
SUBSTITUTE HOUSE BILL 1041

State of Washington

66th Legislature

2019 Regular Session

By House Public Safety (originally sponsored by Representatives Hansen, Irwin, Ryu, Jinkins, Wylie, Santos, and Caldier)

1 AN ACT Relating to promoting successful reentry by modifying the
2 process for obtaining certificates of discharge and vacating
3 conviction records; amending RCW 9.94A.640 and 9.94A.030; reenacting
4 and amending RCW 9.94A.637 and 9.96.060; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the new
7 hope act.

8 **Sec. 2.** RCW 9.94A.637 and 2009 c 325 s 3 and 2009 c 288 s 2 are
9 each reenacted and amended to read as follows:

10 (1) ~~((a))~~ When an offender has completed all requirements of the
11 sentence, including any and all legal financial obligations, and
12 while under the custody ~~((and))~~ or supervision of the department, the
13 secretary or the secretary's designee shall notify the sentencing
14 court, which shall discharge the offender and provide the offender
15 with a certificate of discharge by issuing the certificate to the
16 offender in person or by mailing the certificate to the offender's
17 last known address. A certificate of discharge issued under this
18 subsection (1) is effective on the date the offender completed all
19 conditions of his or her sentence.

1 ~~((b)(i))~~ (2)(a) When an offender has reached the end of his or
2 her supervision with the department and has completed all the
3 requirements of the sentence except his or her legal financial
4 obligations, the secretary's designee shall provide the county clerk
5 with a notice that the offender has completed all nonfinancial
6 requirements of the sentence. The notice must list the specific
7 sentence requirements that have been completed, so that it is clear
8 to the sentencing court that the offender is entitled to discharge
9 upon completion of the legal financial obligations of the sentence.

10 ~~((ii))~~ (b) When the department has provided the county clerk
11 with notice under (a) of this subsection showing that an offender has
12 completed all the requirements of the sentence and the offender
13 subsequently satisfies all legal financial obligations under the
14 sentence, the county clerk shall promptly notify the sentencing
15 court ~~(, including the notice from the department, which)~~. Upon
16 receipt of the notice under this subsection (2)(b), the court shall
17 discharge the offender and provide the offender with a certificate of
18 discharge ~~((by issuing the certificate to the offender in person or~~
19 ~~by mailing the certificate to the offender's last known address))~~. A
20 certificate of discharge issued under this subsection (2) is
21 effective on the date the offender completed all conditions of his or
22 her sentence.

23 ~~((c) When an offender who is subject to requirements of the~~
24 ~~sentence in addition to the payment of legal financial obligations~~
25 ~~either is not subject to supervision by the department or does not~~
26 ~~complete the requirements while under supervision of the department,~~
27 ~~it is the offender's responsibility to provide the court with~~
28 ~~verification of the completion of the sentence conditions other than~~
29 ~~the payment of legal financial obligations. When the offender~~
30 ~~satisfies all legal financial obligations under the sentence, the~~
31 ~~county clerk shall notify the sentencing court that the legal~~
32 ~~financial obligations have been satisfied. When the court has~~
33 ~~received both notification from the clerk and adequate verification~~
34 ~~from the offender that the sentence requirements have been completed,~~
35 ~~the court shall discharge the offender and provide the offender~~
36 ~~with))~~

37 (3) In the absence of a certificate of discharge issued under
38 subsection (1) or (2) of this section, the offender may file a motion
39 with the sentencing court for a certificate of discharge. The
40 sentencing court shall issue a certificate of discharge upon

1 verification of completion of all sentencing conditions, including
2 any and all legal financial obligations. A certificate of discharge
3 issued under this subsection (3) is effective on the date the
4 offender completed all conditions of his or her sentence.

5 (4) In the absence of a certificate of discharge issued under
6 subsection (1), (2), or (3) of this section, the offender may file a
7 motion with the sentencing court for a certificate of discharge and
8 file a declaration sworn under penalty of perjury that he or she has
9 completed all of the nonfinancial conditions of his or her sentence.
10 A certificate of discharge issued under this subsection (4) is
11 effective on the later of: (a) Five years after completion of
12 community custody, or if the offender was not required to serve
13 community custody, after the completion of full and partial
14 confinement; or (b) the date any and all legal financial obligations
15 were satisfied.

16 (5) The court shall issue a certificate of discharge by issuing
17 the certificate to the offender in person or by mailing the
18 certificate to the offender's last known address.

19 ~~((2))~~ (6) (a) ((For purposes of this subsection (2),)) A no-
20 contact order is not a requirement of the offender's sentence. An
21 offender who has completed all requirements of the sentence,
22 including any and all legal financial obligations, is eligible for a
23 certificate of discharge even if the offender has an existing no-
24 contact order that excludes or prohibits the offender from having
25 contact with a specified person or ((business)) entity or coming
26 within a set distance of any specified location.

27 ~~((b))~~ In the case of an eligible offender who has a no-contact
28 order as part of the judgment and sentence, the offender may petition
29 the sentencing court to issue a certificate of discharge and a
30 separate no-contact order ((by filing a petition in the sentencing
31 court and)), which must include paying the appropriate filing fee
32 ((associated with the petition)) for the separate no-contact order.
33 This filing fee does not apply to an offender seeking a certificate
34 of discharge when the offender has a no-contact order separate from
35 the judgment and sentence.

36 ~~((i) (A) The court shall issue a certificate of discharge and a~~
37 ~~separate no-contact order under this subsection (2) if the court~~
38 ~~determines that the offender has completed all requirements of the~~
39 ~~sentence, including all legal financial obligations.)) The court~~
40 ~~shall reissue the no-contact order separately under a new civil cause~~

1 number for the remaining term and under the same conditions as
2 contained in the judgment and sentence.

3 ~~((B))~~ (b) The clerk of the court shall send a copy of the new
4 no-contact order to the individuals or entities protected by the no-
5 contact order, along with an explanation of the reason for the
6 change, if there is an address available in the court file. If no
7 address is available, the clerk of the court shall forward a copy of
8 the order to the prosecutor, who shall send a copy of the no-contact
9 order with an explanation of the reason for the change to the last
10 known address of the protected individuals or entities.

11 ~~((ii) Whenever an order under this subsection (2) is issued,))~~
12 (c) The clerk of the court shall forward a copy of the order to the
13 appropriate law enforcement agency specified in the order on or
14 before the next judicial day. The clerk shall also include a cover
15 sheet that indicates the case number of the judgment and sentence
16 that has been discharged. Upon receipt of the copy of the order and
17 cover sheet, the law enforcement agency shall enter the order into
18 any computer-based criminal intelligence information system available
19 in this state used by law enforcement agencies to list outstanding
20 warrants. The order shall remain in this system until it expires. The
21 new order, and case number of the discharged judgment and sentence,
22 shall be linked in the criminal intelligence information system for
23 purposes of enforcing the no-contact order.

24 ~~((iii))~~ (d) A separately issued no-contact order may be
25 enforced under chapter 26.50 RCW.

26 ~~((iv))~~ (e) A separate no-contact order issued under this
27 subsection ~~((2))~~ (6) is not a modification of the offender's
28 sentence.

29 ~~((3))~~ (7) Every signed certificate and order of discharge shall
30 be filed with the county clerk of the sentencing county. In addition,
31 the court shall send to the department a copy of every signed
32 certificate and order of discharge for offender sentences under the
33 authority of the department. The county clerk shall enter into a
34 database maintained by the administrator for the courts the names of
35 all felons who have been issued certificates of discharge, the date
36 of discharge, and the date of conviction and offense.

37 ~~((4))~~ (8) An offender who is not convicted of a violent offense
38 or a sex offense and is sentenced to a term involving community
39 supervision may be considered for a discharge of sentence by the
40 sentencing court prior to the completion of community supervision,

1 provided that the offender has completed at least one-half of the
2 term of community supervision and has met all other sentence
3 requirements.

4 ~~((+5))~~ (9) The discharge shall have the effect of restoring all
5 civil rights not already restored by RCW 29A.08.520, and the
6 certificate of discharge shall so state. Nothing in this section
7 prohibits the use of an offender's prior record for purposes of
8 determining sentences for later offenses as provided in this chapter.
9 Nothing in this section affects or prevents use of the offender's
10 prior conviction in a later criminal prosecution either as an element
11 of an offense or for impeachment purposes. A certificate of discharge
12 is not based on a finding of rehabilitation.

13 ~~((+6))~~ (10) Unless otherwise ordered by the sentencing court, a
14 certificate of discharge shall not terminate the offender's
15 obligation to comply with an order that excludes or prohibits the
16 offender from having contact with a specified person or coming within
17 a set distance of any specified location that was contained in the
18 judgment and sentence. An offender who violates such an order after a
19 certificate of discharge has been issued shall be subject to
20 prosecution according to the chapter under which the order was
21 originally issued.

22 ~~((+7))~~ (11) Upon release from custody, the offender may apply to
23 the department for counseling and help in adjusting to the community.
24 This voluntary help may be provided for up to one year following the
25 release from custody.

26 **Sec. 3.** RCW 9.94A.640 and 2012 c 183 s 3 are each amended to
27 read as follows:

28 (1) Every offender who has been discharged under RCW 9.94A.637
29 may apply to the sentencing court for a vacation of the offender's
30 record of conviction. If the court finds the offender meets the tests
31 prescribed in subsection (2) of this section, the court may clear the
32 record of conviction by: (a) Permitting the offender to withdraw the
33 offender's plea of guilty and to enter a plea of not guilty; or (b)
34 if the offender has been convicted after a plea of not guilty, by the
35 court setting aside the verdict of guilty; and (c) by the court
36 dismissing the information or indictment against the offender.

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

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

1 (b) The offense was a violent offense as defined in RCW
2 9.94A.030 ~~((7~~)
3 ~~(e)~~ ~~the offense was a~~) or crime against persons as defined in
4 RCW 43.43.830, except the following offenses may be vacated if the
5 conviction did not include a firearm, deadly weapon, or sexual
6 motivation enhancement: (i) Assault in the second degree under RCW
7 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when
8 not committed against a law enforcement officer or peace officer; and
9 (iii) robbery in the second degree under RCW 9A.56.210;
10 ~~((d))~~ (c) The offense is a class B felony and the offender has
11 been convicted of a new crime in this state, another state, or
12 federal court in the ten years prior to the application for vacation;
13 (d) The offense is a class C felony and the offender has been
14 convicted of a new crime in this state, another state, or federal
15 court ~~((since the date of the offender's discharge under RCW~~
16 ~~9.94A.637))~~ in the five years prior to the application for vacation;
17 (e) The offense is a class B felony and less than ten years have
18 passed since the ~~((date the applicant was discharged under RCW~~
19 ~~9.94A.637))~~ later of: (i) The applicant's release from community
20 custody; (ii) the applicant's release from full and partial
21 confinement; or (iii) the applicant's sentencing date;
22 (f) The offense was a class C felony, other than a class C felony
23 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
24 years have passed since the ~~((date the applicant was discharged under~~
25 ~~RCW 9.94A.637))~~ later of: (i) The applicant's release from community
26 custody; (ii) the applicant's release from full and partial
27 confinement; or (iii) the applicant's sentencing date; or
28 (g) The offense was a ~~((class C))~~ felony described in RCW
29 46.61.502 ~~((6))~~ or 46.61.504 ~~((6))~~).

30 (3) (a) Except as provided in (b) of this subsection, once the
31 court vacates a record of conviction under subsection (1) of this
32 section, the fact that the offender has been convicted of the offense
33 shall not be included in the offender's criminal history for purposes
34 of determining a sentence in any subsequent conviction, and the
35 offender shall be released from all penalties and disabilities
36 resulting from the offense. For all purposes, including responding to
37 questions on employment applications, an offender whose conviction
38 has been vacated may state that the offender has never been convicted
39 of that crime. A conviction that has been vacated under this section
40 may not be disseminated or disclosed by the state patrol or local law

1 enforcement agency to any person, except other criminal justice
2 enforcement agencies. Nothing in this section affects or prevents the
3 use of an offender's prior conviction in a later criminal
4 prosecution, and nothing in this section affects the requirements for
5 restoring a right to possess a firearm under RCW 9.41.040.

6 (b) A conviction vacated on or after the effective date of this
7 section qualifies as a prior conviction for the purpose of charging a
8 present recidivist offense occurring on or after the effective date
9 of this section.

10 **Sec. 4.** RCW 9.96.060 and 2017 c 336 s 2, 2017 c 272 s 9, and
11 2017 c 128 s 1 are each reenacted and amended to read as follows:

12 (1) Every person convicted of a misdemeanor or gross misdemeanor
13 offense who has completed all of the terms of the sentence for the
14 misdemeanor or gross misdemeanor offense may apply to the sentencing
15 court for a vacation of the applicant's record of conviction for the
16 offense. If the court finds the applicant meets the tests prescribed
17 in subsection (2) of this section, the court may in its discretion
18 vacate the record of conviction by: (a) (i) Permitting the applicant
19 to withdraw the applicant's plea of guilty and to enter a plea of not
20 guilty; or (ii) if the applicant has been convicted after a plea of
21 not guilty, the court setting aside the verdict of guilty; and (b)
22 the court dismissing the information, indictment, complaint, or
23 citation against the applicant and vacating the judgment and
24 sentence.

25 (2) An applicant may not have the record of conviction for a
26 misdemeanor or gross misdemeanor offense vacated if any one of the
27 following is present:

28 (a) There are any criminal charges against the applicant pending
29 in any court of this state or another state, or in any federal court;

30 (b) The offense was a violent offense as defined in RCW 9.94A.030
31 or an attempt to commit a violent offense;

32 (c) The offense was a violation of RCW 46.61.502 (driving while
33 under the influence), 46.61.504 (actual physical control while under
34 the influence), 9.91.020 (operating a railroad, etc. while
35 intoxicated), or the offense is considered a "prior offense" under
36 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
37 violation within ten years of the date of arrest for the prior
38 offense or less than ten years has elapsed since the date of the
39 arrest for the prior offense;

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

6 (e) The applicant was convicted of a misdemeanor or gross
7 misdemeanor offense as defined in RCW 10.99.020, or the court
8 determines after a review of the court file that the offense was
9 committed by one family member or household member against another,
10 or the court, after considering the damage to person or property that
11 resulted in the conviction, any prior convictions for crimes defined
12 in RCW 10.99.020, or for comparable offenses in another state or in
13 federal court, and the totality of the records under review by the
14 court regarding the conviction being considered for vacation,
15 determines that the offense involved domestic violence, and any one
16 of the following factors exist:

17 (i) The applicant has not provided written notification of the
18 vacation petition to the prosecuting attorney's office that
19 prosecuted the offense for which vacation is sought, or has not
20 provided that notification to the court;

21 (ii) The applicant has (~~previously had a conviction for domestic~~
22 ~~violence~~) two or more domestic violence convictions stemming from
23 different incidents. For purposes of this subsection, however, if the
24 current application is for more than one conviction that arose out of
25 a single incident, none of those convictions counts as a previous
26 conviction;

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

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

35 (f) For any offense other than those described in (e) of this
36 subsection, less than three years have passed since the person
37 completed the terms of the sentence, including any financial
38 obligations;

1 (g) The offender has been convicted of a new crime in this state,
2 another state, or federal court (~~(since the date of conviction)~~) in
3 the three years prior to the vacation application; or

4 (h) (~~The applicant has ever had the record of another conviction~~
5 ~~vacated; or~~

6 ~~(i))~~) The applicant is currently restrained(~~(, or has been~~
7 ~~restrained within five years prior to the vacation application,)~~) by
8 a domestic violence protection order, a no-contact order, an
9 antiharassment order, or a civil restraining order which restrains
10 one party from contacting the other party or was previously
11 restrained by such an order and was found to have committed one or
12 more violations of the order in the five years prior to the vacation
13 application.

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

24 (a) There are any criminal charges against the applicant pending
25 in any court of this state or another state, or in any federal court,
26 for any crime other than prostitution; or

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

38 (4) Every person convicted prior to January 1, 1975, of violating
39 any statute or rule regarding the regulation of fishing activities,
40 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,

1 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
2 who claimed to be exercising a treaty Indian fishing right, may apply
3 to the sentencing court for vacation of the applicant's record of the
4 misdemeanor, gross misdemeanor, or felony conviction for the offense.
5 If the person is deceased, a member of the person's family or an
6 official representative of the tribe of which the person was a member
7 may apply to the court on behalf of the deceased person.
8 Notwithstanding the requirements of RCW 9.94A.640, the court shall
9 vacate the record of conviction if:

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

12 (b) The state has been enjoined from taking enforcement action of
13 the statute or rule to the extent that it interferes with a treaty
14 Indian fishing right as determined under *United States v. Washington*,
15 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
16 899 (D. Oregon 1969), and any posttrial orders of those courts, or
17 any other state supreme court or federal court decision.

18 (5) (a) Except as provided in (c) of this subsection, once the
19 court vacates a record of conviction under this section, the person
20 shall be released from all penalties and disabilities resulting from
21 the offense and the fact that the person has been convicted of the
22 offense shall not be included in the person's criminal history for
23 purposes of determining a sentence in any subsequent conviction. For
24 all purposes, including responding to questions on employment or
25 housing applications, a person whose conviction has been vacated
26 under this section may state that he or she has never been convicted
27 of that crime. However, nothing in this section affects the
28 requirements for restoring a right to possess a firearm under RCW
29 9.41.040. Except as provided in (b) of this subsection, nothing in
30 this section affects or prevents the use of an offender's prior
31 conviction in a later criminal prosecution.

32 (b) When a court vacates a record of domestic violence as defined
33 in RCW 10.99.020 under this section, the state may not use the
34 vacated conviction in a later criminal prosecution unless the
35 conviction was for: (i) Violating the provisions of a restraining
36 order, no-contact order, or protection order restraining or enjoining
37 the person or restraining the person from going on to the grounds of
38 or entering a residence, workplace, school, or day care, or
39 prohibiting the person from knowingly coming within, or knowingly
40 remaining within, a specified distance of a location (RCW 10.99.040,

1 10.99.050, 26.09.300, 26.10.220, (~~26.26.138~~) 26.26B.050, 26.44.063,
2 26.44.150, 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145);
3 or (ii) stalking (RCW 9A.46.110). A vacated conviction under this
4 section is not considered a conviction of such an offense for the
5 purposes of 27 C.F.R. 478.11.

6 ~~((6) All costs incurred by the court and probation services
7 shall be paid by the person making the motion to vacate the record
8 unless a determination is made pursuant to chapter 10.101 RCW that
9 the person making the motion is indigent, at the time the motion is
10 brought.~~

11 ~~(7))~~ (c) A conviction vacated on or after the effective date of
12 this section qualifies as a prior conviction for the purpose of
13 charging a present recidivist offense as defined in RCW 9.94A.030
14 occurring on or after the effective date of this section.

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

27 **Sec. 5.** RCW 9.94A.030 and 2018 c 166 s 3 are each amended to
28 read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply throughout this chapter.

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

33 (2) "Collect," or any derivative thereof, "collect and remit," or
34 "collect and deliver," when used with reference to the department,
35 means that the department, either directly or through a collection
36 agreement authorized by RCW 9.94A.760, is responsible for monitoring
37 and enforcing the offender's sentence with regard to the legal
38 financial obligation, receiving payment thereof from the offender,
39 and, consistent with current law, delivering daily the entire payment

1 to the superior court clerk without depositing it in a departmental
2 account.

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

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

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

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

16 (7) "Community restitution" means compulsory service, without
17 compensation, performed for the benefit of the community by the
18 offender.

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

20 (9) "Conviction" means an adjudication of guilt pursuant to Title
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty,
22 and acceptance of a plea of guilty.

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

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

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

39 (b) A conviction may be removed from a defendant's criminal
40 history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

1 9.95.240, or a similar out-of-state statute, or if the conviction has
2 been vacated pursuant to a governor's pardon. However, when a
3 defendant is charged with a recidivist offense, "criminal history"
4 includes a vacated prior conviction for the sole purpose of
5 establishing that such vacated prior conviction constitutes an
6 element of the present recidivist offense as provided in RCW
7 9.94A.640(3)(b) and 9.96.060(5)(c).

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

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

23 (13) "Criminal street gang associate or member" means any person
24 who actively participates in any criminal street gang and who
25 intentionally promotes, furthers, or assists in any criminal act by
26 the criminal street gang.

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

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

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

36 (c) To exact revenge or retribution for the gang or any member of
37 the gang;

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

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

4 (f) To provide the gang with any advantage in, or any control or
5 dominance over any criminal market sector, including, but not limited
6 to, manufacturing, delivering, or selling any controlled substance
7 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
8 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
9 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
10 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
11 9.68 RCW).

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

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

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

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

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

1 include payments made under Title 50 RCW, except as provided in RCW
2 50.40.020 and 50.40.050, or Title 74 RCW.

3 (20) "Domestic violence" has the same meaning as defined in RCW
4 10.99.020 and 26.50.010.

5 (21) "Drug offender sentencing alternative" is a sentencing
6 option available to persons convicted of a felony offense other than
7 a violent offense or a sex offense and who are eligible for the
8 option under RCW 9.94A.660.

9 (22) "Drug offense" means:

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

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

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

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

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

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

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

34 (25) "Escape" means:

35 (a) Sexually violent predator escape (RCW 9A.76.115), escape in
36 the first degree (RCW 9A.76.110), escape in the second degree (RCW
37 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
38 willful failure to return from work release (RCW 72.65.070), or
39 willful failure to be available for supervision by the department
40 while in community custody (RCW 72.09.310); or

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

4 (26) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

34 (c) A private residence where the individual stays as a transient
35 invitee.

36 (31) "Legal financial obligation" means a sum of money that is
37 ordered by a superior court of the state of Washington for legal
38 financial obligations which may include restitution to the victim,
39 statutorily imposed crime victims' compensation fees as assessed
40 pursuant to RCW 7.68.035, court costs, county or interlocal drug

1 funds, court-appointed attorneys' fees, and costs of defense, fines,
2 and any other financial obligation that is assessed to the offender
3 as a result of a felony conviction. Upon conviction for vehicular
4 assault while under the influence of intoxicating liquor or any drug,
5 RCW 46.61.522(1)(b), or vehicular homicide while under the influence
6 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal
7 financial obligations may also include payment to a public agency of
8 the expense of an emergency response to the incident resulting in the
9 conviction, subject to RCW 38.52.430.

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

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

15 (a) Any felony defined under any law as a class A felony or
16 criminal solicitation of or criminal conspiracy to commit a class A
17 felony;

18 (b) Assault in the second degree;

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

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

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

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

33 (q) Vehicular assault, when caused by the operation or driving of
34 a vehicle by a person while under the influence of intoxicating
35 liquor or any drug or by the operation or driving of a vehicle in a
36 reckless manner;

37 (r) Vehicular homicide, when proximately caused by the driving of
38 any vehicle by any person while under the influence of intoxicating
39 liquor or any drug as defined by RCW 46.61.502, or by the operation
40 of any vehicle in a reckless manner;

1 (s) Any other class B felony offense with a finding of sexual
2 motivation;

3 (t) Any other felony with a deadly weapon verdict under RCW
4 9.94A.825;

5 (u) Any felony offense in effect at any time prior to December 2,
6 1993, that is comparable to a most serious offense under this
7 subsection, or any federal or out-of-state conviction for an offense
8 that under the laws of this state would be a felony classified as a
9 most serious offense under this subsection;

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

16 (ii) A prior conviction for indecent liberties under RCW
17 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
18 if: (A) The crime was committed against a child under the age of
19 fourteen; or (B) the relationship between the victim and perpetrator
20 is included in the definition of indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
22 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
23 1993, through July 27, 1997;

24 (w) Any out-of-state conviction for a felony offense with a
25 finding of sexual motivation if the minimum sentence imposed was ten
26 years or more; provided that the out-of-state felony offense must be
27 comparable to a felony offense under this title and Title 9A RCW and
28 the out-of-state definition of sexual motivation must be comparable
29 to the definition of sexual motivation contained in this section.

30 (34) "Nonviolent offense" means an offense which is not a violent
31 offense.

32 (35) "Offender" means a person who has committed a felony
33 established by state law and is eighteen years of age or older or is
34 less than eighteen years of age but whose case is under superior
35 court jurisdiction under RCW 13.04.030 or has been transferred by the
36 appropriate juvenile court to a criminal court pursuant to RCW
37 13.40.110. In addition, for the purpose of community custody
38 requirements under this chapter, "offender" also means a misdemeanor
39 or gross misdemeanor probationer ordered by a superior court to
40 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and

1 supervised by the department pursuant to RCW 9.94A.501 and
2 9.94A.5011. Throughout this chapter, the terms "offender" and
3 "defendant" are used interchangeably.

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

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

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

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

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

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

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

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

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

29 (vii) Malicious Harassment (RCW 9A.36.080);

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

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

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

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

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

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

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

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

1 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
2 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
3 9A.56.070);
4 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
5 9A.56.075);
6 (xix) Extortion 1 (RCW 9A.56.120);
7 (xx) Extortion 2 (RCW 9A.56.130);
8 (xxi) Intimidating a Witness (RCW 9A.72.110);
9 (xxii) Tampering with a Witness (RCW 9A.72.120);
10 (xxiii) Reckless Endangerment (RCW 9A.36.050);
11 (xxiv) Coercion (RCW 9A.36.070);
12 (xxv) Harassment (RCW 9A.46.020); or
13 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
14 (b) That at least one of the offenses listed in (a) of this
15 subsection shall have occurred after July 1, 2008;
16 (c) That the most recent committed offense listed in (a) of this
17 subsection occurred within three years of a prior offense listed in
18 (a) of this subsection; and
19 (d) Of the offenses that were committed in (a) of this
20 subsection, the offenses occurred on separate occasions or were
21 committed by two or more persons.
22 (38) "Persistent offender" is an offender who:
23 (a) (i) Has been convicted in this state of any felony considered
24 a most serious offense; and
25 (ii) Has, before the commission of the offense under (a) of this
26 subsection, been convicted as an offender on at least two separate
27 occasions, whether in this state or elsewhere, of felonies that under
28 the laws of this state would be considered most serious offenses and
29 would be included in the offender score under RCW 9.94A.525; provided
30 that of the two or more previous convictions, at least one conviction
31 must have occurred before the commission of any of the other most
32 serious offenses for which the offender was previously convicted; or
33 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
34 of a child in the first degree, child molestation in the first
35 degree, rape in the second degree, rape of a child in the second
36 degree, or indecent liberties by forcible compulsion; (B) any of the
37 following offenses with a finding of sexual motivation: Murder in the
38 first degree, murder in the second degree, homicide by abuse,
39 kidnapping in the first degree, kidnapping in the second degree,
40 assault in the first degree, assault in the second degree, assault of

1 a child in the first degree, assault of a child in the second degree,
2 or burglary in the first degree; or (C) an attempt to commit any
3 crime listed in this subsection (38)(b)(i); and

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

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

1 (40) "Private school" means a school regulated under chapter
2 28A.195 or 28A.205 RCW.

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

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

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

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

9 (iii) Domestic violence violation of a protection order under
10 chapter 26.09, 26.10, (~~26.26~~) 26.26B, or 26.50 RCW that is not a
11 felony offense;

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

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

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

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

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

28 (45) "Serious traffic offense" means:

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

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

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

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

40 (ii) Homicide by abuse;

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

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

12 (47) "Sex offense" means:

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

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

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

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

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

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

28 (c) A felony with a finding of sexual motivation under RCW
29 9.94A.835 or 13.40.135; or

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

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

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

38 (50) "Statutory maximum sentence" means the maximum length of
39 time for which an offender may be confined as punishment for a crime
40 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute

1 defining the crime, or other statute defining the maximum penalty for
2 a crime.

3 (51) "Stranger" means that the victim did not know the offender
4 twenty-four hours before the offense.

5 (52) "Total confinement" means confinement inside the physical
6 boundaries of a facility or institution operated or utilized under
7 contract by the state or any other unit of government for twenty-four
8 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 (53) "Transition training" means written and verbal instructions
10 and assistance provided by the department to the offender during the
11 two weeks prior to the offender's successful completion of the work
12 ethic camp program. The transition training shall include
13 instructions in the offender's requirements and obligations during
14 the offender's period of community custody.

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

18 (55) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

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

38 (xiv) Vehicular homicide, when proximately caused by the driving
39 of any vehicle by any person while under the influence of

1 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
2 the operation of any vehicle in a reckless manner;

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 violent offense in (a) of this subsection; and

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

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

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

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

22 (59) "Recidivist offense" means a felony offense where a prior
23 conviction of the same offense or other specified offense is an
24 element of the crime including, but not limited to:

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

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

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

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

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

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

32 (g) Violation of a no-contact or protection order, RCW
33 26.50.110(5).

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