defined by RCW
20 46.61.5055, or has been convicted of one or more vehicular homicide
21 offenses while under the influence of intoxicating liquor or other
22 drug as defined in RCW 46.61.520(1)(a), all enhancements in this
23 subsection must be served in total confinement.

24 An offender serving a sentence under this subsection may be
25 granted an extraordinary medical placement when authorized under RCW
26 9.94A.728(1)(c).

27 (8)(a) The following additional times shall be added to the
28 standard sentence range for felony crimes committed on or after July
29 1, 2006, if the offense was committed with sexual motivation, as that
30 term is defined in RCW 9.94A.030. If the offender is being sentenced
31 for more than one offense, the sexual motivation enhancement must be
32 added to the total period of (~~total~~) confinement for all offenses,
33 regardless of which underlying offense is subject to a sexual
34 motivation enhancement. If the offender committed the offense with
35 sexual motivation and the offender is being sentenced for an
36 anticipatory offense under chapter 9A.28 RCW, the following
37 additional times shall be added to the standard sentence range
38 determined under subsection (2) of this section based on the felony
39 crime of conviction as classified under RCW 9A.28.020:

1 (i) Two years for any felony defined under the law as a class A
2 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
3 years, or both;

4 (ii) Eighteen months for any felony defined under any law as a
5 class B felony or with a statutory maximum sentence of (~~ten~~) 10
6 years, or both;

7 (iii) One year for any felony defined under any law as a class C
8 felony or with a statutory maximum sentence of five years, or both;

9 (iv) If the offender is being sentenced for any sexual motivation
10 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
11 the offender has previously been sentenced for any sexual motivation
12 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
13 (iii) of this subsection, all sexual motivation enhancements under
14 this subsection shall be twice the amount of the enhancement listed;

15 (b) Notwithstanding any other provision of law, all sexual
16 motivation enhancements under this subsection are mandatory(~~(, shall~~
17 ~~be served in total confinement,)~~) and shall run consecutively to all
18 other sentencing provisions, including other sexual motivation
19 enhancements, for all offenses sentenced under this chapter. However,
20 whether or not a mandatory minimum term has expired, an offender
21 serving a sentence under this subsection may be:

22 (i) Granted an extraordinary medical placement when authorized
23 under RCW 9.94A.728(1)(c); or

24 (ii) Released under the provisions of RCW 9.94A.730;

25 (c) The sexual motivation enhancements in this subsection apply
26 to all felony crimes;

27 (d) If the standard sentence range under this subsection exceeds
28 the statutory maximum sentence for the offense, the statutory maximum
29 sentence shall be the presumptive sentence unless the offender is a
30 persistent offender. If the addition of a sexual motivation
31 enhancement increases the sentence so that it would exceed the
32 statutory maximum for the offense, the portion of the sentence
33 representing the enhancement may not be reduced;

34 (e) (~~The portion of the total confinement sentence which the~~
35 ~~offender must serve under this subsection shall be calculated before~~
36 ~~any earned early release time is credited to the offender;~~
37 ~~(f)~~) Nothing in this subsection prevents a sentencing court from
38 imposing a sentence outside the standard sentence range pursuant to
39 RCW 9.94A.535.

1 (9) An additional one-year enhancement shall be added to the
2 standard sentence range for the felony crimes of RCW 9A.44.073,
3 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
4 or after July 22, 2007, if the offender engaged, agreed, or offered
5 to engage the victim in the sexual conduct in return for a fee. If
6 the offender is being sentenced for more than one offense, the
7 one-year enhancement must be added to the total period of (~~total~~)
8 confinement for all offenses, regardless of which underlying offense
9 is subject to the enhancement. If the offender is being sentenced for
10 an anticipatory offense for the felony crimes of RCW 9A.44.073,
11 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
12 offender attempted, solicited another, or conspired to engage, agree,
13 or offer to engage the victim in the sexual conduct in return for a
14 fee, an additional one-year enhancement shall be added to the
15 standard sentence range determined under subsection (2) of this
16 section. For purposes of this subsection, "sexual conduct" means
17 sexual intercourse or sexual contact, both as defined in chapter
18 9A.44 RCW.

19 (10) (~~(a) For a person age eighteen or older convicted of any~~
20 ~~criminal street gang-related felony offense for which the person~~
21 ~~compensated, threatened, or solicited a minor in order to involve the~~
22 ~~minor in the commission of the felony offense, the standard sentence~~
23 ~~range is determined by locating the sentencing grid sentence range~~
24 ~~defined by the appropriate offender score and the seriousness level~~
25 ~~of the completed crime, and multiplying the range by one hundred~~
26 ~~twenty-five percent. If the standard sentence range under this~~
27 ~~subsection exceeds the statutory maximum sentence for the offense,~~
28 ~~the statutory maximum sentence is the presumptive sentence unless the~~
29 ~~offender is a persistent offender.~~

30 ~~(b) This subsection does not apply to any criminal street gang-~~
31 ~~related felony offense for which involving a minor in the commission~~
32 ~~of the felony offense is an element of the offense.~~

33 ~~(c) The increased penalty specified in (a) of this subsection is~~
34 ~~unavailable in the event that the prosecution gives notice that it~~
35 ~~will seek an exceptional sentence based on an aggravating factor~~
36 ~~under RCW 9.94A.535.~~

37 (~~11~~) An additional (~~twelve~~) 12 months and one day shall be
38 added to the standard sentence range for a conviction of attempting
39 to elude a police vehicle as defined by RCW 46.61.024, if the

1 conviction included a finding by special allegation of endangering
2 one or more persons under RCW 9.94A.834.

3 ~~((12))~~ (11) An additional ~~((twelve))~~ 12 months shall be added
4 to the standard sentence range for an offense that is also a
5 violation of RCW 9.94A.831.

6 ~~((13))~~ (12) An additional ~~((twelve))~~ 12 months shall be added
7 to the standard sentence range for vehicular homicide committed while
8 under the influence of intoxicating liquor or any drug as defined by
9 RCW 46.61.520 or for vehicular assault committed while under the
10 influence of intoxicating liquor or any drug as defined by RCW
11 46.61.522, or for any felony driving under the influence (RCW
12 46.61.502(6)) or felony physical control under the influence (RCW
13 46.61.504(6)) for each child passenger under the age of ~~((sixteen))~~
14 16 who is an occupant in the defendant's vehicle. These enhancements
15 shall be mandatory~~((, shall be served in total confinement,))~~ and
16 shall run consecutively to all other sentencing provisions, including
17 other minor child enhancements, for all offenses sentenced under this
18 chapter. ~~((If the addition of a minor child enhancement increases the
19 sentence so that it would exceed the statutory maximum for the
20 offense, the portion of the sentence representing the enhancement
21 shall be mandatory, shall be served in total confinement, and shall
22 run consecutively to all other sentencing provisions.))~~ If the
23 offender has been convicted of two or more prior offenses as defined
24 by RCW 46.61.5055, or has been convicted of one or more vehicular
25 homicide offenses while under the influence of intoxicating liquor or
26 other drug as defined in RCW 46.61.520(1)(a), all enhancements in
27 this subsection must be served in total confinement.

28 ~~((14))~~ (13) An additional ~~((twelve))~~ 12 months shall be added
29 to the standard sentence range for an offense that is also a
30 violation of RCW 9.94A.832.

31 ~~((15))~~ (14) Regardless of any provisions in this section, if a
32 person is being sentenced in adult court for a crime committed under
33 age ~~((eighteen))~~ 18, the court has full discretion to depart from
34 mandatory sentencing enhancements and to take the particular
35 circumstances surrounding the defendant's youth into account.

36 **Sec. 3.** RCW 9.94A.729 and 2022 c 29 s 1 are each amended to read
37 as follows:

38 (1)(a) The term of the sentence of an offender committed to a
39 correctional facility operated by the department may be reduced by

1 earned release time in accordance with procedures that shall be
2 developed and adopted by the correctional agency having jurisdiction
3 in which the offender is confined. The earned release time shall be
4 for good behavior and good performance, as determined by the
5 correctional agency having jurisdiction. The correctional agency
6 shall not credit the offender with earned release credits in advance
7 of the offender actually earning the credits.

8 (b) Any program established pursuant to this section shall allow
9 an offender to earn early release credits for presentence
10 incarceration. If an offender is transferred from a county jail to
11 the department, the administrator of a county jail facility shall
12 certify to the department the amount of time spent in custody at the
13 facility and the number of days of early release credits lost or not
14 earned. The department may approve a jail certification from a
15 correctional agency that calculates early release time based on the
16 actual amount of confinement time served by the offender before
17 sentencing when an erroneous calculation of confinement time served
18 by the offender before sentencing appears on the judgment and
19 sentence. The department must adjust an offender's rate of early
20 release listed on the jail certification to be consistent with the
21 rate applicable to offenders in the department's facilities. However,
22 the department is not authorized to adjust the number of presentence
23 early release days that the jail has certified as lost or not earned.

24 ~~(2) ((a) An offender who has been convicted of a felony committed~~
25 ~~after July 23, 1995, that involves any applicable deadly weapon~~
26 ~~enhancements under RCW 9.94A.533 (3) or (4), or both, shall not~~
27 ~~receive any good time credits or earned release time for that portion~~
28 ~~of his or her sentence that results from any deadly weapon~~
29 ~~enhancements.~~

30 ~~(b) An offender whose sentence includes any impaired driving~~
31 ~~enhancements under RCW 9.94A.533(7), minor child enhancements under~~
32 ~~RCW 9.94A.533(13), or both, shall not receive any good time credits~~
33 ~~or earned release time for any portion of his or her sentence that~~
34 ~~results from those enhancements.~~

35 ~~(3))~~ An offender may earn early release time as follows:

36 (a) In the case of an offender sentenced pursuant to RCW
37 10.95.030(3) or 10.95.035, the offender may not receive any earned
38 early release time during the minimum term of confinement imposed by
39 the court; for any remaining portion of the sentence served by the

1 offender, the aggregate earned release time may not exceed 10 percent
2 of the sentence.

3 (b) In the case of an offender convicted of a serious violent
4 offense, or a sex offense that is a class A felony, committed on or
5 after July 1, 1990, and before July 1, 2003, the aggregate earned
6 release time may not exceed 15 percent of the sentence.

7 (c) In the case of an offender convicted of a serious violent
8 offense, or a sex offense that is a class A felony, committed on or
9 after July 1, 2003, the aggregate earned release time may not exceed
10 10 percent of the sentence.

11 (d) An offender is qualified to earn up to 50 percent of
12 aggregate earned release time if he or she:

13 (i) Is not classified as an offender who is at a high risk to
14 reoffend as provided in subsection (~~((4))~~) (3) of this section;

15 (ii) Is not confined pursuant to a sentence for:

16 (A) A sex offense;

17 (B) A violent offense;

18 (C) A crime against persons as defined in RCW 9.94A.411;

19 (D) A felony that is domestic violence as defined in RCW
20 10.99.020;

21 (E) A violation of RCW 9A.52.025 (residential burglary);

22 (F) A violation of, or an attempt, solicitation, or conspiracy to
23 violate, RCW 69.50.401 by manufacture or delivery or possession with
24 intent to deliver methamphetamine; or

25 (G) A violation of, or an attempt, solicitation, or conspiracy to
26 violate, RCW 69.50.406 (delivery of a controlled substance to a
27 minor);

28 (iii) Has no prior conviction for the offenses listed in (d)(ii)
29 of this subsection;

30 (iv) Participates in programming or activities as directed by the
31 offender's individual reentry plan as provided under RCW 72.09.270 to
32 the extent that such programming or activities are made available by
33 the department; and

34 (v) Has not committed a new felony after July 22, 2007, while
35 under community custody.

36 (e) In no other case shall the aggregate earned release time
37 exceed one-third of the total sentence.

38 (~~((4))~~) (3) The department shall perform a risk assessment of
39 each offender who may qualify for earned early release under
40 subsection (~~((3))~~) (2)(d) of this section utilizing the risk

1 assessment tool recommended by the Washington state institute for
2 public policy. Subsection (~~(3)~~) (2)(d) of this section does not
3 apply to offenders convicted after July 1, 2010.

4 (~~(5)~~) (4)(a) A person who is eligible for earned early release
5 as provided in this section and who will be supervised by the
6 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
7 transferred to community custody in lieu of earned release time;

8 (b) The department shall, as a part of its program for release to
9 the community in lieu of earned release, require the offender to
10 propose a release plan that includes an approved residence and living
11 arrangement. All offenders with community custody terms eligible for
12 release to community custody in lieu of earned release shall provide
13 an approved residence and living arrangement prior to release to the
14 community;

15 (c) The department may deny transfer to community custody in lieu
16 of earned release time if the department determines an offender's
17 release plan, including proposed residence location and living
18 arrangements, may violate the conditions of the sentence or
19 conditions of supervision, place the offender at risk to violate the
20 conditions of the sentence, place the offender at risk to reoffend,
21 or present a risk to victim safety or community safety. The
22 department's authority under this section is independent of any
23 court-ordered condition of sentence or statutory provision regarding
24 conditions for community custody;

25 (d) If the department is unable to approve the offender's release
26 plan, the department may do one or more of the following:

27 (i) Transfer an offender to partial confinement in lieu of earned
28 early release for a period not to exceed three months. The three
29 months in partial confinement is in addition to that portion of the
30 offender's term of confinement that may be served in partial
31 confinement as provided in RCW 9.94A.728(1)(e);

32 (ii) Provide rental vouchers to the offender for a period not to
33 exceed six months if rental assistance will result in an approved
34 release plan.

35 A voucher must be provided in conjunction with additional
36 transition support programming or services that enable an offender to
37 participate in services including, but not limited to, substance
38 abuse treatment, mental health treatment, sex offender treatment,
39 educational programming, or employment programming;

1 (e) The department shall maintain a list of housing providers
2 that meets the requirements of RCW 72.09.285. If more than two
3 voucher recipients will be residing per dwelling unit, as defined in
4 RCW 59.18.030, rental vouchers for those recipients may only be paid
5 to a housing provider on the department's list;

6 (f) For each offender who is the recipient of a rental voucher,
7 the department shall gather data as recommended by the Washington
8 state institute for public policy in order to best demonstrate
9 whether rental vouchers are effective in reducing recidivism.

10 ~~((+6))~~ (5) An offender serving a term of confinement imposed
11 under RCW 9.94A.670(5)(a) is not eligible for earned release credits
12 under this section.

13 **Sec. 4.** RCW 10.01.210 and 2002 c 290 s 23 are each amended to
14 read as follows:

15 Any and all law enforcement agencies and personnel, criminal
16 justice attorneys, sentencing judges, and state and local
17 correctional facilities and personnel may, but are not required to,
18 give any and all offenders either written or oral notice, or both, of
19 the sanctions imposed and criminal justice changes regarding armed
20 offenders, including but not limited to the subjects of:

21 (1) Felony crimes involving any deadly weapon special verdict
22 under RCW ~~((9.94A.602))~~ 9.94A.825;

23 (2) Any and all deadly weapon enhancements under RCW 9.94A.533
24 (3) or (4), or both, as well as any federal firearm, ammunition, or
25 other deadly weapon enhancements;

26 (3) Any and all felony crimes requiring the possession, display,
27 or use of any deadly weapon as well as the many increased penalties
28 for these crimes including the creation of theft of a firearm and
29 possessing a stolen firearm;

30 (4) New prosecuting standards established for filing charges for
31 all crimes involving any deadly weapons; and

32 (5) ~~((Removal of good time for any and all deadly weapon
33 enhancements; and~~

34 ~~+6))~~ Providing the death penalty for those who commit first
35 degree murder: (a) To join, maintain, or advance membership in an
36 identifiable group; (b) as part of a drive-by shooting; or (c) to
37 avoid prosecution as a persistent offender as defined in RCW
38 9.94A.030.

1 **Sec. 5.** RCW 72.01.410 and 2019 c 322 s 2 are each amended to
2 read as follows:

3 (1) Whenever any person is convicted as an adult in the courts of
4 this state of a felony offense committed under the age of
5 (~~eighteen~~) 18, and is committed for a term of confinement, that
6 person shall be initially placed in a facility operated by the
7 department of children, youth, and families. The department of
8 corrections shall determine the person's earned release date.

9 (a) While in the custody of the department of children, youth,
10 and families, the person must have the same treatment, housing
11 options, transfer, and access to program resources as any other
12 person committed to that juvenile correctional facility or
13 institution pursuant to chapter 13.40 RCW. Except as provided under
14 (d) of this subsection, treatment, placement, and program decisions
15 shall be at the sole discretion of the department of children, youth,
16 and families. The person shall not be transferred to the custody of
17 the department of corrections without the approval of the department
18 of children, youth, and families until the person reaches the age of
19 (~~twenty-five~~) 25.

20 (b) If the person's sentence includes a term of community
21 custody, the department of children, youth, and families shall not
22 release the person to community custody until the department of
23 corrections has approved the person's release plan pursuant to RCW
24 9.94A.729(~~(+5)~~) (4)(b). If a person is held past his or her earned
25 release date pending release plan approval, the department of
26 children, youth, and families shall retain custody until a plan is
27 approved or the person completes the ordered term of confinement
28 prior to age (~~twenty-five~~) 25.

29 (c) If the department of children, youth, and families determines
30 that retaining custody of the person in a facility of the department
31 of children, youth, and families presents a significant safety risk,
32 the department of children, youth, and families may transfer the
33 person to the custody of the department of corrections.

34 (d) The department of corrections must retain authority over
35 custody decisions relating to a person whose earned release date is
36 on or after the person's (~~twenty-fifth~~) 25th birthday and who is
37 placed in a facility operated by the department of children, youth,
38 and families under this section, unless the person qualifies for
39 partial confinement under RCW 72.01.412, and must approve any leave
40 from the facility. When the person turns age (~~twenty-five~~) 25, he

1 or she must be transferred to the department of corrections, except
2 as described under RCW 72.01.412. The department of children, youth,
3 and families has all routine and day-to-day operations authority for
4 the person while the person is in its custody.

5 (2) (a) Except as provided in (b) and (c) of this subsection, a
6 person under the age of (~~(eighteen)~~) 18 who is transferred to the
7 custody of the department of corrections must be placed in a housing
8 unit, or a portion of a housing unit, that is separated from other
9 persons in custody who are (~~(eighteen)~~) 18 years of age or older,
10 until the person reaches the age of (~~(eighteen)~~) 18.

11 (b) A person who is transferred to the custody of the department
12 of corrections and reaches (~~(eighteen)~~) 18 years of age may remain in
13 a housing unit for persons under the age of (~~(eighteen)~~) 18 if the
14 secretary of corrections determines that: (i) The person's needs and
15 the rehabilitation goals for the person could continue to be better
16 met by the programs and housing environment that is separate from
17 other persons in custody who are (~~(eighteen)~~) 18 years of age and
18 older; and (ii) the programs or housing environment for persons under
19 the age of (~~(eighteen)~~) 18 will not be substantially affected by the
20 continued placement of the person in that environment. The person may
21 remain placed in a housing unit for persons under the age of
22 (~~(eighteen)~~) 18 until such time as the secretary of corrections
23 determines that the person's needs and goals are no longer better met
24 in that environment but in no case past the person's (~~(twenty-fifth)~~)
25 25th birthday.

26 (c) A person transferred to the custody of the department of
27 corrections who is under the age of (~~(eighteen)~~) 18 may be housed in
28 an intensive management unit or administrative segregation unit
29 containing offenders (~~(eighteen)~~) 18 years of age or older if it is
30 necessary for the safety or security of the offender or staff. In
31 these cases, the offender must be kept physically separate from other
32 offenders at all times.

33 (3) The department of children, youth, and families must review
34 the placement of a person over age (~~(twenty-one)~~) 21 in the custody
35 of the department of children, youth, and families under this section
36 to determine whether the person should be transferred to the custody
37 of the department of corrections. The department of children, youth,
38 and families may determine the frequency of the review required under
39 this subsection, but the review must occur at least once before the
40 person reaches age (~~(twenty-three)~~) 23 if the person's commitment

1 period in a juvenile institution extends beyond the person's
2 ((~~twenty-third~~) 23rd birthday.

3 NEW SECTION. **Sec. 6.** RCW 9.94A.833 (Special allegation—
4 Involving minor in felony offense—Procedures) and 2008 c 276 s 302
5 are each repealed."

SHB 1268 - S COMM AMD
By Committee on Law & Justice

NOT CONSIDERED 05/17/2023

6 On page 1, line 1 of the title, after "enhancements;" strike the
7 remainder of the title and insert "amending RCW 9.94A.030, 9.94A.729,
8 10.01.210, and 72.01.410; reenacting and amending RCW 9.94A.533; and
9 repealing RCW 9.94A.833."

EFFECT: Makes a technical correction. Restores the protected zone
enhancement.

Restores current law provisions which allow a sentence to exceed
the statutory maximum sentence if the addition of a sentencing
enhancement causes the total sentence to exceed the statutory maximum
for the offense.

--- END ---