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HOUSE BILL 1292

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State of Washington

67th Legislature

2021 Regular Session

By Representatives Griffey and Mosbrucker

1 AN ACT Relating to the crime of providing harmful material to a  
2 minor; amending RCW 7.90.150, 9.94A.411, 9.94A.501, 9.94A.515,  
3 9.95.062, 9A.44.128, 9A.44.140, 10.64.025, 43.43.754, and 43.43.830;  
4 adding a new section to chapter 9.68A RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.68A  
7 RCW to read as follows:

8 (1) A person commits the crime of providing harmful material to a  
9 minor if:

10 (a) The person is eighteen years of age or older; and

11 (b) With knowledge of its character, the person:

12 (i) Knowingly sells, furnishes, presents, distributes, or  
13 otherwise disseminates to someone the person knows or should know is  
14 a minor, with or without consideration, any matter that is harmful to  
15 minors; or

16 (ii) Knowingly presents or participates in presenting to someone  
17 the person knows or should know is a minor, with or without  
18 consideration, any live performance that is harmful to minors.

19 (2)(a) Except as provided in (b) of this subsection, a person who  
20 provides harmful material to a minor is guilty of a gross  
21 misdemeanor.

1 (b) A person who provides harmful material to a minor is guilty  
2 of a class C felony if the person has previously been convicted under  
3 this section or of a felony sexual offense under this chapter or  
4 chapter 9A.44 or 9A.64 RCW or of any other felony sexual offense in  
5 this or any other state.

6 (3) The definitions in this subsection apply throughout this  
7 section unless the context clearly requires otherwise.

8 (a) "Harmful to minors" means any matter or live performance:

9 (i) That the average adult person, applying contemporary  
10 community standards, would find, when considered as a whole, appeals  
11 to the prurient interest of minors; and

12 (ii) That explicitly depicts or contains, by prevailing standards  
13 in the adult community with respect to what is suitable for minors,  
14 patently offensive representations or descriptions of any of the  
15 following:

16 (A) Ultimate sexual acts or sexual contact;

17 (B) Masturbation, lewd exhibition of the genitals or genital  
18 area, sexual excitement, or sexually explicit nudity; or

19 (C) Bestiality, excretory functions, or sexual acts that are  
20 violent or destructive, including but not limited to human or animal  
21 mutilation, dismemberment, rape, or torture; and

22 (iii) That, when considered as a whole, and in the context in  
23 which it is used, lacks serious literary, artistic, political, or  
24 scientific value for minors.

25 (b) "Knowingly" has the same meaning as in RCW 9A.08.010(1)(b).

26 (c) "Knowledge of its character" means that the person has  
27 knowledge that the matter or performance contains, depicts, or  
28 describes activity or conduct that may be found to be patently  
29 offensive under (a) of this subsection. Such knowledge may be proved  
30 by direct or circumstantial evidence, or both.

31 (d) "Live performance" means any play, show, skit, dance, or  
32 other exhibition performed or presented to or before an audience of  
33 one or more, in person or by electronic transmission, or by  
34 telephonic communication, with or without consideration.

35 (e) "Matter" includes, but is not limited to:

36 (i) Books, magazines, articles, pamphlets, and other printed or  
37 written material, however produced or reproduced;

38 (ii) Illustrations, pictures, images, motion picture films,  
39 videos, and other visual representations;

40 (iii) Sound recordings; and

1 (iv) Sexual devices.

2 (f) "Sexual contact" means physical contact with a person's  
3 clothed or unclothed genitals, pubic area, buttocks, perineum, or, if  
4 such person is a female, breast.

5 (g) "Sexual device" means any artificial device primarily  
6 designed, promoted, or marketed to physically stimulate or manipulate  
7 the human genitals.

8 (h) "Sexual excitement" means the condition of human male or  
9 female genitals when in a state of sexual stimulation or arousal, or  
10 the depiction of covered male genitals in a discernibly turgid state.

11 (i) "Sexually explicit nudity" means the showing of the human  
12 male or female genitals, pubic area, buttocks, or perineum with less  
13 than a fully opaque covering; or the showing of the female breast  
14 with less than a fully opaque covering of any portion thereof below  
15 the top of the nipple.

16 (4) In any prosecution under this section, it is an affirmative  
17 defense that:

18 (a) The matter or performance involved was displayed or otherwise  
19 disseminated to a minor by the minor's parent or legal guardian, for  
20 a legitimate purpose; or

21 (b) The matter or performance involved was displayed or otherwise  
22 disseminated to a minor with the written permission of the minor's  
23 parent or legal guardian, for a legitimate purpose; or

24 (c) The person made a reasonable good faith attempt to ascertain  
25 the true age of the minor by requiring production of a driver's  
26 license, marriage license, birth certificate, or other governmental  
27 or educational identification card or paper, or copy thereof, and not  
28 relying solely on the allegations or apparent age of the minor.

29 **Sec. 2.** RCW 7.90.150 and 2006 c 138 s 16 are each amended to  
30 read as follows:

31 (1)(a) When any person charged with or arrested for a sex offense  
32 as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a  
33 violation of RCW 9.68A.090, a violation of section 1 of this act, or  
34 a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal  
35 attempt, criminal solicitation, or criminal conspiracy to commit an  
36 offense that is classified as a sex offense under RCW 9.94A.030, is  
37 released from custody before arraignment or trial on bail or personal  
38 recognizance, the court authorizing the release may prohibit that  
39 person from having any contact with the victim. The jurisdiction

1 authorizing the release shall determine whether that person should be  
2 prohibited from having any contact with the victim. If there is no  
3 outstanding restraining or protective order prohibiting that person  
4 from having contact with the victim, the court authorizing release  
5 may issue, by telephone, a sexual assault protection order  
6 prohibiting the person charged or arrested from having contact with  
7 the victim or from knowingly coming within, or knowingly remaining  
8 within, a specified distance of a location.

9 (b) In issuing the order, the court shall consider the provisions  
10 of RCW 9.41.800.

11 (c) The sexual assault protection order shall also be issued in  
12 writing as soon as possible.

13 (2)(a) At the time of arraignment or whenever a motion is brought  
14 to modify the conditions of the defendant's release, the court shall  
15 determine whether a sexual assault protection order shall be issued  
16 or extended. If a sexual assault protection order is issued or  
17 extended, the court may also include in the conditions of release a  
18 requirement that the defendant submit to electronic monitoring. If  
19 electronic monitoring is ordered, the court shall specify who shall  
20 provide the monitoring services, and the terms under which the  
21 monitoring shall be performed. Upon conviction, the court may require  
22 as a condition of the sentence that the defendant reimburse the  
23 providing agency for the costs of the electronic monitoring.

24 (b) A sexual assault protection order issued by the court in  
25 conjunction with criminal charges shall terminate if the defendant is  
26 acquitted or the charges are dismissed, unless the victim files an  
27 independent action for a sexual assault protection order. If the  
28 victim files an independent action for a sexual assault protection  
29 order, the order may be continued by the court until a full hearing  
30 is conducted pursuant to RCW 7.90.050.

31 (3)(a) The written order releasing the person charged or arrested  
32 shall contain the court's directives and shall bear the legend:  
33 "Violation of this order is a criminal offense under chapter 26.50  
34 RCW and will subject a violator to arrest. You can be arrested even  
35 if any person protected by the order invites or allows you to violate  
36 the order's prohibitions. You have the sole responsibility to avoid  
37 or refrain from violating the order's provisions. Only the court can  
38 change the order."

39 (b) A certified copy of the order shall be provided to the victim  
40 at no charge.

1 (4) If a sexual assault protection order has been issued prior to  
2 charging, that order shall expire at arraignment or within seventy-  
3 two hours if charges are not filed. Such orders need not be entered  
4 into the computer-based criminal intelligence information system in  
5 this state which is used by law enforcement agencies to list  
6 outstanding warrants.

7 (5) Whenever an order prohibiting contact is issued pursuant to  
8 subsection (2) of this section, the clerk of the court shall forward  
9 a copy of the order on or before the next judicial day to the  
10 appropriate law enforcement agency specified in the order. Upon  
11 receipt of the copy of the order, the law enforcement agency shall  
12 enter the order for one year or until the expiration date specified  
13 on the order into any computer-based criminal intelligence  
14 information system available in this state used by law enforcement  
15 agencies to list outstanding warrants. Entry into the computer-based  
16 criminal intelligence information system constitutes notice to all  
17 law enforcement agencies of the existence of the order. The order is  
18 fully enforceable in any jurisdiction in the state.

19 (6) (a) When a defendant is found guilty of a sex offense as  
20 defined in RCW 9.94A.030, any violation of RCW 9A.44.096, (~~(or)~~) any  
21 violation of RCW 9.68A.090, or any violation of section 1 of this  
22 act, or any gross misdemeanor that is, under chapter 9A.28 RCW, a  
23 criminal attempt, criminal solicitation, or criminal conspiracy to  
24 commit an offense that is classified as a sex offense under RCW  
25 9.94A.030, and a condition of the sentence restricts the defendant's  
26 ability to have contact with the victim, the condition shall be  
27 recorded as a sexual assault protection order.

28 (b) The written order entered as a condition of sentencing shall  
29 contain the court's directives and shall bear the legend: "Violation  
30 of this order is a criminal offense under chapter 26.50 RCW and will  
31 subject a violator to arrest. You can be arrested even if any person  
32 protected by the order invites or allows you to violate the order's  
33 prohibitions. You have the sole responsibility to avoid or refrain  
34 from violating the order's provisions. Only the court can change the  
35 order."

36 (c) A final sexual assault protection order entered in  
37 conjunction with a criminal prosecution shall remain in effect for a  
38 period of two years following the expiration of any sentence of  
39 imprisonment and subsequent period of community supervision,  
40 conditional release, probation, or parole.

1 (d) A certified copy of the order shall be provided to the victim  
2 at no charge.

3 (7) A knowing violation of a court order issued under subsection  
4 (1), (2), or (6) of this section is punishable under RCW 26.50.110.

5 (8) Whenever a sexual assault protection order is issued,  
6 modified, or terminated under subsection (1), (2), or (6) of this  
7 section, the clerk of the court shall forward a copy of the order on  
8 or before the next judicial day to the appropriate law enforcement  
9 agency specified in the order. Upon receipt of the copy of the order,  
10 the law enforcement agency shall enter the order for one year or  
11 until the expiration date specified on the order into any computer-  
12 based criminal intelligence information system available in this  
13 state used by law enforcement agencies to list outstanding warrants.  
14 Entry into the computer-based criminal intelligence information  
15 system constitutes notice to all law enforcement agencies of the  
16 existence of the order. The order is fully enforceable in any  
17 jurisdiction in the state. Upon receipt of notice that an order has  
18 been terminated under subsection (2) of this section, the law  
19 enforcement agency shall remove the order from the computer-based  
20 criminal intelligence information system.

21 **Sec. 3.** RCW 9.94A.411 and 2019 c 46 s 5008 are each amended to  
22 read as follows:

23 (1) Decision not to prosecute.

24 **STANDARD:** A prosecuting attorney may decline to prosecute, even  
25 though technically sufficient evidence to prosecute exists, in  
26 situations where prosecution would serve no public purpose, would  
27 defeat the underlying purpose of the law in question or would result  
28 in decreased respect for the law.

29 **GUIDELINE/COMMENTARY:**

30 **Examples**

31 The following are examples of reasons not to prosecute which  
32 could satisfy the standard.

33 (a) **Contrary to Legislative Intent** - It may be proper to decline  
34 to charge where the application of criminal sanctions would be  
35 clearly contrary to the intent of the legislature in enacting the  
36 particular statute.

37 (b) **Antiquated Statute** - It may be proper to decline to charge  
38 where the statute in question is antiquated in that:

39 (i) It has not been enforced for many years; and

1 (ii) Most members of society act as if it were no longer in  
2 existence; and

3 (iii) It serves no deterrent or protective purpose in today's  
4 society; and

5 (iv) The statute has not been recently reconsidered by the  
6 legislature.

7 This reason is not to be construed as the basis for declining  
8 cases because the law in question is unpopular or because it is  
9 difficult to enforce.

10 (c) De Minimis Violation - It may be proper to decline to charge  
11 where the violation of law is only technical or insubstantial and  
12 where no public interest or deterrent purpose would be served by  
13 prosecution.

14 (d) Confinement on Other Charges - It may be proper to decline to  
15 charge because the accused has been sentenced on another charge to a  
16 lengthy period of confinement; and

17 (i) Conviction of the new offense would not merit any additional  
18 direct or collateral punishment;

19 (ii) The new offense is either a misdemeanor or a felony which is  
20 not particularly aggravated; and

21 (iii) Conviction of the new offense would not serve any  
22 significant deterrent purpose.

23 (e) Pending Conviction on Another Charge - It may be proper to  
24 decline to charge because the accused is facing a pending prosecution  
25 in the same or another county; and

26 (i) Conviction of the new offense would not merit any additional  
27 direct or collateral punishment;

28 (ii) Conviction in the pending prosecution is imminent;

29 (iii) The new offense is either a misdemeanor or a felony which  
30 is not particularly aggravated; and

31 (iv) Conviction of the new offense would not serve any  
32 significant deterrent purpose.

33 (f) High Disproportionate Cost of Prosecution - It may be proper  
34 to decline to charge where the cost of locating or transporting, or  
35 the burden on, prosecution witnesses is highly disproportionate to  
36 the importance of prosecuting the offense in question. This reason  
37 should be limited to minor cases and should not be relied upon in  
38 serious cases.

39 (g) Improper Motives of Complainant - It may be proper to decline  
40 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the  
2 underlying purpose of the law in question or would result in  
3 decreased respect for the law.

4 (h) Immunity - It may be proper to decline to charge where  
5 immunity is to be given to an accused in order to prosecute another  
6 where the accused's information or testimony will reasonably lead to  
7 the conviction of others who are responsible for more serious  
8 criminal conduct or who represent a greater danger to the public  
9 interest.

10 (i) Victim Request - It may be proper to decline to charge  
11 because the victim requests that no criminal charges be filed and the  
12 case involves the following crimes or situations:

13 (i) Assault cases where the victim has suffered little or no  
14 injury;

15 (ii) Crimes against property, not involving violence, where no  
16 major loss was suffered;

17 (iii) Where doing so would not jeopardize the safety of society.

18 Care should be taken to insure that the victim's request is  
19 freely made and is not the product of threats or pressure by the  
20 accused.

21 The presence of these factors may also justify the decision to  
22 dismiss a prosecution which has been commenced.

#### 23 Notification

24 The prosecutor is encouraged to notify the victim, when  
25 practical, and the law enforcement personnel, of the decision not to  
26 prosecute.

27 (2) Decision to prosecute.

28 (a) STANDARD:

29 Crimes against persons will be filed if sufficient admissible  
30 evidence exists, which, when considered with the most plausible,  
31 reasonably foreseeable defense that could be raised under the  
32 evidence, would justify conviction by a reasonable and objective fact  
33 finder. With regard to offenses prohibited by RCW 9A.44.040,  
34 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086,  
35 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing  
36 agreements or diversions intended to place the accused in a program  
37 of treatment or counseling, so that treatment, if determined to be  
38 beneficial, can be provided pursuant to RCW 9.94A.670.

39 Crimes against property/other crimes will be filed if the  
40 admissible evidence is of such convincing force as to make it



1 probable that a reasonable and objective fact finder would convict  
2 after hearing all the admissible evidence and the most plausible  
3 defense that could be raised.

4 See table below for the crimes within these categories.

5 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

6 CRIMES AGAINST PERSONS

7 Aggravated Murder (RCW 10.95.020)  
8 1st Degree Murder (RCW 9A.32.030)  
9 2nd Degree Murder (RCW 9A.32.050)  
10 1st Degree Manslaughter (RCW 9A.32.060)  
11 2nd Degree Manslaughter (RCW 9A.32.070)  
12 1st Degree Kidnapping (RCW 9A.40.020)  
13 2nd Degree Kidnapping (RCW 9A.40.030)  
14 1st Degree Assault (RCW 9A.36.011)  
15 2nd Degree Assault (RCW 9A.36.021)  
16 3rd Degree Assault (RCW 9A.36.031)  
17 4th Degree Assault (if a violation of RCW 9A.36.041(3))  
18 1st Degree Assault of a Child (RCW 9A.36.120)  
19 2nd Degree Assault of a Child (RCW 9A.36.130)  
20 3rd Degree Assault of a Child (RCW 9A.36.140)  
21 1st Degree Rape (RCW 9A.44.040)  
22 2nd Degree Rape (RCW 9A.44.050)  
23 3rd Degree Rape (RCW 9A.44.060)  
24 1st Degree Rape of a Child (RCW 9A.44.073)  
25 2nd Degree Rape of a Child (RCW 9A.44.076)  
26 3rd Degree Rape of a Child (RCW 9A.44.079)  
27 1st Degree Robbery (RCW 9A.56.200)  
28 2nd Degree Robbery (RCW 9A.56.210)  
29 1st Degree Arson (RCW 9A.48.020)  
30 1st Degree Burglary (RCW 9A.52.020)  
31 1st Degree Identity Theft (RCW 9.35.020(2))  
32 2nd Degree Identity Theft (RCW 9.35.020(3))  
33 1st Degree Extortion (RCW 9A.56.120)  
34 2nd Degree Extortion (RCW 9A.56.130)  
35 1st Degree Criminal Mistreatment (RCW 9A.42.020)  
36 2nd Degree Criminal Mistreatment (RCW 9A.42.030)  
37 1st Degree Theft from a Vulnerable Adult (RCW 9A.56.400(1))  
38 2nd Degree Theft from a Vulnerable Adult (RCW 9A.56.400(2))  
39 Indecent Liberties (RCW 9A.44.100)

1 Incest (RCW 9A.64.020)  
2 Vehicular Homicide (RCW 46.61.520)  
3 Vehicular Assault (RCW 46.61.522)  
4 1st Degree Child Molestation (RCW 9A.44.083)  
5 2nd Degree Child Molestation (RCW 9A.44.086)  
6 3rd Degree Child Molestation (RCW 9A.44.089)  
7 1st Degree Promoting Prostitution (RCW 9A.88.070)  
8 Intimidating a Juror (RCW 9A.72.130)  
9 Communication with a Minor (RCW 9.68A.090)  
10 Intimidating a Witness (RCW 9A.72.110)  
11 Intimidating a Public Servant (RCW 9A.76.180)  
12 Bomb Threat (if against person) (RCW 9.61.160)  
13 Unlawful Imprisonment (RCW 9A.40.040)  
14 Promoting a Suicide Attempt (RCW 9A.36.060)  
15 Criminal Mischief (if against person) (RCW 9A.84.010)  
16 Stalking (RCW 9A.46.110)  
17 Custodial Assault (RCW 9A.36.100)  
18 Domestic Violence Court Order Violation (RCW 10.99.040,  
19 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or  
20 74.34.145)  
21 Counterfeiting (if a violation of RCW 9.16.035(4))  
22 Felony Driving a Motor Vehicle While Under the Influence of  
23 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))  
24 Felony Physical Control of a Motor Vehicle While Under the  
25 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))  
26 Providing Harmful Material to a Minor (section 1 of this act)  
27 CRIMES AGAINST PROPERTY/OTHER CRIMES  
28 2nd Degree Arson (RCW 9A.48.030)  
29 1st Degree Escape (RCW 9A.76.110)  
30 2nd Degree Escape (RCW 9A.76.120)  
31 2nd Degree Burglary (RCW 9A.52.030)  
32 1st Degree Theft (RCW 9A.56.030)  
33 2nd Degree Theft (RCW 9A.56.040)  
34 1st Degree Perjury (RCW 9A.72.020)  
35 2nd Degree Perjury (RCW 9A.72.030)  
36 1st Degree Introducing Contraband (RCW 9A.76.140)  
37 2nd Degree Introducing Contraband (RCW 9A.76.150)  
38 1st Degree Possession of Stolen Property (RCW 9A.56.150)  
39 2nd Degree Possession of Stolen Property (RCW 9A.56.160)

1 Bribery (RCW 9A.68.010)  
2 Bribing a Witness (RCW 9A.72.090)  
3 Bribe received by a Witness (RCW 9A.72.100)  
4 Bomb Threat (if against property) (RCW 9.61.160)  
5 1st Degree Malicious Mischief (RCW 9A.48.070)  
6 2nd Degree Malicious Mischief (RCW 9A.48.080)  
7 1st Degree Reckless Burning (RCW 9A.48.040)  
8 Taking a Motor Vehicle without Authorization (RCW 9A.56.070 and  
9 9A.56.075)  
10 Forgery (RCW 9A.60.020)  
11 2nd Degree Promoting Prostitution (RCW 9A.88.080)  
12 Tampering with a Witness (RCW 9A.72.120)  
13 Trading in Public Office (RCW 9A.68.040)  
14 Trading in Special Influence (RCW 9A.68.050)  
15 Receiving/Granting Unlawful Compensation (RCW 9A.68.030)  
16 Bigamy (RCW 9A.64.010)  
17 Eluding a Pursuing Police Vehicle (RCW 46.61.024)  
18 Willful Failure to Return from Furlough  
19 Escape from Community Custody  
20 Criminal Mischief (if against property) (RCW 9A.84.010)  
21 1st Degree Theft of Livestock (RCW 9A.56.080)  
22 2nd Degree Theft of Livestock (RCW 9A.56.083)  
23 ALL OTHER UNCLASSIFIED FELONIES  
24 Selection of Charges/Degree of Charge  
25 (i) The prosecutor should file charges which adequately describe  
26 the nature of defendant's conduct. Other offenses may be charged only  
27 if they are necessary to ensure that the charges:  
28 (A) Will significantly enhance the strength of the state's case  
29 at trial; or  
30 (B) Will result in restitution to all victims.  
31 (ii) The prosecutor should not overcharge to obtain a guilty  
32 plea. Overcharging includes:  
33 (A) Charging a higher degree;  
34 (B) Charging additional counts.  
35 This standard is intended to direct prosecutors to charge those  
36 crimes which demonstrate the nature and seriousness of a defendant's  
37 criminal conduct, but to decline to charge crimes which are not  
38 necessary to such an indication. Crimes which do not merge as a

1 matter of law, but which arise from the same course of conduct, do  
2 not all have to be charged.

3 (b) GUIDELINES/COMMENTARY:

4 (i) Police Investigation

5 A prosecuting attorney is dependent upon law enforcement agencies  
6 to conduct the necessary factual investigation which must precede the  
7 decision to prosecute. The prosecuting attorney shall ensure that a  
8 thorough factual investigation has been conducted before a decision  
9 to prosecute is made. In ordinary circumstances the investigation  
10 should include the following:

11 (A) The interviewing of all material witnesses, together with the  
12 obtaining of written statements whenever possible;

13 (B) The completion of necessary laboratory tests; and

14 (C) The obtaining, in accordance with constitutional  
15 requirements, of the suspect's version of the events.

16 If the initial investigation is incomplete, a prosecuting  
17 attorney should insist upon further investigation before a decision  
18 to prosecute is made, and specify what the investigation needs to  
19 include.

20 (ii) Exceptions

21 In certain situations, a prosecuting attorney may authorize  
22 filing of a criminal complaint before the investigation is complete  
23 if:

24 (A) Probable cause exists to believe the suspect is guilty; and

25 (B) The suspect presents a danger to the community or is likely  
26 to flee if not apprehended; or

27 (C) The arrest of the suspect is necessary to complete the  
28 investigation of the crime.

29 In the event that the exception to the standard is applied, the  
30 prosecuting attorney shall obtain a commitment from the law  
31 enforcement agency involved to complete the investigation in a timely  
32 manner. If the subsequent investigation does not produce sufficient  
33 evidence to meet the normal charging standard, the complaint should  
34 be dismissed.

35 (iii) Investigation Techniques

36 The prosecutor should be fully advised of the investigatory  
37 techniques that were used in the case investigation including:

38 (A) Polygraph testing;

39 (B) Hypnosis;

1 (C) Electronic surveillance;

2 (D) Use of informants.

3 (iv) Prefiling Discussions with Defendant

4 Discussions with the defendant or his/her representative  
5 regarding the selection or disposition of charges may occur prior to  
6 the filing of charges, and potential agreements can be reached.

7 (v) Prefiling Discussions with Victim(s)

8 Discussions with the victim(s) or victims' representatives  
9 regarding the selection or disposition of charges may occur before  
10 the filing of charges. The discussions may be considered by the  
11 prosecutor in charging and disposition decisions, and should be  
12 considered before reaching any agreement with the defendant regarding  
13 these decisions.

14 **Sec. 4.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to  
15 read as follows:

16 (1) The department shall supervise the following offenders who  
17 are sentenced to probation in superior court, pursuant to RCW  
18 9.92.060, 9.95.204, or 9.95.210:

19 (a) Offenders convicted of:

20 (i) Sexual misconduct with a minor second degree;

21 (ii) Custodial sexual misconduct second degree;

22 (iii) Communication with a minor for immoral purposes; (~~and~~)

23 (iv) Providing harmful material to a minor; and

24 (v) Violation of RCW 9A.44.132(2) (failure to register); and

25 (b) Offenders who have:

26 (i) A current conviction for a repetitive domestic violence  
27 offense where domestic violence has been pleaded and proven after  
28 August 1, 2011; and

29 (ii) A prior conviction for a repetitive domestic violence  
30 offense or domestic violence felony offense where domestic violence  
31 has been pleaded and proven after August 1, 2011.

32 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
33 department pursuant to this section shall be placed on community  
34 custody.

35 (3) The department shall supervise every felony offender  
36 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702  
37 whose risk assessment classifies the offender as one who is at a high  
38 risk to reoffend.

1 (4) Notwithstanding any other provision of this section, the  
2 department shall supervise an offender sentenced to community custody  
3 regardless of risk classification if the offender:

4 (a) Has a current conviction for a sex offense or a serious  
5 violent offense and was sentenced to a term of community custody  
6 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

7 (b) Has been identified by the department as a dangerous mentally  
8 ill offender pursuant to RCW 72.09.370;

9 (c) Has an indeterminate sentence and is subject to parole  
10 pursuant to RCW 9.95.017;

11 (d) Has a current conviction for violating RCW 9A.44.132(1)  
12 (failure to register) and was sentenced to a term of community  
13 custody pursuant to RCW 9.94A.701;

14 (e)(i) Has a current conviction for a domestic violence felony  
15 offense where domestic violence has been pleaded and proven after  
16 August 1, 2011, and a prior conviction for a repetitive domestic  
17 violence offense or domestic violence felony offense where domestic  
18 violence was pleaded and proven after August 1, 2011. This subsection  
19 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

20 (ii) Has a current conviction for a domestic violence felony  
21 offense where domestic violence was pleaded and proven. The state and  
22 its officers, agents, and employees shall not be held criminally or  
23 civilly liable for its supervision of an offender under this  
24 subsection (4)(e)(ii) unless the state and its officers, agents, and  
25 employees acted with gross negligence;

26 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,  
27 9.94A.670, or 9.94A.711;

28 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

29 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular  
30 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)  
31 (felony DUI), or RCW 46.61.504(6) (felony physical control).

32 (5) The department shall supervise any offender who is released  
33 by the indeterminate sentence review board and who was sentenced to  
34 community custody or subject to community custody under the terms of  
35 release.

36 (6) The department is not authorized to, and may not, supervise  
37 any offender sentenced to a term of community custody or any  
38 probationer unless the offender or probationer is one for whom  
39 supervision is required under this section or RCW 9.94A.5011.

1 (7) The department shall conduct a risk assessment for every  
2 felony offender sentenced to a term of community custody who may be  
3 subject to supervision under this section or RCW 9.94A.5011.

4 (8) The period of time the department is authorized to supervise  
5 an offender under this section may not exceed the duration of  
6 community custody specified under RCW 9.94B.050, 9.94A.701 (1)  
7 through (8), or 9.94A.702, except in cases where the court has  
8 imposed an exceptional term of community custody under RCW 9.94A.535.

9 (9) The period of time the department is authorized to supervise  
10 an offender under this section may be reduced by the earned award of  
11 supervision compliance credit pursuant to RCW 9.94A.717.

12 **Sec. 5.** RCW 9.94A.515 and 2020 c 344 s 4 are each amended to  
13 read as follows:

14 TABLE 2

15 CRIMES INCLUDED WITHIN EACH  
16 SERIOUSNESS LEVEL

- 17 XVI Aggravated Murder 1 (RCW 10.95.020)
- 18 XV Homicide by abuse (RCW 9A.32.055)
- 19 Malicious explosion 1 (RCW  
20 70.74.280(1))
- 21 Murder 1 (RCW 9A.32.030)
- 22 XIV Murder 2 (RCW 9A.32.050)
- 23 Trafficking 1 (RCW 9A.40.100(1))
- 24 XIII Malicious explosion 2 (RCW  
25 70.74.280(2))
- 26 Malicious placement of an explosive 1  
27 (RCW 70.74.270(1))
- 28 XII Assault 1 (RCW 9A.36.011)
- 29 Assault of a Child 1 (RCW 9A.36.120)
- 30 Malicious placement of an imitation  
31 device 1 (RCW 70.74.272(1)(a))
- 32 Promoting Commercial Sexual Abuse of  
33 a Minor (RCW 9.68A.101)
- 34 Rape 1 (RCW 9A.44.040)
- 35 Rape of a Child 1 (RCW 9A.44.073)

1 Trafficking 2 (RCW 9A.40.100(3))  
2 XI Manslaughter 1 (RCW 9A.32.060)  
3 Rape 2 (RCW 9A.44.050)  
4 Rape of a Child 2 (RCW 9A.44.076)  
5 Vehicular Homicide, by being under the  
6 influence of intoxicating liquor or  
7 any drug (RCW 46.61.520)  
8 Vehicular Homicide, by the operation of  
9 any vehicle in a reckless manner  
10 (RCW 46.61.520)  
11 X Child Molestation 1 (RCW 9A.44.083)  
12 Criminal Mistreatment 1 (RCW  
13 9A.42.020)  
14 Indecent Liberties (with forcible  
15 compulsion) (RCW  
16 9A.44.100(1)(a))  
17 Kidnapping 1 (RCW 9A.40.020)  
18 Leading Organized Crime (RCW  
19 9A.82.060(1)(a))  
20 Malicious explosion 3 (RCW  
21 70.74.280(3))  
22 Sexually Violent Predator Escape (RCW  
23 9A.76.115)  
24 IX Abandonment of Dependent Person 1  
25 (RCW 9A.42.060)  
26 Assault of a Child 2 (RCW 9A.36.130)  
27 Explosive devices prohibited (RCW  
28 70.74.180)  
29 Hit and Run—Death (RCW  
30 46.52.020(4)(a))  
31 Homicide by Watercraft, by being under  
32 the influence of intoxicating liquor  
33 or any drug (RCW 79A.60.050)  
34 Inciting Criminal Profiteering (RCW  
35 9A.82.060(1)(b))



1 Malicious placement of an explosive 2  
2 (RCW 70.74.270(2))  
3 Robbery 1 (RCW 9A.56.200)  
4 Sexual Exploitation (RCW 9.68A.040)  
5 VIII Arson 1 (RCW 9A.48.020)  
6 Commercial Sexual Abuse of a Minor  
7 (RCW 9.68A.100)  
8 Homicide by Watercraft, by the  
9 operation of any vessel in a reckless  
10 manner (RCW 79A.60.050)  
11 Manslaughter 2 (RCW 9A.32.070)  
12 Promoting Prostitution 1 (RCW  
13 9A.88.070)  
14 Theft of Ammonia (RCW 69.55.010)  
15 VII Air bag diagnostic systems (causing  
16 bodily injury or death) (RCW  
17 46.37.660(2)(b))  
18 Air bag replacement requirements  
19 (causing bodily injury or death)  
20 (RCW 46.37.660(1)(b))  
21 Burglary 1 (RCW 9A.52.020)  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Civil Disorder Training (RCW  
24 9A.48.120)  
25 Dealing in depictions of minor engaged  
26 in sexually explicit conduct 1  
27 (RCW 9.68A.050(1))  
28 Drive-by Shooting (RCW 9A.36.045)  
29 False Reporting 1 (RCW  
30 9A.84.040(2)(a))  
31 Homicide by Watercraft, by disregard  
32 for the safety of others (RCW  
33 79A.60.050)

1 Indecent Liberties (without forcible  
2 compulsion) (RCW 9A.44.100(1)  
3 (b) and (c))  
4 Introducing Contraband 1 (RCW  
5 9A.76.140)  
6 Malicious placement of an explosive 3  
7 (RCW 70.74.270(3))  
8 Manufacture or import counterfeit,  
9 nonfunctional, damaged, or  
10 previously deployed air bag  
11 (causing bodily injury or death)  
12 (RCW 46.37.650(1)(b))  
13 Negligently Causing Death By Use of a  
14 Signal Preemption Device (RCW  
15 46.37.675)  
16 Sell, install, or reinstall counterfeit,  
17 nonfunctional, damaged, or  
18 previously deployed airbag (RCW  
19 46.37.650(2)(b))  
20 Sending, bringing into state depictions  
21 of minor engaged in sexually  
22 explicit conduct 1 (RCW  
23 9.68A.060(1))  
24 Unlawful Possession of a Firearm in the  
25 first degree (RCW 9.41.040(1))  
26 Use of a Machine Gun or Bump-fire  
27 Stock in Commission of a Felony  
28 (RCW 9.41.225)  
29 Vehicular Homicide, by disregard for  
30 the safety of others (RCW  
31 46.61.520)  
32 VI Bail Jumping with Murder 1 (RCW  
33 9A.76.170(3)(a))  
34 Bribery (RCW 9A.68.010)  
35 Incest 1 (RCW 9A.64.020(1))  
36 Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW  
2 9A.72.110, 9A.72.130)  
3 Malicious placement of an imitation  
4 device 2 (RCW 70.74.272(1)(b))  
5 Possession of Depictions of a Minor  
6 Engaged in Sexually Explicit  
7 Conduct 1 (RCW 9.68A.070(1))  
8 Rape of a Child 3 (RCW 9A.44.079)  
9 Theft of a Firearm (RCW 9A.56.300)  
10 Theft from a Vulnerable Adult 1 (RCW  
11 9A.56.400(1))  
12 Unlawful Storage of Ammonia (RCW  
13 69.55.020)  
14 V Abandonment of Dependent Person 2  
15 (RCW 9A.42.070)  
16 Advancing money or property for  
17 extortionate extension of credit  
18 (RCW 9A.82.030)  
19 Air bag diagnostic systems (RCW  
20 46.37.660(2)(c))  
21 Air bag replacement requirements  
22 (RCW 46.37.660(1)(c))  
23 Bail Jumping with class A Felony  
24 (RCW 9A.76.170(3)(b))  
25 Child Molestation 3 (RCW 9A.44.089)  
26 Criminal Mistreatment 2 (RCW  
27 9A.42.030)  
28 Custodial Sexual Misconduct 1 (RCW  
29 9A.44.160)  
30 Dealing in Depictions of Minor  
31 Engaged in Sexually Explicit  
32 Conduct 2 (RCW 9.68A.050(2))

1 Domestic Violence Court Order  
2 Violation (RCW 10.99.040,  
3 10.99.050, 26.09.300, 26.10.220,  
4 26.26B.050, 26.50.110, 26.52.070,  
5 or 74.34.145)  
6 Extortion 1 (RCW 9A.56.120)  
7 Extortionate Extension of Credit (RCW  
8 9A.82.020)  
9 Extortionate Means to Collect  
10 Extensions of Credit (RCW  
11 9A.82.040)  
12 Incest 2 (RCW 9A.64.020(2))  
13 Kidnapping 2 (RCW 9A.40.030)  
14 Manufacture or import counterfeit,  
15 nonfunctional, damaged, or  
16 previously deployed air bag (RCW  
17 46.37.650(1)(c))  
18 Perjury 1 (RCW 9A.72.020)  
19 Persistent prison misbehavior (RCW  
20 9.94.070)  
21 Possession of a Stolen Firearm (RCW  
22 9A.56.310)  
23 Rape 3 (RCW 9A.44.060)  
24 Rendering Criminal Assistance 1 (RCW  
25 9A.76.070)  
26 Sell, install, or reinstall counterfeit,  
27 nonfunctional, damaged, or  
28 previously deployed airbag (RCW  
29 46.37.650(2)(c))  
30 Sending, Bringing into State Depictions  
31 of Minor Engaged in Sexually  
32 Explicit Conduct 2 (RCW  
33 9.68A.060(2))  
34 Sexual Misconduct with a Minor 1  
35 (RCW 9A.44.093)

1 Sexually Violating Human Remains  
2 (RCW 9A.44.105)  
3 Stalking (RCW 9A.46.110)  
4 Taking Motor Vehicle Without  
5 Permission 1 (RCW 9A.56.070)  
6 IV Arson 2 (RCW 9A.48.030)  
7 Assault 2 (RCW 9A.36.021)  
8 Assault 3 (of a Peace Officer with a  
9 Projectile Stun Gun) (RCW  
10 9A.36.031(1)(h))  
11 Assault 4 (third domestic violence  
12 offense) (RCW 9A.36.041(3))  
13 Assault by Watercraft (RCW  
14 79A.60.060)  
15 Bribing a Witness/Bribe Received by  
16 Witness (RCW 9A.72.090,  
17 9A.72.100)  
18 Cheating 1 (RCW 9A.46.1961)  
19 Commercial Bribery (RCW 9A.68.060)  
20 Counterfeiting (RCW 9.16.035(4))  
21 Driving While Under the Influence  
22 (RCW 46.61.502(6))  
23 Endangerment with a Controlled  
24 Substance (RCW 9A.42.100)  
25 Escape 1 (RCW 9A.76.110)  
26 Hate Crime (RCW 9A.36.080)  
27 Hit and Run—Injury (RCW  
28 46.52.020(4)(b))  
29 Hit and Run with Vessel—Injury  
30 Accident (RCW 79A.60.200(3))  
31 Identity Theft 1 (RCW 9.35.020(2))  
32 Indecent Exposure to Person Under Age  
33 Fourteen (subsequent sex offense)  
34 (RCW 9A.88.010)

1 Influencing Outcome of Sporting Event  
2 (RCW 9A.82.070)  
3 Physical Control of a Vehicle While  
4 Under the Influence (RCW  
5 46.61.504(6))  
6 Possession of Depictions of a Minor  
7 Engaged in Sexually Explicit  
8 Conduct 2 (RCW 9.68A.070(2))  
9 Residential Burglary (RCW 9A.52.025)  
10 Robbery 2 (RCW 9A.56.210)  
11 Theft of Livestock 1 (RCW 9A.56.080)  
12 Threats to Bomb (RCW 9.61.160)  
13 Trafficking in Stolen Property 1 (RCW  
14 9A.82.050)  
15 Unlawful factoring of a credit card or  
16 payment card transaction (RCW  
17 9A.56.290(4)(b))  
18 Unlawful transaction of health coverage  
19 as a health care service contractor  
20 (RCW 48.44.016(3))  
21 Unlawful transaction of health coverage  
22 as a health maintenance  
23 organization (RCW 48.46.033(3))  
24 Unlawful transaction of insurance  
25 business (RCW 48.15.023(3))  
26 Unlicensed practice as an insurance  
27 professional (RCW 48.17.063(2))  
28 Use of Proceeds of Criminal  
29 Profiteering (RCW 9A.82.080 (1)  
30 and (2))  
31 Vehicle Prowling 2 (third or subsequent  
32 offense) (RCW 9A.52.100(3))

1 Vehicular Assault, by being under the  
2 influence of intoxicating liquor or  
3 any drug, or by the operation or  
4 driving of a vehicle in a reckless  
5 manner (RCW 46.61.522)

6 Viewing of Depictions of a Minor  
7 Engaged in Sexually Explicit  
8 Conduct 1 (RCW 9.68A.075(1))

9 Willful Failure to Return from Furlough  
10 (RCW 72.66.060)

11 III Animal Cruelty 1 (Sexual Conduct or  
12 Contact) (RCW 16.52.205(3))

13 Assault 3 (Except Assault 3 of a Peace  
14 Officer With a Projectile Stun Gun)  
15 (RCW 9A.36.031 except subsection  
16 (1)(h))

17 Assault of a Child 3 (RCW 9A.36.140)

18 Bail Jumping with class B or C Felony  
19 (RCW 9A.76.170(3)(c))

20 Burglary 2 (RCW 9A.52.030)

21 Communication with a Minor for  
22 Immoral Purposes (RCW  
23 9.68A.090)

24 Criminal Gang Intimidation (RCW  
25 9A.46.120)

26 Custodial Assault (RCW 9A.36.100)

27 Cyberstalking (subsequent conviction or  
28 threat of death) (RCW 9.61.260(3))

29 Escape 2 (RCW 9A.76.120)

30 Extortion 2 (RCW 9A.56.130)

31 False Reporting 2 (RCW  
32 9A.84.040(2)(b))

33 Harassment (RCW 9A.46.020)

34 Intimidating a Public Servant (RCW  
35 9A.76.180)

1 Introducing Contraband 2 (RCW  
2 9A.76.150)  
3 Malicious Injury to Railroad Property  
4 (RCW 81.60.070)  
5 Manufacture of Untraceable Firearm  
6 with Intent to Sell (RCW 9.41.190)  
7 Manufacture or Assembly of an  
8 Undetectable Firearm or  
9 Untraceable Firearm (RCW  
10 9.41.325)  
11 Mortgage Fraud (RCW 19.144.080)  
12 Negligently Causing Substantial Bodily  
13 Harm By Use of a Signal  
14 Preemption Device (RCW  
15 46.37.674)  
16 Organized Retail Theft 1 (RCW  
17 9A.56.350(2))  
18 Perjury 2 (RCW 9A.72.030)  
19 Possession of Incendiary Device (RCW  
20 9.40.120)  
21 Possession of Machine Gun, Bump-Fire  
22 Stock, Undetectable Firearm, or  
23 Short-Barreled Shotgun or Rifle  
24 (RCW 9.41.190)  
25 Promoting Prostitution 2 (RCW  
26 9A.88.080)  
27 Providing Harmful Material to a Minor  
28 (section 1(2)(b) of this act)  
29 Retail Theft with Special Circumstances  
30 1 (RCW 9A.56.360(2))  
31 Securities Act violation (RCW  
32 21.20.400)  
33 Tampering with a Witness (RCW  
34 9A.72.120)



1 Telephone Harassment (subsequent  
2 conviction or threat of death) (RCW  
3 9.61.230(2))  
4 Theft of Livestock 2 (RCW 9A.56.083)  
5 Theft with the Intent to Resell 1 (RCW  
6 9A.56.340(2))  
7 Trafficking in Stolen Property 2 (RCW  
8 9A.82.055)  
9 Unlawful Hunting of Big Game 1 (RCW  
10 77.15.410(3)(b))  
11 Unlawful Imprisonment (RCW  
12 9A.40.040)  
13 Unlawful Misbranding of Fish or  
14 Shellfish 1 (RCW 77.140.060(3))  
15 Unlawful possession of firearm in the  
16 second degree (RCW 9.41.040(2))  
17 Unlawful Taking of Endangered Fish or  
18 Wildlife 1 (RCW 77.15.120(3)(b))  
19 Unlawful Trafficking in Fish, Shellfish,  
20 or Wildlife 1 (RCW  
21 77.15.260(3)(b))  
22 Unlawful Use of a Nondesignated  
23 Vessel (RCW 77.15.530(4))  
24 Vehicular Assault, by the operation or  
25 driving of a vehicle with disregard  
26 for the safety of others (RCW  
27 46.61.522)  
28 Willful Failure to Return from Work  
29 Release (RCW 72.65.070)  
30 II Commercial Fishing Without a License  
31 1 (RCW 77.15.500(3)(b))  
32 Computer Trespass 1 (RCW 9A.90.040)  
33 Counterfeiting (RCW 9.16.035(3))  
34 Electronic Data Service Interference  
35 (RCW 9A.90.060)

1 Electronic Data Tampering 1 (RCW  
2 9A.90.080)  
3 Electronic Data Theft (RCW 9A.90.100)  
4 Engaging in Fish Dealing Activity  
5 Unlicensed 1 (RCW 77.15.620(3))  
6 Escape from Community Custody  
7 (RCW 72.09.310)  
8 Failure to Register as a Sex Offender  
9 (second or subsequent offense)  
10 (RCW 9A.44.130 prior to June 10,  
11 2010, and RCW 9A.44.132)  
12 Health Care False Claims (RCW  
13 48.80.030)  
14 Identity Theft 2 (RCW 9.35.020(3))  
15 Improperly Obtaining Financial  
16 Information (RCW 9.35.010)  
17 Malicious Mischief 1 (RCW 9A.48.070)  
18 Organized Retail Theft 2 (RCW  
19 9A.56.350(3))  
20 Possession of Stolen Property 1 (RCW  
21 9A.56.150)  
22 Possession of a Stolen Vehicle (RCW  
23 9A.56.068)  
24 Retail Theft with Special Circumstances  
25 2 (RCW 9A.56.360(3))  
26 Scrap Processing, Recycling, or  
27 Supplying Without a License  
28 (second or subsequent offense)  
29 (RCW 19.290.100)  
30 Theft 1 (RCW 9A.56.030)  
31 Theft of a Motor Vehicle (RCW  
32 9A.56.065)  
33 Theft of Rental, Leased, Lease-  
34 purchased, or Loaned Property  
35 (valued at five thousand dollars or  
36 more) (RCW 9A.56.096(5)(a))

1 Theft with the Intent to Resell 2 (RCW  
2 9A.56.340(3))  
3 Trafficking in Insurance Claims (RCW  
4 48.30A.015)  
5 Unlawful factoring of a credit card or  
6 payment card transaction (RCW  
7 9A.56.290(4)(a))  
8 Unlawful Participation of Non-Indians  
9 in Indian Fishery (RCW  
10 77.15.570(2))  
11 Unlawful Practice of Law (RCW  
12 2.48.180)  
13 Unlawful Purchase or Use of a License  
14 (RCW 77.15.650(3)(b))  
15 Unlawful Trafficking in Fish, Shellfish,  
16 or Wildlife 2 (RCW  
17 77.15.260(3)(a))  
18 Unlicensed Practice of a Profession or  
19 Business (RCW 18.130.190(7))  
20 Voyeurism 1 (RCW 9A.44.115)  
21 I Attempting to Elude a Pursuing Police  
22 Vehicle (RCW 46.61.024)  
23 False Verification for Welfare (RCW  
24 74.08.055)  
25 Forgery (RCW 9A.60.020)  
26 Fraudulent Creation or Revocation of a  
27 Mental Health Advance Directive  
28 (RCW 9A.60.060)  
29 Malicious Mischief 2 (RCW 9A.48.080)  
30 Mineral Trespass (RCW 78.44.330)  
31 Possession of Stolen Property 2 (RCW  
32 9A.56.160)  
33 Reckless Burning 1 (RCW 9A.48.040)  
34 Spotlighting Big Game 1 (RCW  
35 77.15.450(3)(b))

1 Suspension of Department Privileges 1  
2 (RCW 77.15.670(3)(b))  
3 Taking Motor Vehicle Without  
4 Permission 2 (RCW 9A.56.075)  
5 Theft 2 (RCW 9A.56.040)  
6 Theft from a Vulnerable Adult 2 (RCW  
7 9A.56.400(2))  
8 Theft of Rental, Leased, Lease-  
9 purchased, or Loaned Property  
10 (valued at seven hundred fifty  
11 dollars or more but less than five  
12 thousand dollars) (RCW  
13 9A.56.096(5)(b))  
14 Transaction of insurance business  
15 beyond the scope of licensure  
16 (RCW 48.17.063)  
17 Unlawful Fish and Shellfish Catch  
18 Accounting (RCW 77.15.630(3)(b))  
19 Unlawful Issuance of Checks or Drafts  
20 (RCW 9A.56.060)  
21 Unlawful Possession of Fictitious  
22 Identification (RCW 9A.56.320)  
23 Unlawful Possession of Instruments of  
24 Financial Fraud (RCW 9A.56.320)  
25 Unlawful Possession of Payment  
26 Instruments (RCW 9A.56.320)  
27 Unlawful Possession of a Personal  
28 Identification Device (RCW  
29 9A.56.320)  
30 Unlawful Production of Payment  
31 Instruments (RCW 9A.56.320)  
32 Unlawful Releasing, Planting,  
33 Possessing, or Placing Deleterious  
34 Exotic Wildlife (RCW  
35 77.15.250(2)(b))

1 Unlawful Trafficking in Food Stamps  
2 (RCW 9.91.142)  
3 Unlawful Use of Food Stamps (RCW  
4 9.91.144)  
5 Unlawful Use of Net to Take Fish 1  
6 (RCW 77.15.580(3)(b))  
7 Unlawful Use of Prohibited Aquatic  
8 Animal Species (RCW  
9 77.15.253(3))  
10 Vehicle Prowl 1 (RCW 9A.52.095)  
11 Violating Commercial Fishing Area or  
12 Time 1 (RCW 77.15.550(3)(b))

13 **Sec. 6.** RCW 9.95.062 and 2011 c 111 s 3 are each amended to read  
14 as follows:

15 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant  
16 in a criminal action shall not stay the execution of the judgment of  
17 conviction, if the court determines by a preponderance of the  
18 evidence that:

19 (a) The defendant is likely to flee or to pose a danger to the  
20 safety of any other person or the community if the judgment is  
21 stayed; or

22 (b) The delay resulting from the stay will unduly diminish the  
23 deterrent effect of the punishment; or

24 (c) A stay of the judgment will cause unreasonable trauma to the  
25 victims of the crime or their families; or

26 (d) The defendant has not undertaken to the extent of the  
27 defendant's financial ability to pay the financial obligations under  
28 the judgment or has not posted an adequate performance bond to assure  
29 payment.

30 (2) An appeal by a defendant convicted of one of the following  
31 offenses shall not stay execution of the judgment of conviction: Rape  
32 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of  
33 a child in the first, second, or third degree (RCW 9A.44.073,  
34 9A.44.076, and 9A.44.079); child molestation in the first, second, or  
35 third degree (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual  
36 misconduct with a minor in the first or second degree (RCW 9A.44.093  
37 and 9A.44.096); indecent liberties (RCW 9A.44.100); incest (RCW

1 9A.64.020); luring (RCW 9A.40.090); human trafficking in the first or  
2 second degree (RCW 9A.40.100); promoting commercial sexual abuse of a  
3 minor (RCW 9.68A.101); any class A or B felony that is a sexually  
4 motivated offense as defined in RCW 9.94A.030; a felony violation of  
5 RCW 9.68A.090; a felony violation of section 1 of this act; or any  
6 offense that is, under chapter 9A.28 RCW, a criminal attempt,  
7 solicitation, or conspiracy to commit one of those offenses.

8 (3) In case the defendant has been convicted of a felony, and has  
9 been unable to obtain release pending the appeal by posting an appeal  
10 bond, cash, adequate security, release on personal recognizance, or  
11 any other conditions imposed by the court, the time the defendant has  
12 been imprisoned pending the appeal shall be deducted from the term  
13 for which the defendant was sentenced, if the judgment is affirmed.

14 **Sec. 7.** RCW 9A.44.128 and 2015 c 261 s 2 are each amended to  
15 read as follows:

16 For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200,  
17 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

18 (1) "Business day" means any day other than Saturday, Sunday, or  
19 a legal local, state, or federal holiday.

20 (2) "Conviction" means any adult conviction or juvenile  
21 adjudication for a sex offense or kidnapping offense.

22 (3) "Disqualifying offense" means a conviction for: Any offense  
23 that is a felony; a sex offense as defined in this section; a crime  
24 against children or persons as defined in RCW 43.43.830(7) and  
25 9.94A.411(2)(a); an offense with a domestic violence designation as  
26 provided in RCW 10.99.020; permitting the commercial sexual abuse of  
27 a minor as defined in RCW 9.68A.103; or any violation of chapter  
28 9A.88 RCW.

29 (4) "Employed" or "carries on a vocation" means employment that  
30 is full time or part time for a period of time exceeding fourteen  
31 days, or for an aggregate period of time exceeding thirty days during  
32 any calendar year. A person is employed or carries on a vocation  
33 whether the person's employment is financially compensated,  
34 volunteered, or for the purpose of government or educational benefit.

35 (5) "Fixed residence" means a building that a person lawfully and  
36 habitually uses as living quarters a majority of the week. Uses as  
37 living quarters means to conduct activities consistent with the  
38 common understanding of residing, such as sleeping; eating; keeping  
39 personal belongings; receiving mail; and paying utilities, rent, or

1 mortgage. A nonpermanent structure including, but not limited to, a  
2 motor home, travel trailer, camper, or boat may qualify as a  
3 residence provided it is lawfully and habitually used as living  
4 quarters a majority of the week, primarily kept at one location with  
5 a physical address, and the location it is kept at is either owned or  
6 rented by the person or used by the person with the permission of the  
7 owner or renter. A shelter program may qualify as a residence  
8 provided it is a shelter program designed to provide temporary living  
9 accommodations for the homeless, provides an offender with a  
10 personally assigned living space, and the offender is permitted to  
11 store belongings in the living space.

12 (6) "In the community" means residing outside of confinement or  
13 incarceration for a disqualifying offense.

14 (7) "Institution of higher education" means any public or private  
15 institution dedicated to postsecondary education, including any  
16 college, university, community college, trade, or professional  
17 school.

18 (8) "Kidnapping offense" means:

19 (a) The crimes of kidnapping in the first degree, kidnapping in  
20 the second degree, and unlawful imprisonment, as defined in chapter  
21 9A.40 RCW, where the victim is a minor and the offender is not the  
22 minor's parent;

23 (b) Any offense that is, under chapter 9A.28 RCW, a criminal  
24 attempt, criminal solicitation, or criminal conspiracy to commit an  
25 offense that is classified as a kidnapping offense under this  
26 subsection;

27 (c) Any federal or out-of-state conviction for: An offense for  
28 which the person would be required to register as a kidnapping  
29 offender if residing in the state of conviction; or, if not required  
30 to register in the state of conviction, an offense that under the  
31 laws of this state would be classified as a kidnapping offense under  
32 this subsection; and

33 (d) Any tribal conviction for an offense for which the person  
34 would be required to register as a kidnapping offender while residing  
35 in the reservation of conviction; or, if not required to register in  
36 the reservation of conviction, an offense that under the laws of this  
37 state would be classified as a kidnapping offense under this  
38 subsection.

39 (9) "Lacks a fixed residence" means the person does not have a  
40 living situation that meets the definition of a fixed residence and

1 includes, but is not limited to, a shelter program designed to  
2 provide temporary living accommodations for the homeless, an outdoor  
3 sleeping location, or locations where the person does not have  
4 permission to stay.

5 (10) "Sex offense" means:

6 (a) Any offense defined as a sex offense by RCW 9.94A.030;

7 (b) Any violation under RCW 9A.44.096 (sexual misconduct with a  
8 minor in the second degree);

9 (c) Any violation under RCW 9A.40.100(1)(b)(ii) (trafficking);

10 (d) Any violation under RCW 9.68A.090 (communication with a minor  
11 for immoral purposes);

12 (e) A violation under RCW 9A.88.070 (promoting prostitution in  
13 the first degree) or RCW 9A.88.080 (promoting prostitution in the  
14 second degree) if the person has a prior conviction for one of these  
15 offenses;

16 (f) Any violation under RCW 9A.40.100(1)(a)(i)(A) (III) or (IV)  
17 or (a)(i)(B);

18 (g) Any violation under section 1 of this act;

19 (h) Any gross misdemeanor that is, under chapter 9A.28 RCW, a  
20 criminal attempt, criminal solicitation, or criminal conspiracy to  
21 commit an offense that is classified as a sex offense under RCW  
22 9.94A.030 or this subsection;

23 ~~((h))~~ (i) Any out-of-state conviction for an offense for which  
24 the person would be required to register as a sex offender while  
25 residing in the state of conviction; or, if not required to register  
26 in the state of conviction, an offense that under the laws of this  
27 state would be classified as a sex offense under this subsection;

28 ~~((i))~~ (j) Any federal conviction classified as a sex offense  
29 under 42 U.S.C. Sec. 16911 (SORNA);

30 ~~((j))~~ (k) Any military conviction for a sex offense. This  
31 includes sex offenses under the uniform code of military justice, as  
32 specified by the United States secretary of defense;

33 ~~((k))~~ (l) Any conviction in a foreign country for a sex offense  
34 if it was obtained with sufficient safeguards for fundamental  
35 fairness and due process for the accused under guidelines or  
36 regulations established pursuant to 42 U.S.C. Sec. 16912;

37 ~~((l))~~ (m) Any tribal conviction for an offense for which the  
38 person would be required to register as a sex offender while residing  
39 in the reservation of conviction; or, if not required to register in



1 the reservation of conviction, an offense that under the laws of this  
2 state would be classified as a sex offense under this subsection.

3 (11) "School" means a public or private school regulated under  
4 Title 28A RCW or chapter 72.40 RCW.

5 (12) "Student" means a person who is enrolled, on a full-time or  
6 part-time basis, in any school or institution of higher education.

7 **Sec. 8.** RCW 9A.44.140 and 2020 c 249 s 2 are each amended to  
8 read as follows:

9 The duty to register under RCW 9A.44.130 shall continue for the  
10 duration provided in this section.

11 (1) For a person convicted in this state of a class A felony, or  
12 a person convicted of any sex offense or kidnapping offense who has  
13 one or more prior convictions for a sex offense or kidnapping  
14 offense, the duty to register shall continue indefinitely.

15 (2) For a person convicted in this state of a class B felony who  
16 does not have one or more prior convictions for a sex offense or  
17 kidnapping offense, the duty to register shall end fifteen years  
18 after the last date of release from confinement, if any, (including  
19 full-time residential treatment) pursuant to the conviction, or entry  
20 of the judgment and sentence, if the person has spent fifteen  
21 consecutive years in the community without being convicted of a  
22 disqualifying offense during that time period.

23 (3) For a person convicted in this state of a class C felony, a  
24 violation of RCW 9.68A.090 (~~(or)~~), 9A.44.096, or section 1 of this  
25 act, or an attempt, solicitation, or conspiracy to commit a class C  
26 felony, and the person does not have one or more prior convictions  
27 for a sex offense or kidnapping offense, the duty to register shall  
28 end ten years after the last date of release from confinement, if  
29 any, (including full-time residential treatment) pursuant to the  
30 conviction, or entry of the judgment and sentence, if the person has  
31 spent ten consecutive years in the community without being convicted  
32 of a disqualifying offense during that time period.

33 (4) Except as provided in RCW 9A.44.142, for a person required to  
34 register for a federal, tribal, or out-of-state conviction, the duty  
35 to register shall continue indefinitely.

36 (5) For a person who is or has been determined to be a sexually  
37 violent predator pursuant to chapter 71.09 RCW, the duty to register  
38 shall continue for the person's lifetime.

1 (6) Nothing in this section prevents a person from being relieved  
2 of the duty to register under RCW 9A.44.142, 9A.44.143, and  
3 13.40.162.

4 (7) Nothing in RCW 9.94A.637 relating to discharge of an offender  
5 shall be construed as operating to relieve the offender of his or her  
6 duty to register pursuant to RCW 9A.44.130.

7 (8) For purposes of determining whether a person has been  
8 convicted of more than one sex offense, failure to register as a sex  
9 offender or kidnapping offender is not a sex or kidnapping offense.

10 (9) The provisions of this section and RCW 9A.44.141 through  
11 9A.44.143 apply equally to a person who has been found not guilty by  
12 reason of insanity under chapter 10.77 RCW of a sex offense or  
13 kidnapping offense.

14 **Sec. 9.** RCW 10.64.025 and 2011 c 111 s 4 are each amended to  
15 read as follows:

16 (1) A defendant who has been found guilty of a felony and is  
17 awaiting sentencing shall be detained unless the court finds by clear  
18 and convincing evidence that the defendant is not likely to flee or  
19 to pose a danger to the safety of any other person or the community  
20 if released. Any bail bond that was posted on behalf of a defendant  
21 shall, upon the defendant's conviction, be exonerated.

22 (2) A defendant who has been found guilty of one of the following  
23 offenses shall be detained pending sentencing: Rape in the first or  
24 second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the  
25 first, second, or third degree (RCW 9A.44.073, 9A.44.076, and  
26 9A.44.079); child molestation in the first, second, or third degree  
27 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a  
28 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);  
29 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring  
30 (RCW 9A.40.090); human trafficking in the first or second degree (RCW  
31 9A.40.100); promoting commercial sexual abuse of a minor (RCW  
32 9.68A.101); any class A or B felony that is a sexually motivated  
33 offense as defined in RCW 9.94A.030; a felony violation of RCW  
34 9.68A.090; a felony violation of section 1 of this act; or any  
35 offense that is, under chapter 9A.28 RCW, a criminal attempt,  
36 solicitation, or conspiracy to commit one of those offenses.

37 **Sec. 10.** RCW 43.43.754 and 2020 c 26 s 7 are each amended to  
38 read as follows:

1 (1) A biological sample must be collected for purposes of DNA  
2 identification analysis from:

3 (a) Every adult or juvenile individual convicted of a felony, or  
4 any of the following crimes (or equivalent juvenile offenses):

5 (i) Assault in the fourth degree where domestic violence as  
6 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,  
7 9.94A.030);

8 (ii) Assault in the fourth degree with sexual motivation (RCW  
9 9A.36.041, 9.94A.835);

10 (iii) Communication with a minor for immoral purposes (RCW  
11 9.68A.090);

12 (iv) Custodial sexual misconduct in the second degree (RCW  
13 9A.44.170);

14 (v) Failure to register (chapter 9A.44 RCW);

15 (vi) Harassment (RCW 9A.46.020);

16 (vii) Patronizing a prostitute (RCW 9A.88.110);

17 (viii) Sexual misconduct with a minor in the second degree (RCW  
18 9A.44.096);

19 (ix) Stalking (RCW 9A.46.110);

20 (x) Indecent exposure (RCW 9A.88.010);

21 (xi) Providing harmful material to a minor (section 1 of this  
22 act);

23 (xii) Violation of a sexual assault protection order granted  
24 under chapter 7.90 RCW; and

25 (b) Every adult or juvenile individual who is required to  
26 register under RCW 9A.44.130.

27 (2)(a) A municipal jurisdiction may also submit any biological  
28 sample to the laboratory services bureau of the Washington state  
29 patrol for purposes of DNA identification analysis when:

30 (i) The sample was collected from a defendant upon conviction for  
31 a municipal offense where the underlying ordinance does not adopt the  
32 relevant state statute by reference but the offense is otherwise  
33 equivalent to an offense in subsection (1)(a) of this section;

34 (ii) The equivalent offense in subsection (1)(a) of this section  
35 was an offense for which collection of a biological sample was  
36 required under this section at the time of the conviction; and

37 (iii) The sample was collected on or after June 12, 2008, and  
38 before January 1, 2020.

39 (b) When submitting a biological sample under this subsection,  
40 the municipal jurisdiction must include a signed affidavit from the

1 municipal prosecuting authority of the jurisdiction in which the  
2 conviction occurred specifying the state crime to which the municipal  
3 offense is equivalent.

4 (3) Law enforcement may submit to the forensic laboratory  
5 services bureau of the Washington state patrol, for purposes of DNA  
6 identification analysis, any lawfully obtained biological sample  
7 within its control from a deceased offender who was previously  
8 convicted of an offense under subsection (1)(a) of this section,  
9 regardless of the date of conviction.

10 (4) If the Washington state patrol crime laboratory already has a  
11 DNA sample from an individual for a qualifying offense, a subsequent  
12 submission is not required to be submitted.

13 (5) Biological samples shall be collected in the following  
14 manner:

15 (a) For persons convicted of any offense listed in subsection  
16 (1)(a) of this section or adjudicated guilty of an equivalent  
17 juvenile offense, who do not serve a term of confinement in a  
18 department of corrections facility or a department of children,  
19 youth, and families facility, and are serving a term of confinement  
20 in a city or county jail facility, the city or county jail facility  
21 shall be responsible for obtaining the biological samples.

22 (b) The local police department or sheriff's office shall be  
23 responsible for obtaining the biological samples for:

24 (i) Persons convicted of any offense listed in subsection (1)(a)  
25 of this section or adjudicated guilty of an equivalent juvenile  
26 offense, who do not serve a term of confinement in a department of  
27 corrections facility, department of children, youth, and families  
28 facility, or a city or county jail facility; and

29 (ii) Persons who are required to register under RCW 9A.44.130.

30 (c) For persons convicted of any offense listed in subsection  
31 (1)(a) of this section or adjudicated guilty of an equivalent  
32 juvenile offense, who are serving or who are to serve a term of  
33 confinement in a department of corrections facility or a department  
34 of children, youth, and families facility, the facility holding the  
35 person shall be responsible for obtaining the biological samples as  
36 part of the intake process. If the facility did not collect the  
37 biological sample during the intake process, then the facility shall  
38 collect the biological sample as soon as is practicable. For those  
39 persons incarcerated before June 12, 2008, who have not yet had a

1 biological sample collected, priority shall be given to those persons  
2 who will be released the soonest.

3 (d) For persons convicted of any offense listed in subsection  
4 (1)(a) of this section or adjudicated guilty of an equivalent  
5 juvenile offense, who will not serve a term of confinement, the court  
6 shall: Order the person to report to the local police department or  
7 sheriff's office as provided under subsection (5)(b)(i) of this  
8 section within a reasonable period of time established by the court  
9 in order to provide a biological sample; or if the local police  
10 department or sheriff's office has a protocol for collecting the  
11 biological sample in the courtroom, order the person to immediately  
12 provide the biological sample to the local police department or  
13 sheriff's office before leaving the presence of the court. The court  
14 must further inform the person that refusal to provide a biological  
15 sample is a gross misdemeanor under this section.

16 (6) Any biological sample taken pursuant to RCW 43.43.752 through  
17 43.43.758 may be retained by the forensic laboratory services bureau,  
18 and shall be used solely for the purpose of providing DNA or other  
19 tests for identification analysis and prosecution of a criminal  
20 offense or for the identification of human remains or missing  
21 persons. Nothing in this section prohibits the submission of results  
22 derived from the biological samples to the federal bureau of  
23 investigation combined DNA index system.

24 (7) The forensic laboratory services bureau of the Washington  
25 state patrol is responsible for testing performed on all biological  
26 samples that are collected under this section, to the extent allowed  
27 by funding available for this purpose. Known duplicate samples may be  
28 excluded from testing unless testing is deemed necessary or advisable  
29 by the director.

30 (8) This section applies to:

31 (a) All adults and juveniles to whom this section applied prior  
32 to June 12, 2008;

33 (b) All adults and juveniles to whom this section did not apply  
34 prior to June 12, 2008, who:

35 (i) Are convicted on or after June 12, 2008, of an offense listed  
36 in subsection (1)(a) of this section on the date of conviction; or

37 (ii) Were convicted prior to June 12, 2008, of an offense listed  
38 in subsection (1)(a) of this section and are still incarcerated on or  
39 after June 12, 2008;

1 (c) All adults and juveniles who are required to register under  
2 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,  
3 on, or after June 12, 2008; and

4 (d) All samples submitted under subsections (2) and (3) of this  
5 section.

6 (9) This section creates no rights in a third person. No cause of  
7 action may be brought based upon the noncollection or nonanalysis or  
8 the delayed collection or analysis of a biological sample authorized  
9 to be taken under RCW 43.43.752 through 43.43.758.

10 (10) The detention, arrest, or conviction of a person based upon  
11 a database match or database information is not invalidated if it is  
12 determined that the sample was obtained or placed in the database by  
13 mistake, or if the conviction or juvenile adjudication that resulted  
14 in the collection of the biological sample was subsequently vacated  
15 or otherwise altered in any future proceeding including but not  
16 limited to posttrial or postfact-finding motions, appeals, or  
17 collateral attacks. No cause of action may be brought against the  
18 state based upon the analysis of a biological sample authorized to be  
19 taken pursuant to a municipal ordinance if the conviction or  
20 adjudication that resulted in the collection of the biological sample  
21 was subsequently vacated or otherwise altered in any future  
22 proceeding including, but not limited to, posttrial or postfact-  
23 finding motions, appeals, or collateral attacks.

24 (11) A person commits the crime of refusal to provide DNA if the  
25 person willfully refuses to comply with a legal request for a DNA  
26 sample as required under this section. The refusal to provide DNA is  
27 a gross misdemeanor.

28 **Sec. 11.** RCW 43.43.830 and 2019 c 271 s 10 are each amended to  
29 read as follows:

30 Unless the context clearly requires otherwise, the definitions in  
31 this section apply throughout (~~RCW 43.43.830~~) this section and RCW  
32 43.43.832 through 43.43.845.

33 (1) "Agency" means any person, firm, partnership, association,  
34 corporation, or facility which receives, provides services to, houses  
35 or otherwise cares for vulnerable adults, juveniles, or children, or  
36 which provides child day care, early learning, or early childhood  
37 education services.

38 (2) "Applicant" means:

1 (a) Any prospective employee who will or may have unsupervised  
2 access to children under sixteen years of age or developmentally  
3 disabled persons or vulnerable adults during the course of his or her  
4 employment or involvement with the business or organization;

5 (b) Any prospective volunteer who will have regularly scheduled  
6 unsupervised access to children under sixteen years of age,  
7 developmentally disabled persons, or vulnerable adults during the  
8 course of his or her employment or involvement with the business or  
9 organization under circumstances where such access will or may  
10 involve groups of (i) five or fewer children under twelve years of  
11 age, (ii) three or fewer children between twelve and sixteen years of  
12 age, (iii) developmentally disabled persons, or (iv) vulnerable  
13 adults;

14 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
15 or

16 (d) Any prospective custodian in a nonparental custody proceeding  
17 under chapter 26.10 RCW.

18 (3) "Business or organization" means a person, business, or  
19 organization licensed in this state, any agency of the state, or  
20 other governmental entity, that educates, trains, treats, supervises,  
21 houses, or provides recreation to developmentally disabled persons,  
22 vulnerable adults, or children under sixteen years of age, or that  
23 provides child day care, early learning, or early learning childhood  
24 education services, including but not limited to public housing  
25 authorities, school districts, and educational service districts.

26 (4) "Civil adjudication proceeding" is a judicial or  
27 administrative adjudicative proceeding that results in a finding of,  
28 or upholds an agency finding of, domestic violence, abuse, sexual  
29 abuse, neglect, abandonment, violation of a professional licensing  
30 standard regarding a child or vulnerable adult, or exploitation or  
31 financial exploitation of a child or vulnerable adult under any  
32 provision of law, including but not limited to chapter 13.34, 26.44,  
33 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW.  
34 "Civil adjudication proceeding" also includes judicial or  
35 administrative findings that become final due to the failure of the  
36 alleged perpetrator to timely exercise a legal right to  
37 administratively challenge such findings.

38 (5) "Client" or "resident" means a child, person with  
39 developmental disabilities, or vulnerable adult applying for housing  
40 assistance from a business or organization.

1 (6) "Conviction record" means "conviction record" information as  
2 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed  
3 by either an adult or a juvenile. It does not include a conviction  
4 for an offense that has been the subject of an expungement, pardon,  
5 annulment, certificate of rehabilitation, or other equivalent  
6 procedure based on a finding of the rehabilitation of the person  
7 convicted, or a conviction that has been the subject of a pardon,  
8 annulment, or other equivalent procedure based on a finding of  
9 innocence. It does include convictions for offenses for which the  
10 defendant received a deferred or suspended sentence, unless the  
11 record has been expunged according to law.

12 (7) "Crime against children or other persons" means a conviction  
13 of any of the following offenses: Aggravated murder; first or second  
14 degree murder; first or second degree kidnapping; first, second, or  
15 third degree assault; fourth degree assault (if a violation of RCW  
16 9A.36.041(3)); first, second, or third degree assault of a child;  
17 first, second, or third degree rape; first, second, or third degree  
18 rape of a child; first or second degree robbery; first degree arson;  
19 first degree burglary; first or second degree manslaughter; first or  
20 second degree extortion; indecent liberties; incest; vehicular  
21 homicide; first degree promoting prostitution; communication with a  
22 minor; providing harmful material to a minor; unlawful imprisonment;  
23 simple assault; sexual exploitation of minors; first or second degree  
24 criminal mistreatment; endangerment with a controlled substance;  
25 child abuse or neglect as defined in RCW 26.44.020; first or second  
26 degree custodial interference; first or second degree custodial  
27 sexual misconduct; hate crime; first, second, or third degree child  
28 molestation; first or second degree sexual misconduct with a minor;  
29 commercial sexual abuse of a minor; child abandonment; promoting  
30 pornography; selling or distributing erotic material to a minor;  
31 custodial assault; violation of child abuse restraining order; child  
32 buying or selling; prostitution; felony indecent exposure; criminal  
33 abandonment; or any of these crimes as they may be renamed in the  
34 future.

35 (8) "Crimes relating to drugs" means a conviction of a crime to  
36 manufacture, delivery, or possession with intent to manufacture or  
37 deliver a controlled substance.

38 (9) "Crimes relating to financial exploitation" means a  
39 conviction for first, second, or third degree extortion; first,



1 second, or third degree theft; first or second degree robbery;  
2 forgery; or any of these crimes as they may be renamed in the future.

3 (10) "Financial exploitation" means "financial exploitation" as  
4 defined in RCW 74.34.020.

5 (11) "Health care facility" means a nursing home licensed under  
6 chapter 18.51 RCW, an assisted living facility licensed under chapter  
7 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

8 (12) "Peer counselor" means a nonprofessional person who has  
9 equal standing with another person, providing advice on a topic about  
10 which the nonprofessional person is more experienced or  
11 knowledgeable, and who is a counselor for a peer counseling program  
12 that contracts with or is otherwise approved by the department,  
13 another state or local agency, or the court.

14 (13) "Unsupervised" means not in the presence of:

15 (a) Another employee or volunteer from the same business or  
16 organization as the applicant; or

17 (b) Any relative or guardian of any of the children or  
18 developmentally disabled persons or vulnerable adults to which the  
19 applicant has access during the course of his or her employment or  
20 involvement with the business or organization.

21 With regard to peer counselors, "unsupervised" does not include  
22 incidental contact with children under age sixteen at the location at  
23 which the peer counseling is taking place. "Incidental contact" means  
24 minor or casual contact with a child in an area accessible to and  
25 within visual or auditory range of others. It could include passing a  
26 child while walking down a hallway but would not include being alone  
27 with a child for any period of time in a closed room or office.

28 (14) "Vulnerable adult" means "vulnerable adult" as defined in  
29 chapter 74.34 RCW, except that for the purposes of requesting and  
30 receiving background checks pursuant to RCW 43.43.832, it shall also  
31 include adults of any age who lack the functional, mental, or  
32 physical ability to care for themselves.

--- END ---