
SUBSTITUTE HOUSE BILL 1268

State of Washington

68th Legislature

2023 Regular Session

By House Community Safety, Justice, & Reentry (originally sponsored by Representatives Goodman, Simmons, Walen, and Eslick)

READ FIRST TIME 02/03/23.

1 AN ACT Relating to sentencing enhancements; amending RCW
2 9.94A.030, 9.94A.599, 9.94A.729, 10.01.210, and 72.01.410; reenacting
3 and amending RCW 9.94A.533; and repealing RCW 9.94A.833 and
4 69.50.435.

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

6 **Sec. 1.** RCW 9.94A.030 and 2022 c 231 s 11 are each amended to
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

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

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

10 (6) "Community protection zone" means the area within 880 feet of
11 the facilities and grounds of a public or private school.

12 (7) "Community restitution" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender.

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

16 (9) "Conviction" means an adjudication of guilt pursuant to Title
17 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
18 and acceptance of a plea of guilty.

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

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

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

35 (b) A conviction may be removed from a defendant's criminal
36 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,
37 9.95.240, or a similar out-of-state statute, or if the conviction has
38 been vacated pursuant to a governor's pardon. However, when a
39 defendant is charged with a recidivist offense, "criminal history"
40 includes a vacated prior conviction for the sole purpose of

1 establishing that such vacated prior conviction constitutes an
2 element of the present recidivist offense as provided in RCW
3 9.94A.640(4)(b) and 9.96.060(7)(c).

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

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

19 (13) "Criminal street gang associate or member" means any person
20 who actively participates in any criminal street gang and who
21 intentionally promotes, furthers, or assists in any criminal act by
22 the criminal street gang.

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

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

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

32 (c) To exact revenge or retribution for the gang or any member of
33 the gang;

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

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

39 (f) To provide the gang with any advantage in, or any control or
40 dominance over any criminal market sector, including, but not limited

1 to, manufacturing, delivering, or selling any controlled substance
2 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
3 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
4 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
5 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
6 9.68 RCW).

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

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

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

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

25 (19) "Disposable earnings" means that part of the earnings of an
26 offender remaining after the deduction from those earnings of any
27 amount required by law to be withheld. For the purposes of this
28 definition, "earnings" means compensation paid or payable for
29 personal services, whether denominated as wages, salary, commission,
30 bonuses, or otherwise, and, notwithstanding any other provision of
31 law making the payments exempt from garnishment, attachment, or other
32 process to satisfy a court-ordered legal financial obligation,
33 specifically includes periodic payments pursuant to pension or
34 retirement programs, or insurance policies of any type, but does not
35 include payments made under Title 50 RCW, except as provided in RCW
36 50.40.020 and 50.40.050, or Title 74 RCW.

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

39 (b) "Domestic violence" also means: (i) Physical harm, bodily
40 injury, assault, or the infliction of fear of imminent physical harm,

1 bodily injury, or assault, sexual assault, or stalking, as defined in
2 RCW 9A.46.110, of one intimate partner by another intimate partner as
3 defined in RCW 10.99.020; or (ii) physical harm, bodily injury,
4 assault, or the infliction of fear of imminent physical harm, bodily
5 injury, or assault, sexual assault, or stalking, as defined in RCW
6 9A.46.110, of one family or household member by another family or
7 household member as defined in RCW 10.99.020.

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

11 (22) "Drug offense" means:

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

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

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

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

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

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

32 (b) Active or passive global positioning system technology, which
33 detects the location of the monitored individual and notifies the
34 monitoring agency of the monitored individual's location and which
35 may also include electronic monitoring with victim notification
36 technology that is capable of notifying a victim or protected party,
37 either directly or through a monitoring agency, if the monitored
38 individual enters within the restricted distance of a victim or
39 protected party, or within the restricted distance of a designated
40 location.

1 (25) "Escape" means:

2 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
3 the first degree (RCW 9A.76.110), escape in the second degree (RCW
4 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
5 willful failure to return from work release (RCW 72.65.070), or
6 willful failure to be available for supervision by the department
7 while in community custody (RCW 72.09.310); 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 an
10 escape under (a) of this subsection.

11 (26) "Felony traffic offense" means:

12 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
13 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
14 run injury-accident (RCW 46.52.020(4)), felony driving while under
15 the influence of intoxicating liquor or any drug (RCW 46.61.502(6)),
16 or felony physical control of a vehicle while under the influence of
17 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

27 (29) "Home detention" is a subset of electronic monitoring and
28 means a program of partial confinement available to offenders wherein
29 the offender is confined in a private residence 24 hours a day,
30 unless an absence from the residence is approved, authorized, or
31 otherwise permitted in the order by the court or other supervising
32 agency that ordered home detention, and the offender is subject to
33 electronic monitoring.

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

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

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

1 (c) A private residence where the individual stays as a transient
2 invitee.

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

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

19 (a) Any felony defined under any law as a class A felony or
20 criminal solicitation of or criminal conspiracy to commit a class A
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

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

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Promoting prostitution in the first degree;

34 (n) Rape in the third degree;

35 (o) Sexual exploitation;

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

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

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

7 (s) Any other felony with a deadly weapon verdict under RCW
8 9.94A.825;

9 (t) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection;

14 (u)(i) A prior conviction for indecent liberties under RCW
15 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
16 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
17 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
18 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
19 until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
22 if: (A) The crime was committed against a child under the age of 14;
23 or (B) the relationship between the victim and perpetrator is
24 included in the definition of indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
26 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
27 1993, through July 27, 1997;

28 (v) Any out-of-state conviction for a felony offense with a
29 finding of sexual motivation if the minimum sentence imposed was 10
30 years or more; provided that the out-of-state felony offense must be
31 comparable to a felony offense under this title and Title 9A RCW and
32 the out-of-state definition of sexual motivation must be comparable
33 to the definition of sexual motivation contained in this section.

34 (33) "Nonviolent offense" means an offense which is not a violent
35 offense.

36 (34) "Offender" means a person who has committed a felony
37 established by state law and is 18 years of age or older or is less
38 than 18 years of age but whose case is under superior court
39 jurisdiction under RCW 13.04.030 or has been transferred by the
40 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. In addition, for the purpose of community custody
2 requirements under this chapter, "offender" also means a misdemeanor
3 or gross misdemeanor probationer ordered by a superior court to
4 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
5 supervised by the department pursuant to RCW 9.94A.501 and
6 9.94A.5011. Throughout this chapter, the terms "offender" and
7 "defendant" are used interchangeably.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (~~(xii)~~) (xi) Burglary 2 (RCW 9A.52.030);
2 (~~(xiii)~~) (xii) Malicious Mischief 1 (RCW 9A.48.070);
3 (~~(xiv)~~) (xiii) Malicious Mischief 2 (RCW 9A.48.080);
4 (~~(xv)~~) (xiv) Theft of a Motor Vehicle (RCW 9A.56.065);
5 (~~(xvi)~~) (xv) Possession of a Stolen Motor Vehicle (RCW
6 9A.56.068);
7 (~~(xvii)~~) (xvi) Taking a Motor Vehicle Without Permission 1 (RCW
8 9A.56.070);
9 (~~(xviii)~~) (xvii) Taking a Motor Vehicle Without Permission 2
10 (RCW 9A.56.075);
11 (~~(xix)~~) (xviii) Extortion 1 (RCW 9A.56.120);
12 (~~(xx)~~) (xix) Extortion 2 (RCW 9A.56.130);
13 (~~(xxi)~~) (xx) Intimidating a Witness (RCW 9A.72.110);
14 (~~(xxii)~~) (xxi) Tampering with a Witness (RCW 9A.72.120);
15 (~~(xxiii)~~) (xxii) Reckless Endangerment (RCW 9A.36.050);
16 (~~(xxiv)~~) (xxiii) Coercion (RCW 9A.36.070);
17 (~~(xxv)~~) (xxiv) Harassment (RCW 9A.46.020); or
18 (~~(xxvi)~~) (xxv) Malicious Mischief 3 (RCW 9A.48.090);

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

21 (c) That the most recent committed offense listed in (a) of this
22 subsection occurred within three years of a prior offense listed in
23 (a) of this subsection; and

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

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

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

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

38 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
39 of a child in the first degree, child molestation in the first
40 degree, rape in the second degree, rape of a child in the second

1 degree, or indecent liberties by forcible compulsion; (B) any of the
2 following offenses with a finding of sexual motivation: Murder in the
3 first degree, murder in the second degree, homicide by abuse,
4 kidnapping in the first degree, kidnapping in the second degree,
5 assault in the first degree, assault in the second degree, assault of
6 a child in the first degree, assault of a child in the second degree,
7 or burglary in the first degree; or (C) an attempt to commit any
8 crime listed in this subsection (37)(b)(i); and

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

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

1 based instruction" has the same meaning as defined in RCW
2 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
3 in authority" does not include the parent or legal guardian of the
4 victim.

5 (39) "Private school" means a school regulated under chapter
6 28A.195 or 28A.205 RCW.

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

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

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

13 (b) Cyber harassment, RCW 9A.90.120(2)(b)(i);

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

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

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

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

18 (g) Violation of a no-contact or protection order, RCW 7.105.450
19 or former RCW 26.50.110(5).

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

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

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

25 (iii) Domestic violence violation of a protection order under
26 chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or
27 violation of a domestic violence protection order under chapter 7.105
28 RCW, that is not a felony offense;

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

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

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

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

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

5 (45) "Serious traffic offense" means:

6 (a) Nonfelony driving while under the influence of intoxicating
7 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
8 while under the influence of intoxicating liquor or any drug (RCW
9 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
10 attended vehicle (RCW 46.52.020(5)); or

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

14 (46) "Serious violent offense" is a subcategory of violent
15 offense and means:

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

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

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

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

29 (47) "Sex offense" means:

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

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

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

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

38 (v) A felony violation of RCW 9A.44.132(1) (failure to register
39 as a sex offender) if the person has been convicted of violating RCW

1 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
2 prior to June 10, 2010, on at least one prior occasion;

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

6 (c) A felony with a finding of sexual motivation under RCW
7 9.94A.835 or 13.40.135; or

8 (d) 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 sex
10 offense under (a) of this subsection.

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

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

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

21 (51) "Stranger" means that the victim did not know the offender
22 24 hours before the offense.

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

27 (53) "Transition training" means written and verbal instructions
28 and assistance provided by the department to the offender during the
29 two weeks prior to the offender's successful completion of the work
30 ethic camp program. The transition training shall include
31 instructions in the offender's requirements and obligations during
32 the offender's period of community custody.

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

36 (55) "Victim of domestic violence" means an intimate partner or
37 household member who has been subjected to the infliction of physical
38 harm or sexual and psychological abuse by an intimate partner or
39 household member as part of a pattern of assaultive, coercive, and
40 controlling behaviors directed at achieving compliance from or

1 control over that intimate partner or household member. Domestic
2 violence includes, but is not limited to, the offenses listed in RCW
3 10.99.020 and 26.50.010 committed by an intimate partner or household
4 member against a victim who is an intimate partner or household
5 member.

6 (56) "Victim of sex trafficking, prostitution, or commercial
7 sexual abuse of a minor" means a person who has been forced or
8 coerced to perform a commercial sex act including, but not limited
9 to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070,
10 9.68A.101, and the trafficking victims protection act of 2000, 22
11 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a
12 commercial sex act when they were less than 18 years of age including
13 but not limited to the offenses defined in chapter 9.68A RCW.

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

20 (58) "Violent offense" means:

21 (a) Any of the following felonies:

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

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

26 (iii) Manslaughter in the first degree;

27 (iv) Manslaughter in the second degree;

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

29 (vi) Kidnapping in the second degree;

30 (vii) Arson in the second degree;

31 (viii) Assault in the second degree;

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

33 (x) Extortion in the first degree;

34 (xi) Robbery in the second degree;

35 (xii) Drive-by shooting;

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

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

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

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

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

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

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

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

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

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

34 (3) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if
36 the offender or an accomplice was armed with a firearm as defined in
37 RCW 9.41.010 and the offender is being sentenced for one of the
38 crimes listed in this subsection as eligible for any firearm
39 enhancements based on the classification of the completed felony

1 crime. If the offender is being sentenced for more than one offense,
2 the firearm enhancement or enhancements must be added to the total
3 period of confinement for all offenses, regardless of which
4 underlying offense is subject to a firearm enhancement. If the
5 offender or an accomplice was armed with a firearm as defined in RCW
6 9.41.010 and the offender is being sentenced for an anticipatory
7 offense under chapter 9A.28 RCW to commit one of the crimes listed in
8 this subsection as eligible for any firearm enhancements, the
9 following additional times shall be added to the standard sentence
10 range determined under subsection (2) of this section based on the
11 felony crime of conviction as classified under RCW 9A.28.020:

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

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

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

21 (d) If the offender is being sentenced for any firearm
22 enhancements under (a), (b), and/or (c) of this subsection and the
23 offender has previously been sentenced for any deadly weapon
24 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
25 subsection or subsection (4)(a), (b), and/or (c) of this section, or
26 both, all firearm enhancements under this subsection shall be twice
27 the amount of the enhancement listed;

28 (e) (i) Notwithstanding any other provision of law, all firearm
29 enhancements under this section are mandatory (~~(, shall be served in~~
30 ~~total confinement, and shall run consecutively to all other~~
31 ~~sentencing provisions, including other firearm or deadly weapon~~
32 ~~enhancements, for all offenses sentenced under this chapter. However,~~
33 ~~whether)). For any person sentenced to multiple firearm enhancements
34 on or after the effective date of this section, the court may order
35 the enhancements to run consecutively.~~

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

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

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

1 (f) The firearm enhancements in this section shall apply to all
2 felony crimes except the following: Possession of a machine gun or
3 bump-fire stock, possessing a stolen firearm, drive-by shooting,
4 theft of a firearm, unlawful possession of a firearm in the first and
5 second degree, and use of a machine gun or bump-fire stock in a
6 felony;

7 (g) If the standard sentence range under this section exceeds the
8 statutory maximum sentence for the offense, the statutory maximum
9 sentence shall be the presumptive sentence unless the offender is a
10 persistent offender. (~~If the addition of a firearm enhancement
11 increases the sentence so that it would exceed the statutory maximum
12 for the offense, the portion of the sentence representing the
13 enhancement may not be reduced.~~)

14 (4) The following additional times shall be added to the standard
15 sentence range for felony crimes committed after July 23, 1995, if
16 the offender or an accomplice was armed with a deadly weapon other
17 than a firearm as defined in RCW 9.41.010 and the offender is being
18 sentenced for one of the crimes listed in this subsection as eligible
19 for any deadly weapon enhancements based on the classification of the
20 completed felony crime. If the offender is being sentenced for more
21 than one offense, the deadly weapon enhancement or enhancements must
22 be added to the total period of confinement for all offenses,
23 regardless of which underlying offense is subject to a deadly weapon
24 enhancement. If the offender or an accomplice was armed with a deadly
25 weapon other than a firearm as defined in RCW 9.41.010 and the
26 offender is being sentenced for an anticipatory offense under chapter
27 9A.28 RCW to commit one of the crimes listed in this subsection as
28 eligible for any deadly weapon enhancements, the following additional
29 times shall be added to the standard sentence range determined under
30 subsection (2) of this section based on the felony crime of
31 conviction as classified under RCW 9A.28.020:

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

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

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

1 (d) If the offender is being sentenced under (a), (b), and/or (c)
2 of this subsection for any deadly weapon enhancements and the
3 offender has previously been sentenced for any deadly weapon
4 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
5 subsection or subsection (3)(a), (b), and/or (c) of this section, or
6 both, all deadly weapon enhancements under this subsection shall be
7 twice the amount of the enhancement listed;

8 (e) (i) Notwithstanding any other provision of law, all deadly
9 weapon enhancements under this section are mandatory (~~(, shall be~~
10 ~~served in total confinement, and shall run consecutively to all other~~
11 ~~sentencing provisions, including other firearm or deadly weapon~~
12 ~~enhancements, for all offenses sentenced under this chapter. However,~~
13 ~~whether)). For any person sentenced to multiple firearm enhancements
14 on or after the effective date of this section, the court may order
15 the enhancements to run consecutively.~~

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

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

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

21 (f) The deadly weapon enhancements in this section shall apply to
22 all felony crimes except the following: Possession of a machine gun
23 or bump-fire stock, possessing a stolen firearm, drive-by shooting,
24 theft of a firearm, unlawful possession of a firearm in the first and
25 second degree, and use of a machine gun or bump-fire stock in a
26 felony;

27 (g) If the standard sentence range under this section exceeds the
28 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 deadly weapon enhancement~~
31 ~~increases the sentence so that it would exceed the statutory maximum~~
32 ~~for the offense, the portion of the sentence representing the~~
33 ~~enhancement may not be reduced.))~~

34 (5) The following additional times shall be added to the standard
35 sentence range if the offender or an accomplice committed the offense
36 while in a county jail or state correctional facility and the
37 offender is being sentenced for one of the crimes listed in this
38 subsection. If the offender or an accomplice committed one of the
39 crimes listed in this subsection while in a county jail or state
40 correctional facility, and the offender is being sentenced for an

1 anticipatory offense under chapter 9A.28 RCW to commit one of the
2 crimes listed in this subsection, the following additional times
3 shall be added to the standard sentence range determined under
4 subsection (2) of this section:

5 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
6 (a) or (b) or 69.50.410;

7 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
8 (c), (d), or (e);

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

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

13 (6) An additional (~~twenty-four~~) 24 months shall be added to the
14 standard sentence range for any ranked offense involving a violation
15 of chapter 69.50 RCW if the offense was also a violation of RCW
16 (~~69.50.435 or~~) 9.94A.827. (~~All enhancements under this subsection
17 shall run consecutively to all other sentencing provisions, for all
18 offenses sentenced under this chapter.~~)

19 (7) An additional two years shall be added to the standard
20 sentence range for vehicular homicide committed while under the
21 influence of intoxicating liquor or any drug as defined by RCW
22 46.61.502 for each prior offense as defined in RCW 46.61.5055.

23 Notwithstanding any other provision of law, all impaired driving
24 enhancements under this subsection are mandatory(~~(, shall be served
25 in total confinement,)~~) and shall run consecutively to all other
26 sentencing provisions, including other impaired driving enhancements,
27 for all offenses sentenced under this chapter. If the offender has
28 been convicted of two or more prior offenses as defined by RCW
29 46.61.5055, or has been convicted of one or more vehicular homicide
30 offenses while under the influence of intoxicating liquor or other
31 drug as defined in RCW 46.61.520(1)(a), all enhancements in this
32 subsection must be served in total confinement.

33 An offender serving a sentence under this subsection may be
34 granted an extraordinary medical placement when authorized under RCW
35 9.94A.728(1)(c).

36 (8)(a) The following additional times shall be added to the
37 standard sentence range for felony crimes committed on or after July
38 1, 2006, if the offense was committed with sexual motivation, as that
39 term is defined in RCW 9.94A.030. If the offender is being sentenced
40 for more than one offense, the sexual motivation enhancement must be

1 added to the total period of (~~total~~) confinement for all offenses,
2 regardless of which underlying offense is subject to a sexual
3 motivation enhancement. If the offender committed the offense with
4 sexual motivation and the offender is being sentenced for an
5 anticipatory offense under chapter 9A.28 RCW, the following
6 additional times shall be added to the standard sentence range
7 determined under subsection (2) of this section based on the felony
8 crime of conviction as classified under RCW 9A.28.020:

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

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

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

17 (iv) If the offender is being sentenced for any sexual motivation
18 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
19 the offender has previously been sentenced for any sexual motivation
20 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
21 (iii) of this subsection, all sexual motivation enhancements under
22 this subsection shall be twice the amount of the enhancement listed;

23 (b) Notwithstanding any other provision of law, all sexual
24 motivation enhancements under this subsection are mandatory(~~(, shall~~
25 ~~be served in total confinement,)~~) and shall run consecutively to all
26 other sentencing provisions, including other sexual motivation
27 enhancements, for all offenses sentenced under this chapter. However,
28 whether or not a mandatory minimum term has expired, an offender
29 serving a sentence under this subsection may be:

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

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

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

35 (d) If the standard sentence range under this subsection exceeds
36 the statutory maximum sentence for the offense, the statutory maximum
37 sentence shall be the presumptive sentence unless the offender is a
38 persistent offender(~~(. If the addition of a sexual motivation~~
39 ~~enhancement increases the sentence so that it would exceed the~~

1 ~~statutory maximum for the offense, the portion of the sentence~~
2 ~~representing the enhancement may not be reduced));~~

3 ~~(e) ((The portion of the total confinement sentence which the~~
4 ~~offender must serve under this subsection shall be calculated before~~
5 ~~any earned early release time is credited to the offender;~~

6 ~~(f))~~) Nothing in this subsection prevents a sentencing court from
7 imposing a sentence outside the standard sentence range pursuant to
8 RCW 9.94A.535.

9 (9) An additional one-year enhancement shall be added to the
10 standard sentence range 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 committed on
12 or after July 22, 2007, if the offender engaged, agreed, or offered
13 to engage the victim in the sexual conduct in return for a fee. If
14 the offender is being sentenced for more than one offense, the
15 one-year enhancement must be added to the total period of ~~((total))~~
16 confinement for all offenses, regardless of which underlying offense
17 is subject to the enhancement. If the offender is being sentenced for
18 an anticipatory offense for the felony crimes of RCW 9A.44.073,
19 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
20 offender attempted, solicited another, or conspired to engage, agree,
21 or offer to engage the victim in the sexual conduct in return for a
22 fee, an additional one-year enhancement shall be added to the
23 standard sentence range determined under subsection (2) of this
24 section. For purposes of this subsection, "sexual conduct" means
25 sexual intercourse or sexual contact, both as defined in chapter
26 9A.44 RCW.

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

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

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

5 ~~((11))~~) An additional ~~((twelve))~~ 12 months and one day shall be
6 added to the standard sentence range for a conviction of attempting
7 to elude a police vehicle as defined by RCW 46.61.024, if the
8 conviction included a finding by special allegation of endangering
9 one or more persons under RCW 9.94A.834.

10 ~~((12))~~) (11) An additional ~~((twelve))~~ 12 months shall be added
11 to the standard sentence range for an offense that is also a
12 violation of RCW 9.94A.831.

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

35 ~~((14))~~) (13) An additional ~~((twelve))~~ 12 months shall be added
36 to the standard sentence range for an offense that is also a
37 violation of RCW 9.94A.832.

38 ~~((15))~~) (14) Regardless of any provisions in this section, if a
39 person is being sentenced in adult court for a crime committed under
40 age ~~((eighteen))~~ 18, the court has full discretion to depart from

1 mandatory sentencing enhancements and to take the particular
2 circumstances surrounding the defendant's youth into account.

3 **Sec. 3.** RCW 9.94A.599 and 1998 c 235 s 3 are each amended to
4 read as follows:

5 If the presumptive sentence duration given in the sentencing grid
6 exceeds the statutory maximum sentence for the offense, the statutory
7 maximum sentence shall be the presumptive sentence. (~~If the addition
8 of a firearm or deadly weapon enhancement increases the sentence so
9 that it would exceed the statutory maximum for the offense, the
10 portion of the sentence representing the enhancement may not be
11 reduced.~~)

12 **Sec. 4.** RCW 9.94A.729 and 2022 c 29 s 1 are each amended to read
13 as follows:

14 (1)(a) The term of the sentence of an offender committed to a
15 correctional facility operated by the department may be reduced by
16 earned release time in accordance with procedures that shall be
17 developed and adopted by the correctional agency having jurisdiction
18 in which the offender is confined. The earned release time shall be
19 for good behavior and good performance, as determined by the
20 correctional agency having jurisdiction. The correctional agency
21 shall not credit the offender with earned release credits in advance
22 of the offender actually earning the credits.

23 (b) Any program established pursuant to this section shall allow
24 an offender to earn early release credits for presentence
25 incarceration. If an offender is transferred from a county jail to
26 the department, the administrator of a county jail facility shall
27 certify to the department the amount of time spent in custody at the
28 facility and the number of days of early release credits lost or not
29 earned. The department may approve a jail certification from a
30 correctional agency that calculates early release time based on the
31 actual amount of confinement time served by the offender before
32 sentencing when an erroneous calculation of confinement time served
33 by the offender before sentencing appears on the judgment and
34 sentence. The department must adjust an offender's rate of early
35 release listed on the jail certification to be consistent with the
36 rate applicable to offenders in the department's facilities. However,
37 the department is not authorized to adjust the number of presentence
38 early release days that the jail has certified as lost or not earned.

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

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

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

13 (a) In the case of an offender sentenced pursuant to RCW
14 10.95.030(3) or 10.95.035, the offender may not receive any earned
15 early release time during the minimum term of confinement imposed by
16 the court; for any remaining portion of the sentence served by the
17 offender, the aggregate earned release time may not exceed 10 percent
18 of the sentence.

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

23 (c) In the case of an offender convicted of a serious violent
24 offense, or a sex offense that is a class A felony, committed on or
25 after July 1, 2003, the aggregate earned release time may not exceed
26 10 percent of the sentence.

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

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

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

32 (A) A sex offense;

33 (B) A violent offense;

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

35 (D) A felony that is domestic violence as defined in RCW
36 10.99.020;

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

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

1 (G) A violation of, or an attempt, solicitation, or conspiracy to
2 violate, RCW 69.50.406 (delivery of a controlled substance to a
3 minor);

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

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

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

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

14 (~~(4)~~) (3) The department shall perform a risk assessment of
15 each offender who may qualify for earned early release under
16 subsection (~~(3)~~) (2)(d) of this section utilizing the risk
17 assessment tool recommended by the Washington state institute for
18 public policy. Subsection (~~(3)~~) (2)(d) of this section does not
19 apply to offenders convicted after July 1, 2010.

20 (~~(5)~~) (4)(a) A person who is eligible for earned early release
21 as provided in this section and who will be supervised by the
22 department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be
23 transferred to community custody in lieu of earned release time;

24 (b) The department shall, as a part of its program for release to
25 the community in lieu of earned release, require the offender to
26 propose a release plan that includes an approved residence and living
27 arrangement. All offenders with community custody terms eligible for
28 release to community custody in lieu of earned release shall provide
29 an approved residence and living arrangement prior to release to the
30 community;

31 (c) The department may deny transfer to community custody in lieu
32 of earned release time if the department determines an offender's
33 release plan, including proposed residence location and living
34 arrangements, may violate the conditions of the sentence or
35 conditions of supervision, place the offender at risk to violate the
36 conditions of the sentence, place the offender at risk to reoffend,
37 or present a risk to victim safety or community safety. The
38 department's authority under this section is independent of any
39 court-ordered condition of sentence or statutory provision regarding
40 conditions for community custody;

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

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

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

11 A voucher must be provided in conjunction with additional
12 transition support programming or services that enable an offender to
13 participate in services including, but not limited to, substance
14 abuse treatment, mental health treatment, sex offender treatment,
15 educational programming, or employment programming;

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

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

25 ~~((+6))~~ (5) An offender serving a term of confinement imposed
26 under RCW 9.94A.670(5)(a) is not eligible for earned release credits
27 under this section.

28 **Sec. 5.** RCW 10.01.210 and 2002 c 290 s 23 are each amended to
29 read as follows:

30 Any and all law enforcement agencies and personnel, criminal
31 justice attorneys, sentencing judges, and state and local
32 correctional facilities and personnel may, but are not required to,
33 give any and all offenders either written or oral notice, or both, of
34 the sanctions imposed and criminal justice changes regarding armed
35 offenders, including but not limited to the subjects of:

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

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

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

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

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

12 ~~(6))~~) Providing the death penalty for those who commit first
13 degree murder: (a) To join, maintain, or advance membership in an
14 identifiable group; (b) as part of a drive-by shooting; or (c) to
15 avoid prosecution as a persistent offender as defined in RCW
16 9.94A.030.

17 **Sec. 6.** RCW 72.01.410 and 2019 c 322 s 2 are each amended to
18 read as follows:

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

25 (a) While in the custody of the department of children, youth,
26 and families, the person must have the same treatment, housing
27 options, transfer, and access to program resources as any other
28 person committed to that juvenile correctional facility or
29 institution pursuant to chapter 13.40 RCW. Except as provided under
30 (d) of this subsection, treatment, placement, and program decisions
31 shall be at the sole discretion of the department of children, youth,
32 and families. The person shall not be transferred to the custody of
33 the department of corrections without the approval of the department
34 of children, youth, and families until the person reaches the age of
35 (~~twenty-five~~) 25.

36 (b) If the person's sentence includes a term of community
37 custody, the department of children, youth, and families shall not
38 release the person to community custody until the department of
39 corrections has approved the person's release plan pursuant to RCW

1 9.94A.729(~~(+5)~~) (4)(b). If a person is held past his or her earned
2 release date pending release plan approval, the department of
3 children, youth, and families shall retain custody until a plan is
4 approved or the person completes the ordered term of confinement
5 prior to age (~~(twenty-five)~~) 25.

6 (c) If the department of children, youth, and families determines
7 that retaining custody of the person in a facility of the department
8 of children, youth, and families presents a significant safety risk,
9 the department of children, youth, and families may transfer the
10 person to the custody of the department of corrections.

11 (d) The department of corrections must retain authority over
12 custody decisions relating to a person whose earned release date is
13 on or after the person's (~~(twenty-fifth)~~) 25th birthday and who is
14 placed in a facility operated by the department of children, youth,
15 and families under this section, unless the person qualifies for
16 partial confinement under RCW 72.01.412, and must approve any leave
17 from the facility. When the person turns age (~~(twenty-five)~~) 25, he
18 or she must be transferred to the department of corrections, except
19 as described under RCW 72.01.412. The department of children, youth,
20 and families has all routine and day-to-day operations authority for
21 the person while the person is in its custody.

22 (2)(a) Except as provided in (b) and (c) of this subsection, a
23 person under the age of (~~(eighteen)~~) 18 who is transferred to the
24 custody of the department of corrections must be placed in a housing
25 unit, or a portion of a housing unit, that is separated from other
26 persons in custody who are (~~(eighteen)~~) 18 years of age or older,
27 until the person reaches the age of (~~(eighteen)~~) 18.

28 (b) A person who is transferred to the custody of the department
29 of corrections and reaches (~~(eighteen)~~) 18 years of age may remain in
30 a housing unit for persons under the age of (~~(eighteen)~~) 18 if the
31 secretary of corrections determines that: (i) The person's needs and
32 the rehabilitation goals for the person could continue to be better
33 met by the programs and housing environment that is separate from
34 other persons in custody who are (~~(eighteen)~~) 18 years of age and
35 older; and (ii) the programs or housing environment for persons under
36 the age of (~~(eighteen)~~) 18 will not be substantially affected by the
37 continued placement of the person in that environment. The person may
38 remain placed in a housing unit for persons under the age of
39 (~~(eighteen)~~) 18 until such time as the secretary of corrections
40 determines that the person's needs and goals are no longer better met

1 in that environment but in no case past the person's (~~twenty-fifth~~)
2 25th birthday.

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

10 (3) The department of children, youth, and families must review
11 the placement of a person over age (~~twenty-one~~) 21 in the custody
12 of the department of children, youth, and families under this section
13 to determine whether the person should be transferred to the custody
14 of the department of corrections. The department of children, youth,
15 and families may determine the frequency of the review required under
16 this subsection, but the review must occur at least once before the
17 person reaches age (~~twenty-three~~) 23 if the person's commitment
18 period in a juvenile institution extends beyond the person's
19 (~~twenty-third~~) 23rd birthday.

20 NEW SECTION. **Sec. 7.** The following acts or parts of acts are
21 each repealed:

22 (1) RCW 9.94A.833 (Special allegation—Involving minor in felony
23 offense—Procedures) and 2008 c 276 s 302; and

24 (2) RCW 69.50.435 (Violations committed in or on certain public
25 places or facilities—Additional penalty—Defenses—Construction—
26 Definitions) and 2022 c 16 s 93, 2015 c 265 s 37, & 2003 c 53 s 346.

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