

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5288**

61st Legislature  
2009 Regular Session

Passed by the Senate April 25, 2009  
YEAS 26 NAYS 23

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**President of the Senate**

Passed by the House April 21, 2009  
YEAS 51 NAYS 45

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**Speaker of the House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5288** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SUBSTITUTE SENATE BILL 5288

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AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

State of Washington                      61st Legislature                      2009 Regular Session

By Senate Human Services & Corrections (originally sponsored by  
Senators Hargrove, Stevens, Regala, and Shin)

READ FIRST TIME 01/26/09.

1            AN ACT Relating to the supervision of offenders; amending RCW  
2 9.94A.501, 9.94A.501, 9.94A.030, 9.94A.701, 9.94A.704, 9.94A.707,  
3 9.94A.850, 9.95.220, 9.94A.633, 9.94A.737, and 9.94A.6332; amending  
4 2008 c 231 s 6 (uncodified); reenacting and amending RCW 9.94A.030;  
5 creating new sections; repealing RCW 9.95.206 and 9.95.212; repealing  
6 2008 c 231 s 60 (uncodified); providing an effective date; providing an  
7 expiration date; and declaring an emergency.

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

9            **Sec. 1.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read  
10 as follows:

11            (1) ~~((When the department performs a risk assessment pursuant to~~  
12 ~~RCW 9.94A.500, or to determine a person's conditions of supervision,~~  
13 ~~the risk assessment shall classify the offender or a probationer~~  
14 ~~sentenced in superior court into one of at least four risk categories.~~

15            ~~(2) The department shall supervise every offender sentenced to a~~  
16 ~~term of community custody, community placement, or community~~  
17 ~~supervision and every misdemeanor and gross misdemeanor probationer~~  
18 ~~ordered by a superior court to probation under the supervision of the~~  
19 ~~department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210.~~

1       ~~(a) Whose risk assessment places that offender or probationer in~~  
2 ~~one of the two highest risk categories; or~~  
3       ~~(b) Regardless of the offender's or probationer's risk category if:~~  
4       ~~(i) The offender's or probationer's current conviction is for:~~  
5       ~~(A) A sex offense;~~  
6       ~~(B) A violent offense;~~  
7       ~~(C) A crime against persons as defined in RCW 9.94A.411;~~  
8       ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~  
9       ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~  
10       ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
11 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
12 ~~intent to deliver methamphetamine; or~~  
13       ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
14 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~  
15       ~~(ii) The offender or probationer has a prior conviction for:~~  
16       ~~(A) A sex offense;~~  
17       ~~(B) A violent offense;~~  
18       ~~(C) A crime against persons as defined in RCW 9.94A.411;~~  
19       ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~  
20       ~~(E) A violation of RCW 9A.52.025 (residential burglary);~~  
21       ~~(F) A violation of, or an attempt, solicitation, or conspiracy to~~  
22 ~~violate, RCW 69.50.401 by manufacture or delivery or possession with~~  
23 ~~intent to deliver methamphetamine; or~~  
24       ~~(G) A violation of, or an attempt, solicitation, or conspiracy to~~  
25 ~~violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~  
26       ~~(iii) The conditions of the offender's community custody, community~~  
27 ~~placement, or community supervision or the probationer's supervision~~  
28 ~~include chemical dependency treatment;~~  
29       ~~(iv) The offender))~~ The department shall supervise every offender  
30 convicted of a misdemeanor or gross misdemeanor offense who is  
31 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
32 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
33 subsection. The superior court shall order probation for:  
34       (a) Offenders convicted of fourth degree assault, violation of a  
35 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
36 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
37 and who also have a prior conviction for one or more of the following:  
38       (i) A violent offense;

1       (ii) A sex offense;  
2       (iii) A crime against a person as provided in RCW 9.94A.411;  
3       (iv) Fourth degree assault; or  
4       (v) Violation of a domestic violence court order; and  
5       (b) Offenders convicted of:  
6       (i) Sexual misconduct with a minor second degree;  
7       (ii) Custodial sexual misconduct second degree;  
8       (iii) Communication with a minor for immoral purposes; and  
9       (iv) Failure to register pursuant to RCW 9A.44.130.  
10       (2) Misdemeanor and gross misdemeanor offenders supervised by the  
11 department pursuant to this section shall be placed on community  
12 custody.  
13       (3) The department shall supervise every felony offender sentenced  
14 to community custody whose risk assessment, conducted pursuant to  
15 subsection (6) of this section, places the offender in one of the two  
16 highest risk categories.  
17       (4) Notwithstanding any other provision of this section, the  
18 department shall supervise an offender sentenced to community custody  
19 regardless of risk classification if the offender:  
20       (a) Has a current conviction for a sex offense;  
21       (b) Has been identified by the department as a dangerous mentally  
22 ill offender pursuant to RCW 72.09.370;  
23       (c) Has an indeterminate sentence and is subject to parole pursuant  
24 to RCW 9.95.017;  
25       (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or  
26       ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW  
27 9.94A.745.  
28       ~~((3))~~ (5) The department is not authorized to, and may not,  
29 supervise any offender sentenced to a term of community custody,  
30 community placement, or community supervision or any probationer unless  
31 the offender or probationer is one for whom supervision is required  
32 under subsection (1), (2), (3), or (4) of this section.  
33       ~~((4) This section expires July 1, 2010)~~ (6) The department shall  
34 conduct a risk assessment for every felony offender sentenced to a term  
35 of community custody, community placement, or community supervision who  
36 may be subject to supervision under this section.

1           **Sec. 2.** RCW 9.94A.501 and 2008 c 231 s 24 are each amended to read  
2 as follows:

3           ~~(1) ((When the department performs a risk assessment pursuant to  
4 RCW 9.94A.500, or to determine a person's conditions of supervision,  
5 the risk assessment shall classify the offender or a probationer  
6 sentenced in superior court into one of at least four risk categories.~~

7           ~~(2) The department shall supervise every offender sentenced to a  
8 term of community custody and every misdemeanor and gross misdemeanor  
9 probationer ordered by a superior court to probation under the  
10 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
11 9.95.210:~~

12           ~~(a) Whose risk assessment places that offender or probationer in  
13 one of the two highest risk categories; or~~

14           ~~(b) Regardless of the offender's or probationer's risk category if:~~

15           ~~(i) The offender's or probationer's current conviction is for:~~

16           ~~(A) A sex offense;~~

17           ~~(B) A violent offense;~~

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

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

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

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

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

26           ~~(ii) The offender or probationer has a prior conviction for:~~

27           ~~(A) A sex offense;~~

28           ~~(B) A violent offense;~~

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

30           ~~(D) A felony that is domestic violence as defined in RCW 10.99.020;~~

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

32           ~~(F) A violation of, or an attempt, solicitation, or conspiracy to  
33 violate, RCW 69.50.401 by manufacture or delivery or possession with  
34 intent to deliver methamphetamine; or~~

35           ~~(G) A violation of, or an attempt, solicitation, or conspiracy to  
36 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);~~

37           ~~(iii) The conditions of the offender's community custody or the  
38 probationer's supervision include chemical dependency treatment;~~

1 ~~(iv) The offender~~) The department shall supervise every offender  
2 convicted of a misdemeanor or gross misdemeanor offense who is  
3 sentenced to probation in superior court, pursuant to RCW 9.92.060,  
4 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this  
5 subsection. The superior court shall order probation for:

6 (a) Offenders convicted of fourth degree assault, violation of a  
7 domestic violence court order pursuant to RCW 10.99.040, 10.99.050,  
8 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145,  
9 and who also have a prior conviction for one or more of the following:

10 (i) A violent offense;

11 (ii) A sex offense;

12 (iii) A crime against a person as provided in RCW 9.94A.411;

13 (iv) Fourth degree assault; or

14 (v) Violation of a domestic violence court order; and

15 (b) Offenders convicted of:

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

17 (ii) Custodial sexual misconduct second degree;

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

19 (iv) Failure to register pursuant to RCW 9A.44.130.

20 (2) Misdemeanor and gross misdemeanor offenders supervised by the  
21 department pursuant to this section shall be placed on community  
22 custody.

23 (3) The department shall supervise every felony offender sentenced  
24 to community custody whose risk assessment, conducted pursuant to  
25 subsection (6) of this section, classifies the offender as one who is  
26 at a high risk to reoffend.

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

30 (a) Has a current conviction for a sex offense;

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

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

35 (d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

36 ~~((v) The offender)~~ (e) Is subject to supervision pursuant to RCW  
37 9.94A.745.

1        ~~((3))~~ (5) The department is not authorized to, and may not,  
2 supervise any offender sentenced to a term of community custody or any  
3 probationer unless the offender or probationer is one for whom  
4 supervision is required under subsection (1), (2), (3), or (4) of this  
5 section.

6        ~~((4) This section expires July 1, 2010))~~ (6) The department shall  
7 conduct a risk assessment for every felony offender sentenced to a term  
8 of community custody who may be subject to supervision under this  
9 section.

10        **Sec. 3.** RCW 9.94A.030 and 2008 c 276 s 309 and 2008 c 7 s 1 are  
11 each reenacted and amended to read as follows:

12        Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

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

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

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

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

29        (5) "Community custody" means that portion of an offender's  
30 sentence of confinement in lieu of earned release time or imposed  
31 ~~((pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~  
32 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,))~~ as part of a  
33 sentence under this chapter and served in the community subject to  
34 controls placed on the offender's movement and activities by the  
35 department. For offenders placed on community custody for crimes  
36 committed on or after July 1, 2000, the department shall assess the

1 offender's risk of reoffense and may establish and modify conditions of  
2 community custody, in addition to those imposed by the court, based  
3 upon the risk to community safety.

4 (6) "Community custody range" means the minimum and maximum period  
5 of community custody included as part of a sentence under RCW  
6 9.94A.715, as established by the commission or the legislature under  
7 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

8 (7) "Community placement" means that period during which the  
9 offender is subject to the conditions of community custody and/or  
10 postrelease supervision, which begins either upon completion of the  
11 term of confinement (postrelease supervision) or at such time as the  
12 offender is transferred to community custody in lieu of earned release.  
13 Community placement may consist of entirely community custody, entirely  
14 postrelease supervision, or a combination of the two.

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

18 (9) "Community restitution" means compulsory service, without  
19 compensation, performed for the benefit of the community by the  
20 offender.

21 (10) "Community supervision" means a period of time during which a  
22 convicted offender is subject to crime-related prohibitions and other  
23 sentence conditions imposed by a court pursuant to this chapter or RCW  
24 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
25 a chemical dependency that has contributed to his or her offense, the  
26 conditions of supervision may, subject to available resources, include  
27 treatment. For purposes of the interstate compact for out-of-state  
28 supervision of parolees and probationers, RCW 9.95.270, community  
29 supervision is the functional equivalent of probation and should be  
30 considered the same as probation by other states.

31 (11) "Confinement" means total or partial confinement.

32 (12) "Conviction" means an adjudication of guilt pursuant to  
33 Title((§)) 10 or 13 RCW and includes a verdict of guilty, a finding of  
34 guilty, and acceptance of a plea of guilty.

35 (13) "Crime-related prohibition" means an order of a court  
36 prohibiting conduct that directly relates to the circumstances of the  
37 crime for which the offender has been convicted, and shall not be  
38 construed to mean orders directing an offender affirmatively to



1 participate in rehabilitative programs or to otherwise perform  
2 affirmative conduct. However, affirmative acts necessary to monitor  
3 compliance with the order of a court may be required by the department.

4 (14) "Criminal history" means the list of a defendant's prior  
5 convictions and juvenile adjudications, whether in this state, in  
6 federal court, or elsewhere.

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

11 (b) A conviction may be removed from a defendant's criminal history  
12 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
13 a similar out-of-state statute, or if the conviction has been vacated  
14 pursuant to a governor's pardon.

15 (c) The determination of a defendant's criminal history is distinct  
16 from the determination of an offender score. A prior conviction that  
17 was not included in an offender score calculated pursuant to a former  
18 version of the sentencing reform act remains part of the defendant's  
19 criminal history.

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

30 (16) "Criminal street gang associate or member" means any person  
31 who actively participates in any criminal street gang and who  
32 intentionally promotes, furthers, or assists in any criminal act by the  
33 criminal street gang.

34 (17) "Criminal street gang-related offense" means any felony or  
35 misdemeanor offense, whether in this state or elsewhere, that is  
36 committed for the benefit of, at the direction of, or in association  
37 with any criminal street gang, or is committed with the intent to

1 promote, further, or assist in any criminal conduct by the gang, or is  
2 committed for one or more of the following reasons:

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

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

6 (c) To exact revenge or retribution for the gang or any member of  
7 the gang;

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

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

13 (f) To provide the gang with any advantage in, or any control or  
14 dominance over any criminal market sector, including, but not limited  
15 to, manufacturing, delivering, or selling any controlled substance  
16 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
17 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
18 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
19 (chapter 9.68 RCW).

20 (18) "Day fine" means a fine imposed by the sentencing court that  
21 equals the difference between the offender's net daily income and the  
22 reasonable obligations that the offender has for the support of the  
23 offender and any dependents.

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

29 (20) "Department" means the department of corrections.

30 (21) "Determinate sentence" means a sentence that states with  
31 exactitude the number of actual years, months, or days of total  
32 confinement, of partial confinement, of community supervision, the  
33 number of actual hours or days of community restitution work, or  
34 dollars or terms of a legal financial obligation. The fact that an  
35 offender through earned release can reduce the actual period of  
36 confinement shall not affect the classification of the sentence as a  
37 determinate sentence.

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

13 (23) "Drug offender sentencing alternative" is a sentencing option  
14 available to persons convicted of a felony offense other than a violent  
15 offense or a sex offense and who are eligible for the option under RCW  
16 9.94A.660.

17 (24) "Drug offense" means:

18 (a) Any felony violation of chapter 69.50 RCW except possession of  
19 a controlled substance (RCW 69.50.4013) or forged prescription for a  
20 controlled substance (RCW 69.50.403);

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

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

27 (25) "Earned release" means earned release from confinement as  
28 provided in RCW 9.94A.728.

29 (26) "Escape" means:

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

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

1 (27) "Felony traffic offense" means:

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

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

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

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

17 (30) "Home detention" means a program of partial confinement  
18 available to offenders wherein the offender is confined in a private  
19 residence subject to electronic surveillance.

20 (31) "Legal financial obligation" means a sum of money that is  
21 ordered by a superior court of the state of Washington for legal  
22 financial obligations which may include restitution to the victim,  
23 statutorily imposed crime victims' compensation fees as assessed  
24 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
25 court-appointed attorneys' fees, and costs of defense, fines, and any  
26 other financial obligation that is assessed to the offender as a result  
27 of a felony conviction. Upon conviction for vehicular assault while  
28 under the influence of intoxicating liquor or any drug, RCW  
29 46.61.522(1)(b), or vehicular homicide while under the influence of  
30 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
31 obligations may also include payment to a public agency of the expense  
32 of an emergency response to the incident resulting in the conviction,  
33 subject to RCW 38.52.430.

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

36 (a) Any felony defined under any law as a class A felony or  
37 criminal solicitation of or criminal conspiracy to commit a class A  
38 felony;

- 1 (b) Assault in the second degree;
- 2 (c) Assault of a child in the second degree;
- 3 (d) Child molestation in the second degree;
- 4 (e) Controlled substance homicide;
- 5 (f) Extortion in the first degree;
- 6 (g) Incest when committed against a child under age fourteen;
- 7 (h) Indecent liberties;
- 8 (i) Kidnapping in the second degree;
- 9 (j) Leading organized crime;
- 10 (k) Manslaughter in the first degree;
- 11 (l) Manslaughter in the second degree;
- 12 (m) Promoting prostitution in the first degree;
- 13 (n) Rape in the third degree;
- 14 (o) Robbery in the second degree;
- 15 (p) Sexual exploitation;
- 16 (q) Vehicular assault, when caused by the operation or driving of  
17 a vehicle by a person while under the influence of intoxicating liquor  
18 or any drug or by the operation or driving of a vehicle in a reckless  
19 manner;
- 20 (r) Vehicular homicide, when proximately caused by the driving of  
21 any vehicle by any person while under the influence of intoxicating  
22 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
23 any vehicle in a reckless manner;
- 24 (s) Any other class B felony offense with a finding of sexual  
25 motivation;
- 26 (t) Any other felony with a deadly weapon verdict under RCW  
27 9.94A.602;
- 28 (u) Any felony offense in effect at any time prior to December 2,  
29 1993, that is comparable to a most serious offense under this  
30 subsection, or any federal or out-of-state conviction for an offense  
31 that under the laws of this state would be a felony classified as a  
32 most serious offense under this subsection;
- 33 (v)(i) A prior conviction for indecent liberties under RCW  
34 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
35 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
36 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
37 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

1 (ii) A prior conviction for indecent liberties under RCW  
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
3 if: (A) The crime was committed against a child under the age of  
4 fourteen; or (B) the relationship between the victim and perpetrator is  
5 included in the definition of indecent liberties under RCW  
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
8 through July 27, 1997;

9 (w) Any out-of-state conviction for a felony offense with a finding  
10 of sexual motivation if the minimum sentence imposed was ten years or  
11 more; provided that the out-of-state felony offense must be comparable  
12 to a felony offense under Title 9 or 9A RCW and the out-of-state  
13 definition of sexual motivation must be comparable to the definition of  
14 sexual motivation contained in this section.

15 (33) "Nonviolent offense" means an offense which is not a violent  
16 offense.

17 (34) "Offender" means a person who has committed a felony  
18 established by state law and is eighteen years of age or older or is  
19 less than eighteen years of age but whose case is under superior court  
20 jurisdiction under RCW 13.04.030 or has been transferred by the  
21 appropriate juvenile court to a criminal court pursuant to RCW  
22 13.40.110. Throughout this chapter, the terms "offender" and  
23 "defendant" are used interchangeably.

24 (35) "Partial confinement" means confinement for no more than one  
25 year in a facility or institution operated or utilized under contract  
26 by the state or any other unit of government, or, if home detention or  
27 work crew has been ordered by the court, in an approved residence, for  
28 a substantial portion of each day with the balance of the day spent in  
29 the community. Partial confinement includes work release, home  
30 detention, work crew, and a combination of work crew and home  
31 detention.

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

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

36 (i) Any "serious violent" felony offense as defined in ((RCW  
37 ~~9.94A.030~~) this section), excluding Homicide by Abuse (RCW 9A.32.055)  
38 and Assault of a Child 1 (RCW 9A.36.120);

1 (ii) Any "violent" offense as defined by ((RCW 9.94A.030)) this  
2 section, excluding Assault of a Child 2 (RCW 9A.36.130);  
3 (iii) Deliver or Possession with Intent to Deliver a Controlled  
4 Substance (chapter 69.50 RCW);  
5 (iv) Any violation of the firearms and dangerous weapon act  
6 (chapter 9.41 RCW);  
7 (v) Theft of a Firearm (RCW 9A.56.300);  
8 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);  
9 (vii) Malicious Harassment (RCW 9A.36.080);  
10 (viii) Harassment where a subsequent violation or deadly threat is  
11 made (RCW 9A.46.020(2)(b));  
12 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
13 (x) Any felony conviction by a person eighteen years of age or  
14 older with a special finding of involving a juvenile in a felony  
15 offense under RCW 9.94A.833;  
16 (xi) Residential Burglary (RCW 9A.52.025);  
17 (xii) Burglary 2 (RCW 9A.52.030);  
18 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
19 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
20 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
21 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
22 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
23 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
24 9A.56.075);  
25 (xix) Extortion 1 (RCW 9A.56.120);  
26 (xx) Extortion 2 (RCW 9A.56.130);  
27 (xxi) Intimidating a Witness (RCW 9A.72.110);  
28 (xxii) Tampering with a Witness (RCW 9A.72.120);  
29 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
30 (xxiv) Coercion (RCW 9A.36.070);  
31 (xxv) Harassment (RCW 9A.46.020); or  
32 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
33 (b) That at least one of the offenses listed in (a) of this  
34 subsection shall have occurred after July 1, 2008;  
35 (c) That the most recent committed offense listed in (a) of this  
36 subsection occurred within three years of a prior offense listed in (a)  
37 of this subsection; and

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

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

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

7 (ii) Has, before the commission of the offense under (a) of this  
8 subsection, been convicted as an offender on at least two separate  
9 occasions, whether in this state or elsewhere, of felonies that under  
10 the laws of this state would be considered most serious offenses and  
11 would be included in the offender score under RCW 9.94A.525; provided  
12 that of the two or more previous convictions, at least one conviction  
13 must have occurred before the commission of any of the other most  
14 serious offenses for which the offender was previously convicted; or

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
16 of a child in the first degree, child molestation in the first degree,  
17 rape in the second degree, rape of a child in the second degree, or  
18 indecent liberties by forcible compulsion; (B) any of the following  
19 offenses with a finding of sexual motivation: Murder in the first  
20 degree, murder in the second degree, homicide by abuse, kidnapping in  
21 the first degree, kidnapping in the second degree, assault in the first  
22 degree, assault in the second degree, assault of a child in the first  
23 degree, assault of a child in the second degree, or burglary in the  
24 first degree; or (C) an attempt to commit any crime listed in this  
25 subsection (37)(b)(i); and

26 (ii) Has, before the commission of the offense under (b)(i) of this  
27 subsection, been convicted as an offender on at least one occasion,  
28 whether in this state or elsewhere, of an offense listed in (b)(i) of  
29 this subsection or any federal or out-of-state offense or offense under  
30 prior Washington law that is comparable to the offenses listed in  
31 (b)(i) of this subsection. A conviction for rape of a child in the  
32 first degree constitutes a conviction under (b)(i) of this subsection  
33 only when the offender was sixteen years of age or older when the  
34 offender committed the offense. A conviction for rape of a child in  
35 the second degree constitutes a conviction under (b)(i) of this  
36 subsection only when the offender was eighteen years of age or older  
37 when the offender committed the offense.



1 (38) "Postrelease supervision" is that portion of an offender's  
2 community placement that is not community custody.

3 (39) "Predatory" means: (a) The perpetrator of the crime was a  
4 stranger to the victim, as defined in this section; (b) the perpetrator  
5 established or promoted a relationship with the victim prior to the  
6 offense and the victimization of the victim was a significant reason  
7 the perpetrator established or promoted the relationship; or (c) the  
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
9 in authority in any public or private school and the victim was a  
10 student of the school under his or her authority or supervision. For  
11 purposes of this subsection, "school" does not include home-based  
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
13 volunteer, or other person in authority in any recreational activity  
14 and the victim was a participant in the activity under his or her  
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
16 person in authority in any church or religious organization, and the  
17 victim was a member or participant of the organization under his or her  
18 authority.

19 (40) "Private school" means a school regulated under chapter  
20 28A.195 or 28A.205 RCW.

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

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

26 (43) "Risk assessment" means the application of ~~((an objective))~~  
27 the risk instrument ~~((supported by research and adopted by))~~  
28 recommended to the department ~~((for the purpose of assessing an~~  
29 ~~offender's risk of reoffense, taking into consideration the nature of~~  
30 ~~the harm done by the offender, place and circumstances of the offender~~  
31 ~~related to risk, the offender's relationship to any victim, and any~~  
32 ~~information provided to the department by victims. The results of a~~  
33 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~  
34 ~~allegations))~~ by the Washington state institute for public policy as  
35 having the highest degree of predictive accuracy for assessing an  
36 offender's risk of reoffense.

37 (44) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating  
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
3 while under the influence of intoxicating liquor or any drug (RCW  
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
5 attended vehicle (RCW 46.52.020(5)); or

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

9 (45) "Serious violent offense" is a subcategory of violent offense  
10 and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (46) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
26 RCW 9A.44.130(12);

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

28 (iii) A felony that is a violation of chapter 9.68A RCW other than  
29 RCW 9.68A.080; or

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

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

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

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex  
2 offense under (a) of this subsection.

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

6 (48) "Standard sentence range" means the sentencing court's  
7 discretionary range in imposing a nonappealable sentence.

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

12 (50) "Stranger" means that the victim did not know the offender  
13 twenty-four hours before the offense.

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

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

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

- 27 (54) "Violent offense" means:
- 28 (a) Any of the following felonies:
    - 29 (i) Any felony defined under any law as a class A felony or an  
30 attempt to commit a class A felony;
    - 31 (ii) Criminal solicitation of or criminal conspiracy to commit a  
32 class A felony;
    - 33 (iii) Manslaughter in the first degree;
    - 34 (iv) Manslaughter in the second degree;
    - 35 (v) Indecent liberties if committed by forcible compulsion;
    - 36 (vi) Kidnapping in the second degree;
    - 37 (vii) Arson in the second degree;
    - 38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;  
2 (x) Extortion in the first degree;  
3 (xi) Robbery in the second degree;  
4 (xii) Drive-by shooting;  
5 (xiii) Vehicular assault, when caused by the operation or driving  
6 of a vehicle by a person while under the influence of intoxicating  
7 liquor or any drug or by the operation or driving of a vehicle in a  
8 reckless manner; and

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

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

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

19 (55) "Work crew" means a program of partial confinement consisting  
20 of civic improvement tasks for the benefit of the community that  
21 complies with RCW 9.94A.725.

22 (56) "Work ethic camp" means an alternative incarceration program  
23 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
24 the cost of corrections by requiring offenders to complete a  
25 comprehensive array of real-world job and vocational experiences,  
26 character-building work ethics training, life management skills  
27 development, substance abuse rehabilitation, counseling, literacy  
28 training, and basic adult education.

29 (57) "Work release" means a program of partial confinement  
30 available to offenders who are employed or engaged as a student in a  
31 regular course of study at school.

32 **Sec. 4.** RCW 9.94A.030 and 2009 c 28 s 4 are each amended to read  
33 as follows:

34 Unless the context clearly requires otherwise, the definitions in  
35 this section apply throughout this chapter.

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

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

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

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

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

19 ~~((("Community custody range" means the minimum and maximum  
20 period of community custody included as part of a sentence under RCW  
21 9.94A.701, as established by the commission or the legislature under  
22 RCW 9.94A.850.~~

23 ~~(7))~~ "Community protection zone" means the area within eight  
24 hundred eighty feet of the facilities and grounds of a public or  
25 private school.

26 ~~((8))~~ (7) "Community restitution" means compulsory service,  
27 without compensation, performed for the benefit of the community by the  
28 offender.

29 ~~((9))~~ (8) "Confinement" means total or partial confinement.

30 ~~((10))~~ (9) "Conviction" means an adjudication of guilt pursuant  
31 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of  
32 guilty, and acceptance of a plea of guilty.

33 ~~((11))~~ (10) "Crime-related prohibition" means an order of a court  
34 prohibiting conduct that directly relates to the circumstances of the  
35 crime for which the offender has been convicted, and shall not be  
36 construed to mean orders directing an offender affirmatively to  
37 participate in rehabilitative programs or to otherwise perform

1 affirmative conduct. However, affirmative acts necessary to monitor  
2 compliance with the order of a court may be required by the department.

3 ~~((+12+))~~ (11) "Criminal history" means the list of a defendant's  
4 prior convictions and juvenile adjudications, whether in this state, in  
5 federal court, or elsewhere.

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

10 (b) A conviction may be removed from a defendant's criminal history  
11 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
12 a similar out-of-state statute, or if the conviction has been vacated  
13 pursuant to a governor's pardon.

14 (c) The determination of a defendant's criminal history is distinct  
15 from the determination of an offender score. A prior conviction that  
16 was not included in an offender score calculated pursuant to a former  
17 version of the sentencing reform act remains part of the defendant's  
18 criminal history.

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

29 ~~((+14+))~~ (13) "Criminal street gang associate or member" means any  
30 person who actively participates in any criminal street gang and who  
31 intentionally promotes, furthers, or assists in any criminal act by the  
32 criminal street gang.

33 ~~((+15+))~~ (14) "Criminal street gang-related offense" means any  
34 felony or misdemeanor offense, whether in this state or elsewhere, that  
35 is committed for the benefit of, at the direction of, or in association  
36 with any criminal street gang, or is committed with the intent to  
37 promote, further, or assist in any criminal conduct by the gang, or is  
38 committed for one or more of the following reasons:

- 1 (a) To gain admission, prestige, or promotion within the gang;  
2 (b) To increase or maintain the gang's size, membership, prestige,  
3 dominance, or control in any geographical area;  
4 (c) To exact revenge or retribution for the gang or any member of  
5 the gang;  
6 (d) To obstruct justice, or intimidate or eliminate any witness  
7 against the gang or any member of the gang;  
8 (e) To directly or indirectly cause any benefit, aggrandizement,  
9 gain, profit, or other advantage for the gang, its reputation,  
10 influence, or membership; or  
11 (f) To provide the gang with any advantage in, or any control or  
12 dominance over any criminal market sector, including, but not limited  
13 to, manufacturing, delivering, or selling any controlled substance  
14 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen  
15 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88  
16 RCW); human trafficking (RCW 9A.40.100); or promoting pornography  
17 (chapter 9.68 RCW).

18 ~~((+16+))~~ (15) "Day fine" means a fine imposed by the sentencing  
19 court that equals the difference between the offender's net daily  
20 income and the reasonable obligations that the offender has for the  
21 support of the offender and any dependents.

22 ~~((+17+))~~ (16) "Day reporting" means a program of enhanced  
23 supervision designed to monitor the offender's daily activities and  
24 compliance with sentence conditions, and in which the offender is  
25 required to report daily to a specific location designated by the  
26 department or the sentencing court.

27 ~~((+18+))~~ (17) "Department" means the department of corrections.

28 ~~((+19+))~~ (18) "Determinate sentence" means a sentence that states  
29 with exactitude the number of actual years, months, or days of total  
30 confinement, of partial confinement, of community custody, the number  
31 of actual hours or days of community restitution work, or dollars or  
32 terms of a legal financial obligation. The fact that an offender  
33 through earned release can reduce the actual period of confinement  
34 shall not affect the classification of the sentence as a determinate  
35 sentence.

36 ~~((+20+))~~ (19) "Disposable earnings" means that part of the earnings  
37 of an offender remaining after the deduction from those earnings of any  
38 amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal  
2 services, whether denominated as wages, salary, commission, bonuses, or  
3 otherwise, and, notwithstanding any other provision of law making the  
4 payments exempt from garnishment, attachment, or other process to  
5 satisfy a court-ordered legal financial obligation, specifically  
6 includes periodic payments pursuant to pension or retirement programs,  
7 or insurance policies of any type, but does not include payments made  
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
9 or Title 74 RCW.

10 ~~((+21+))~~ (20) "Drug offender sentencing alternative" is a  
11 sentencing option available to persons convicted of a felony offense  
12 other than a violent offense or a sex offense and who are eligible for  
13 the option under RCW 9.94A.660.

14 ~~((+22+))~~ (21) "Drug offense" means:

15 (a) Any felony violation of chapter 69.50 RCW except possession of  
16 a controlled substance (RCW 69.50.4013) or forged prescription for a  
17 controlled substance (RCW 69.50.403);

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

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

24 ~~((+23+))~~ (22) "Earned release" means earned release from  
25 confinement as provided in RCW 9.94A.728.

26 ~~((+24+))~~ (23) "Escape" means:

27 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
28 first degree (RCW 9A.76.110), escape in the second degree (RCW  
29 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
30 willful failure to return from work release (RCW 72.65.070), or willful  
31 failure to be available for supervision by the department while in  
32 community custody (RCW 72.09.310); or

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

36 ~~((+25+))~~ (24) "Felony traffic offense" means:

37 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
38 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-



1 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
2 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
3 felony physical control of a vehicle while under the influence of  
4 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

8 ~~((+26+))~~ (25) "Fine" means a specific sum of money ordered by the  
9 sentencing court to be paid by the offender to the court over a  
10 specific period of time.

11 ~~((+27+))~~ (26) "First-time offender" means any person who has no  
12 prior convictions for a felony and is eligible for the first-time  
13 offender waiver under RCW 9.94A.650.

14 ~~((+28+))~~ (27) "Home detention" means a program of partial  
15 confinement available to offenders wherein the offender is confined in  
16 a private residence subject to electronic surveillance.

17 ~~((+29+))~~ (28) "Legal financial obligation" means a sum of money  
18 that is ordered by a superior court of the state of Washington for  
19 legal financial obligations which may include restitution to the  
20 victim, statutorily imposed crime victims' compensation fees as  
21 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
22 drug funds, court-appointed attorneys' fees, and costs of defense,  
23 fines, and any other financial obligation that is assessed to the  
24 offender as a result of a felony conviction. Upon conviction for  
25 vehicular assault while under the influence of intoxicating liquor or  
26 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
27 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
28 legal financial obligations may also include payment to a public agency  
29 of the expense of an emergency response to the incident resulting in  
30 the conviction, subject to RCW 38.52.430.

31 ~~((+30+))~~ (29) "Most serious offense" means any of the following  
32 felonies or a felony attempt to commit any of the following felonies:

33 (a) Any felony defined under any law as a class A felony or  
34 criminal solicitation of or criminal conspiracy to commit a class A  
35 felony;

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

- 1 (e) Controlled substance homicide;
- 2 (f) Extortion in the first degree;
- 3 (g) Incest when committed against a child under age fourteen;
- 4 (h) Indecent liberties;
- 5 (i) Kidnapping in the second degree;
- 6 (j) Leading organized crime;
- 7 (k) Manslaughter in the first degree;
- 8 (l) Manslaughter in the second degree;
- 9 (m) Promoting prostitution in the first degree;
- 10 (n) Rape in the third degree;
- 11 (o) Robbery in the second degree;
- 12 (p) Sexual exploitation;
- 13 (q) Vehicular assault, when caused by the operation or driving of  
14 a vehicle by a person while under the influence of intoxicating liquor  
15 or any drug or by the operation or driving of a vehicle in a reckless  
16 manner;
- 17 (r) Vehicular homicide, when proximately caused by the driving of  
18 any vehicle by any person while under the influence of intoxicating  
19 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
20 any vehicle in a reckless manner;
- 21 (s) Any other class B felony offense with a finding of sexual  
22 motivation;
- 23 (t) Any other felony with a deadly weapon verdict under RCW  
24 9.94A.602;
- 25 (u) Any felony offense in effect at any time prior to December 2,  
26 1993, that is comparable to a most serious offense under this  
27 subsection, or any federal or out-of-state conviction for an offense  
28 that under the laws of this state would be a felony classified as a  
29 most serious offense under this subsection;
- 30 (v)(i) A prior conviction for indecent liberties under RCW  
31 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
32 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
33 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
34 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 35 (ii) A prior conviction for indecent liberties under RCW  
36 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
37 if: (A) The crime was committed against a child under the age of  
38 fourteen; or (B) the relationship between the victim and perpetrator is

1 included in the definition of indecent liberties under RCW  
2 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
3 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
4 through July 27, 1997;

5 (w) Any out-of-state conviction for a felony offense with a finding  
6 of sexual motivation if the minimum sentence imposed was ten years or  
7 more; provided that the out-of-state felony offense must be comparable  
8 to a felony offense under Title 9 or 9A RCW and the out-of-state  
9 definition of sexual motivation must be comparable to the definition of  
10 sexual motivation contained in this section.

11 (~~(31)~~) (30) "Nonviolent offense" means an offense which is not a  
12 violent offense.

13 (~~(32)~~) (31) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. In addition, for the purpose of community custody  
19 requirements under this chapter, "offender" also means a misdemeanor or  
20 gross misdemeanor probationer convicted of an offense included in RCW  
21 9.94A.501(1) and ordered by a superior court to probation under the  
22 supervision of the department pursuant to RCW 9.92.060, 9.95.204, or  
23 9.95.210. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

25 (~~(33)~~) (32) "Partial confinement" means confinement for no more  
26 than one year in a facility or institution operated or utilized under  
27 contract by the state or any other unit of government, or, if home  
28 detention or work crew has been ordered by the court, in an approved  
29 residence, for a substantial portion of each day with the balance of  
30 the day spent in the community. Partial confinement includes work  
31 release, home detention, work crew, and a combination of work crew and  
32 home detention.

33 (~~(34)~~) (33) "Pattern of criminal street gang activity" means:

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

37 (i) Any "serious violent" felony offense as defined in ((RCW

1 ~~9.94A.030~~) this section, excluding Homicide by Abuse (RCW 9A.32.055)  
2 and Assault of a Child 1 (RCW 9A.36.120);  
3 (ii) Any "violent" offense as defined by (~~RCW 9.94A.030~~) this  
4 section, excluding Assault of a Child 2 (RCW 9A.36.130);  
5 (iii) Deliver or Possession with Intent to Deliver a Controlled  
6 Substance (chapter 69.50 RCW);  
7 (iv) Any violation of the firearms and dangerous weapon act  
8 (chapter 9.41 RCW);  
9 (v) Theft of a Firearm (RCW 9A.56.300);  
10 (vi) Possession of a Stolen Firearm (RCW 9A.56.310);  
11 (vii) Malicious Harassment (RCW 9A.36.080);  
12 (viii) Harassment where a subsequent violation or deadly threat is  
13 made (RCW 9A.46.020(2)(b));  
14 (ix) Criminal Gang Intimidation (RCW 9A.46.120);  
15 (x) Any felony conviction by a person eighteen years of age or  
16 older with a special finding of involving a juvenile in a felony  
17 offense under RCW 9.94A.833;  
18 (xi) Residential Burglary (RCW 9A.52.025);  
19 (xii) Burglary 2 (RCW 9A.52.030);  
20 (xiii) Malicious Mischief 1 (RCW 9A.48.070);  
21 (xiv) Malicious Mischief 2 (RCW 9A.48.080);  
22 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);  
23 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);  
24 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);  
25 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW  
26 9A.56.075);  
27 (xix) Extortion 1 (RCW 9A.56.120);  
28 (xx) Extortion 2 (RCW 9A.56.130);  
29 (xxi) Intimidating a Witness (RCW 9A.72.110);  
30 (xxii) Tampering with a Witness (RCW 9A.72.120);  
31 (xxiii) Reckless Endangerment (RCW 9A.36.050);  
32 (xxiv) Coercion (RCW 9A.36.070);  
33 (xxv) Harassment (RCW 9A.46.020); or  
34 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);  
35 (b) That at least one of the offenses listed in (a) of this  
36 subsection shall have occurred after July 1, 2008;  
37 (c) That the most recent committed offense listed in (a) of this

1 subsection occurred within three years of a prior offense listed in (a)  
2 of this subsection; and

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

6 (~~(+35+)~~) (34) "Persistent offender" is an offender who:

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

9 (ii) Has, before the commission of the offense under (a) of this  
10 subsection, been convicted as an offender on at least two separate  
11 occasions, whether in this state or elsewhere, of felonies that under  
12 the laws of this state would be considered most serious offenses and  
13 would be included in the offender score under RCW 9.94A.525; provided  
14 that of the two or more previous convictions, at least one conviction  
15 must have occurred before the commission of any of the other most  
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
18 of a child in the first degree, child molestation in the first degree,  
19 rape in the second degree, rape of a child in the second degree, or  
20 indecent liberties by forcible compulsion; (B) any of the following  
21 offenses with a finding of sexual motivation: Murder in the first  
22 degree, murder in the second degree, homicide by abuse, kidnapping in  
23 the first degree, kidnapping in the second degree, assault in the first  
24 degree, assault in the second degree, assault of a child in the first  
25 degree, assault of a child in the second degree, or burglary in the  
26 first degree; or (C) an attempt to commit any crime listed in this  
27 subsection (~~(+35+)~~) (34)(b)(i); and

28 (ii) Has, before the commission of the offense under (b)(i) of this  
29 subsection, been convicted as an offender on at least one occasion,  
30 whether in this state or elsewhere, of an offense listed in (b)(i) of  
31 this subsection or any federal or out-of-state offense or offense under  
32 prior Washington law that is comparable to the offenses listed in  
33 (b)(i) of this subsection. A conviction for rape of a child in the  
34 first degree constitutes a conviction under (b)(i) of this subsection  
35 only when the offender was sixteen years of age or older when the  
36 offender committed the offense. A conviction for rape of a child in  
37 the second degree constitutes a conviction under (b)(i) of this

1 subsection only when the offender was eighteen years of age or older  
2 when the offender committed the offense.

3 ~~((+36+))~~ (35) "Predatory" means: (a) The perpetrator of the crime  
4 was a stranger to the victim, as defined in this section; (b) the  
5 perpetrator established or promoted a relationship with the victim  
6 prior to the offense and the victimization of the victim was a  
7 significant reason the perpetrator established or promoted the  
8 relationship; or (c) the perpetrator was: (i) A teacher, counselor,  
9 volunteer, or other person in authority in any public or private school  
10 and the victim was a student of the school under his or her authority  
11 or supervision. For purposes of this subsection, "school" does not  
12 include home-based instruction as defined in RCW 28A.225.010; (ii) a  
13 coach, trainer, volunteer, or other person in authority in any  
14 recreational activity and the victim was a participant in the activity  
15 under his or her authority or supervision; or (iii) a pastor, elder,  
16 volunteer, or other person in authority in any church or religious  
17 organization, and the victim was a member or participant of the  
18 organization under his or her authority.

19 ~~((+37+))~~ (36) "Private school" means a school regulated under  
20 chapter 28A.195 or 28A.205 RCW.

21 ~~((+38+))~~ (37) "Public school" has the same meaning as in RCW  
22 28A.150.010.

23 ~~((+39+))~~ (38) "Restitution" means a specific sum of money ordered  
24 by the sentencing court to be paid by the offender to the court over a  
25 specified period of time as payment of damages. The sum may include  
26 both public and private costs.

27 ~~((+40+))~~ (39) "Risk assessment" means the application of ~~((an~~  
28 ~~objective))~~ the risk instrument ~~((supported by research and adopted~~  
29 ~~by))~~ recommended to the department ~~((for the purpose of assessing an~~  
30 ~~offender's risk of reoffense, taking into consideration the nature of~~  
31 ~~the harm done by the offender, place and circumstances of the offender~~  
32 ~~related to risk, the offender's relationship to any victim, and any~~  
33 ~~information provided to the department by victims. The results of a~~  
34 ~~risk assessment shall not be based on unconfirmed or unconfirmable~~  
35 ~~allegations))~~ by the Washington state institute for public policy as  
36 having the highest degree of predictive accuracy for assessing an  
37 offender's risk of reoffense.

38 ~~((+41+))~~ (40) "Serious traffic offense" means:

1 (a) Nonfelony driving while under the influence of intoxicating  
2 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
3 while under the influence of intoxicating liquor or any drug (RCW  
4 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
5 attended vehicle (RCW 46.52.020(5)); or

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

9 (~~(42)~~) (41) "Serious violent offense" is a subcategory of violent  
10 offense and means:

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

12 (ii) Homicide by abuse;

13 (iii) Murder in the second degree;

14 (iv) Manslaughter in the first degree;

15 (v) Assault in the first degree;

16 (vi) Kidnapping in the first degree;

17 (vii) Rape in the first degree;

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

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

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

24 (~~(43)~~) (42) "Sex offense" means:

25 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
26 RCW 9A.44.130(12);

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

28 (iii) A felony that is a violation of chapter 9.68A RCW other than  
29 RCW 9.68A.080; or

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

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

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

37 (d) Any federal or out-of-state conviction for an offense that

1 under the laws of this state would be a felony classified as a sex  
2 offense under (a) of this subsection.

3 ~~((44))~~ (43) "Sexual motivation" means that one of the purposes  
4 for which the defendant committed the crime was for the purpose of his  
5 or her sexual gratification.

6 ~~((45))~~ (44) "Standard sentence range" means the sentencing  
7 court's discretionary range in imposing a nonappealable sentence.

8 ~~((46))~~ (45) "Statutory maximum sentence" means the maximum length  
9 of time for which an offender may be confined as punishment for a crime  
10 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
11 the crime, or other statute defining the maximum penalty for a crime.

12 ~~((47))~~ (46) "Stranger" means that the victim did not know the  
13 offender twenty-four hours before the offense.

14 ~~((48))~~ (47) "Total confinement" means confinement inside the  
15 physical boundaries of a facility or institution operated or utilized  
16 under contract by the state or any other unit of government for twenty-  
17 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

18 ~~((49))~~ (48) "Transition training" means written and verbal  
19 instructions and assistance provided by the department to the offender  
20 during the two weeks prior to the offender's successful completion of  
21 the work ethic camp program. The transition training shall include  
22 instructions in the offender's requirements and obligations during the  
23 offender's period of community custody.

24 ~~((50))~~ (49) "Victim" means any person who has sustained  
25 emotional, psychological, physical, or financial injury to person or  
26 property as a direct result of the crime charged.

27 ~~((51))~~ (50) "Violent offense" means:

- 28 (a) Any of the following felonies:
  - 29 (i) Any felony defined under any law as a class A felony or an  
30 attempt to commit a class A felony;
  - 31 (ii) Criminal solicitation of or criminal conspiracy to commit a  
32 class A felony;
  - 33 (iii) Manslaughter in the first degree;
  - 34 (iv) Manslaughter in the second degree;
  - 35 (v) Indecent liberties if committed by forcible compulsion;
  - 36 (vi) Kidnapping in the second degree;
  - 37 (vii) Arson in the second degree;
  - 38 (viii) Assault in the second degree;



1 (ix) Assault of a child in the second degree;  
2 (x) Extortion in the first degree;  
3 (xi) Robbery in the second degree;  
4 (xii) Drive-by shooting;  
5 (xiii) Vehicular assault, when caused by the operation or driving  
6 of a vehicle by a person while under the influence of intoxicating  
7 liquor or any drug or by the operation or driving of a vehicle in a  
8 reckless manner; and

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

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

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

19 ~~((+52+))~~ (51) "Work crew" means a program of partial confinement  
20 consisting of civic improvement tasks for the benefit of the community  
21 that complies with RCW 9.94A.725.

22 ~~((+53+))~~ (52) "Work ethic camp" means an alternative incarceration  
23 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
24 lower the cost of corrections by requiring offenders to complete a  
25 comprehensive array of real-world job and vocational experiences,  
26 character-building work ethics training, life management skills  
27 development, substance abuse rehabilitation, counseling, literacy  
28 training, and basic adult education.

29 ~~((+54+))~~ (53) "Work release" means a program of partial confinement  
30 available to offenders who are employed or engaged as a student in a  
31 regular course of study at school.

32 **Sec. 5.** RCW 9.94A.701 and 2009 c 28 s 10 are each amended to read  
33 as follows:

34 (1) If an offender is sentenced to the custody of the department  
35 for one of the following crimes, the court shall ~~((impose a term of~~  
36 ~~community custody for the community custody range established under RCW~~  
37 ~~9.94A.850 or up to the period of earned release awarded pursuant to RCW~~

1 ~~9.94A.728 (1) and (2), whichever is longer)), in addition to the other~~  
2 ~~terms of the sentence, sentence the offender to community custody for~~  
3 ~~three years:~~

4 (a) A sex offense not sentenced under RCW 9.94A.507;

5 (b) A serious violent offense; or

6 (c) ~~((A crime against persons under RCW 9.94A.411(2);~~

7 ~~(d) An offense involving the unlawful possession of a firearm under~~  
8 ~~RCW 9.41.040, where the offender is a criminal street gang member or~~  
9 ~~associate;~~

10 ~~(e) A felony offender under chapter 69.50 or 69.52 RCW))~~ A  
11 violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006,  
12 when a court sentences the person to a term of confinement of one year  
13 or less.

14 ~~(2) ((If an offender is sentenced to a term of confinement of one~~  
15 ~~year or less for a violation of RCW 9A.44.130(11)(a), the court shall~~  
16 ~~impose a term of community custody for the community custody range~~  
17 ~~established under RCW 9.94A.850 or up to the period of earned release~~  
18 ~~awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer))~~ A  
19 court shall, in addition to the other terms of the sentence, sentence  
20 an offender to community custody for eighteen months when the court  
21 sentences the person to the custody of the department for a violent  
22 offense that is not considered a serious violent offense.

23 (3) A court shall, in addition to the other terms of the sentence,  
24 sentence an offender to community custody for one year when the court  
25 sentences the person to the custody of the department for:

26 (a) Any crime against persons under RCW 9.94A.411(2);

27 (b) An offense involving the unlawful possession of a firearm under  
28 RCW 9.41.040, where the offender is a criminal street gang member or  
29 associate; or

30 (c) A felony offense under chapter 69.50 or 69.52 RCW, committed on  
31 or after July 1, 2000.

32 ~~((+3))~~ (4) If an offender is sentenced under the drug offender  
33 sentencing alternative, the court shall impose community custody as  
34 provided in RCW 9.94A.660.

35 ~~((+4))~~ (5) If an offender is sentenced under the special sexual  
36 offender sentencing alternative, the court shall impose community  
37 custody as provided in RCW 9.94A.670.

1       ~~((+5))~~ (6) If an offender is sentenced to a work ethic camp, the  
2 court shall impose community custody as provided in RCW 9.94A.690.

3       ~~((+6))~~ (7) If a sex offender is sentenced as a nonpersistent  
4 offender pursuant to RCW 9.94A.507, the court shall impose community  
5 custody as provided in that section.

6       ~~((+7) If the offender is a criminal street gang associate or member  
7 and is found guilty of unlawful possession of a firearm under RCW  
8 9.41.040, the court shall impose a term of community custody under  
9 subsection (1)(d) of this section))~~ (8) The term of community custody  
10 specified by this section shall be reduced by the court whenever an  
11 offender's standard range term of confinement in combination with the  
12 term of community custody exceeds the statutory maximum for the crime  
13 as provided in RCW 9A.20.021.

14       **Sec. 6.** RCW 9.94A.704 and 2009 c 28 s 12 are each amended to read  
15 as follows:

16       (1) Every person who is sentenced to a period of community custody  
17 shall report to and be placed under the supervision of the department,  
18 subject to RCW 9.94A.501.

19       (2)(a) The department shall assess the offender's risk of reoffense  
20 and may establish and modify additional conditions of community custody  
21 based upon the risk to community safety.

22       (b) Within the funds available for community custody, the  
23 department shall determine conditions ~~((and duration of community  
24 eustody))~~ on the basis of risk to community safety, and shall supervise  
25 offenders during community custody on the basis of risk to community  
26 safety and conditions imposed by the court. The secretary shall adopt  
27 rules to implement the provisions of this subsection (2)(b).

28       (3) If the offender is supervised by the department, the department  
29 shall at a minimum instruct the offender to:

30       (a) Report as directed to a community corrections officer;

31       (b) Remain within prescribed geographical boundaries;

32       (c) Notify the community corrections officer of any change in the  
33 offender's address or employment;

34       (d) Pay the supervision fee assessment; and

35       (e) Disclose the fact of supervision to any mental health or  
36 chemical dependency treatment provider, as required by RCW 9.94A.722.

1 (4) The department may require the offender to participate in  
2 rehabilitative programs, or otherwise perform affirmative conduct, and  
3 to obey all laws.

4 (5) If the offender was sentenced pursuant to a conviction for a  
5 sex offense, the department may impose electronic monitoring. Within  
6 the resources made available by the department for this purpose, the  
7 department shall carry out any electronic monitoring using the most  
8 appropriate technology given the individual circumstances of the  
9 offender. As used in this section, "electronic monitoring" means the  
10 monitoring of an offender using an electronic offender tracking system  
11 including, but not limited to, a system using radio frequency or active  
12 or passive global positioning system technology.

13 (6) The department may not impose conditions that are contrary to  
14 those ordered by the court and may not contravene or decrease court-  
15 imposed conditions.

16 (7)(a) The department shall notify the offender in writing of any  
17 additional conditions or modifications.

18 (b) By the close of the next business day after receiving notice of  
19 a condition imposed or modified by the department, an offender may  
20 request an administrative review under rules adopted by the department.  
21 The condition shall remain in effect unless the reviewing officer finds  
22 that it is not reasonably related to the crime of conviction, the  
23 offender's risk of reoffending, or the safety of the community.

24 (8) The department may require offenders to pay for special  
25 services rendered including electronic monitoring, day reporting, and  
26 telephone reporting, dependent on the offender's ability to pay. The  
27 department may pay for these services for offenders who are not able to  
28 pay.

29 (9)(a) When a sex offender has been sentenced pursuant to RCW  
30 9.94A.507, the department shall assess the offender's risk of  
31 recidivism and shall recommend to the board any additional or modified  
32 conditions based upon the offender's risk to community safety and may  
33 recommend affirmative conduct or electronic monitoring consistent with  
34 subsections (4) through (6) of this section.

35 (b) The board may impose conditions in addition to court-ordered  
36 conditions. The board must consider and may impose department-  
37 recommended conditions.

1 (c) By the close of the next business day, after receiving notice  
2 of a condition imposed by the board or the department, an offender may  
3 request an administrative hearing under rules adopted by the board.  
4 The condition shall remain in effect unless the hearing examiner finds  
5 that it is not reasonably related to any of the following:

6 (i) The crime of conviction;

7 (ii) The offender's risk of reoffending;

8 (iii) The safety of the community.

9 (d) If the department finds that an emergency exists requiring the  
10 immediate imposition of additional conditions in order to prevent the  
11 offender from committing a crime, the department may impose such  
12 conditions. The department may not impose conditions that are contrary  
13 to those set by the board or the court and may not contravene or  
14 decrease court-imposed or board-imposed conditions. Conditions imposed  
15 under this subsection shall take effect immediately after notice to the  
16 offender by personal service, but shall not remain in effect longer  
17 than seven working days unless approved by the board.

18 (10) In setting, modifying, and enforcing conditions of community  
19 custody, the department shall be deemed to be performing a  
20 quasi-judicial function.

21 **Sec. 7.** RCW 9.94A.707 and 2008 c 231 s 12 are each amended to read  
22 as follows:

23 (1) Community custody shall begin: (a) Upon completion of the term  
24 of confinement; or (b) ((~~at such time as the offender is transferred to~~  
25 ~~community custody in lieu of earned release in accordance with RCW~~  
26 ~~9.94A.728 (1) or (2); or (c))~~) at the time of sentencing if no term of  
27 confinement is ordered.

28 (2) When an offender is sentenced to community custody, the  
29 offender is subject to the conditions of community custody as of the  
30 date of sentencing, unless otherwise ordered by the court.

31 ((~~3) When an offender is sentenced to a community custody range~~  
32 ~~pursuant to RCW 9.94A.701 (1) or (2), the department shall discharge~~  
33 ~~the offender from community custody on a date determined by the~~  
34 ~~department, which the department may modify, based on risk and~~  
35 ~~performance of the offender, within the range or at the end of the~~  
36 ~~period of earned release, whichever is later.))~~

1       **Sec. 8.** RCW 9.94A.850 and 2009 c 28 s 17 are each amended to read  
2 as follows:

3       (1) A sentencing guidelines commission is established as an agency  
4 of state government.

5       (2) The legislature finds that the commission, having accomplished  
6 its original statutory directive to implement this chapter, and having  
7 expertise in sentencing practice and policies, shall:

8       (a) Evaluate state sentencing policy, to include whether the  
9 sentencing ranges and standards are consistent with and further:

10       (i) The purposes of this chapter as defined in RCW 9.94A.010; and

11       (ii) The intent of the legislature to emphasize confinement for the  
12 violent offender and alternatives to confinement for the nonviolent  
13 offender.

14       The commission shall provide the governor and the legislature with  
15 its evaluation and recommendations under this subsection not later than  
16 December 1, 1996, and every two years thereafter;

17       (b) Recommend to the legislature revisions or modifications to the  
18 standard sentence ranges, state sentencing policy, prosecuting  
19 standards, and other standards. If implementation of the revisions or  
20 modifications would result in exceeding the capacity of correctional  
21 facilities, then the commission shall accompany its recommendation with  
22 an additional list of standard sentence ranges which are consistent  
23 with correction capacity;

24       (c) Study the existing criminal code and from time to time make  
25 recommendations to the legislature for modification;

26       (d)(i) Serve as a clearinghouse and information center for the  
27 collection, preparation, analysis, and dissemination of information on  
28 state and local adult and juvenile sentencing practices; (ii) develop  
29 and maintain a computerized adult and juvenile sentencing information  
30 system by individual superior court judge consisting of offender,  
31 offense, history, and sentence information entered from judgment and  
32 sentence forms for all adult felons; and (iii) conduct ongoing research  
33 regarding adult and juvenile sentencing guidelines, use of total  
34 confinement and alternatives to total confinement, plea bargaining, and  
35 other matters relating to the improvement of the adult criminal justice  
36 system and the juvenile justice system;

37       (e) Assume the powers and duties of the juvenile disposition  
38 standards commission after June 30, 1996;

1 (f) Evaluate the effectiveness of existing disposition standards  
2 and related statutes in implementing policies set forth in RCW  
3 13.40.010 generally, specifically review the guidelines relating to the  
4 confinement of minor and first-time offenders as well as the use of  
5 diversion, and review the application of current and proposed juvenile  
6 sentencing standards and guidelines for potential adverse impacts on  
7 the sentencing outcomes of racial and ethnic minority youth;

8 (g) Solicit the comments and suggestions of the juvenile justice  
9 community concerning disposition standards, and make recommendations to  
10 the legislature regarding revisions or modifications of the standards.  
11 The evaluations shall be submitted to the legislature on December 1 of  
12 each odd-numbered year. The department of social and health services  
13 shall provide the commission with available data concerning the  
14 implementation of the disposition standards and related statutes and  
15 their effect on the performance of the department's responsibilities  
16 relating to juvenile offenders, and with recommendations for  
17 modification of the disposition standards. The administrative office  
18 of the courts shall provide the commission with available data on  
19 diversion, including the use of youth court programs, and dispositions  
20 of juvenile offenders under chapter 13.40 RCW; and

21 (h) Not later than December 1, 1997, and at least every two years  
22 thereafter, based on available information, report to the governor and  
23 the legislature on:

24 (i) Racial disproportionality in juvenile and adult sentencing,  
25 and, if available, the impact that diversions, such as youth courts,  
26 have on racial disproportionality in juvenile prosecution,  
27 adjudication, and sentencing;

28 (ii) The capacity of state and local juvenile and adult facilities  
29 and resources; and

30 (iii) Recidivism information on adult and juvenile offenders.

31 (3) Each of the commission's recommended standard sentence ranges  
32 shall include one or more of the following: Total confinement, partial  
33 confinement, community supervision, community restitution, and a fine.

34 (4) The standard sentence ranges of total and partial confinement  
35 under this chapter, except as provided in RCW 9.94A.517, are subject to  
36 the following limitations:

37 (a) If the maximum term in the range is one year or less, the  
38 minimum term in the range shall be no less than one-third of the

1 maximum term in the range, except that if the maximum term in the range  
2 is ninety days or less, the minimum term may be less than one-third of  
3 the maximum;

4 (b) If the maximum term in the range is greater than one year, the  
5 minimum term in the range shall be no less than seventy-five percent of  
6 the maximum term in the range, except that for murder in the second  
7 degree in seriousness level XIV under RCW 9.94A.510, the minimum term  
8 in the range shall be no less than fifty percent of the maximum term in  
9 the range; and

10 (c) The maximum term of confinement in a range may not exceed the  
11 statutory maximum for the crime as provided in RCW 9A.20.021.

12 ~~(5)((a) Not later than December 31 of each year, the commission  
13 may propose modifications to the community custody ranges to be  
14 included in sentences under RCW 9.94A.701. The ranges shall be based  
15 on the principles in RCW 9.94A.010, and shall take into account the  
16 funds available to the department for community custody. The minimum  
17 term in each range shall not be less than one-half of the maximum term.~~

18 ~~(b) The legislature may, by enactment of a legislative bill, adopt  
19 or modify the community custody ranges proposed by the commission. If  
20 the legislature fails to adopt or modify the initial ranges in its next  
21 regular session after they are proposed, the proposed ranges shall take  
22 effect without legislative approval for crimes committed on or after  
23 July 1, 2000.~~

24 ~~(c) When the commission proposes modifications to ranges pursuant  
25 to this subsection, the legislature may, by enactment of a bill, adopt  
26 or modify the ranges proposed by the commission for crimes committed on  
27 or after July 1 of the year after they were proposed. Unless the  
28 legislature adopts or modifies the commission's proposal in its next  
29 regular session, the proposed ranges shall not take effect.~~

30 ~~(6))~~ The commission shall exercise its duties under this section  
31 in conformity with chapter 34.05 RCW.

32 NEW SECTION. **Sec. 9.** The department of corrections shall  
33 recalculate the term of community custody and reset the date that  
34 community custody will end for each offender currently in confinement  
35 or serving a term of community custody for a crime specified in RCW  
36 9.94A.701. The recalculation shall not extend a term of community  
37 custody beyond that to which an offender is currently subject.



1       **Sec. 10.** 2008 c 231 s 6 (uncodified) is amended to read as  
2 follows:

3       The existing sentencing reform act contains numerous provisions for  
4 supervision of different types of offenders. This duplication has  
5 caused great confusion for judges, lawyers, offenders, and the  
6 department of corrections, and often results in inaccurate sentences.  
7 The clarifications in this act are intended to support continued  
8 discussions by the sentencing guidelines commission with the courts and  
9 the criminal justice community to identify and propose policy changes  
10 that will further simplify and improve the sentencing reform act  
11 relating to the supervision of offenders. The sentencing guidelines  
12 commission shall submit policy change proposals to the legislature on  
13 or before December 1, 2008.

14       Sections 7 through 58 of this act are intended to simplify the  
15 supervision provisions of the sentencing reform act and increase the  
16 uniformity of its application. These sections are not intended to  
17 either increase or decrease the authority of sentencing courts or the  
18 department relating to supervision, except for those provisions  
19 instructing the court to apply the provisions of the current community  
20 custody law to offenders sentenced after July 1, 2009, but who  
21 committed their crime prior to August 1, 2009, to the extent that such  
22 application is constitutionally permissible.

23       This will effect a change for offenders who committed their crimes  
24 prior to the offender accountability act, chapter 196, Laws of 1999.  
25 These offenders will be ordered to a term of community custody rather  
26 than community placement or community supervision. To the extent  
27 constitutionally permissible, the terms of the offender's supervision  
28 will be as provided in current law. With the exception of this change,  
29 the legislature does not intend to make, and no provision of sections  
30 7 through 58 of this act may be construed as making, a substantive  
31 change to the supervision provisions of the sentencing reform act.

32       ~~((It is the intent of the legislature to reaffirm that section 3,~~  
33 ~~chapter 379, Laws of 2003, expires July 1, 2010.))~~

34       **Sec. 11.** RCW 9.95.220 and 1957 c 227 s 5 are each amended to read  
35 as follows:

36       (1) Except as provided in subsection (2) of this section, whenever  
37 the state parole officer or other officer under whose supervision the

1 probationer has been placed shall have reason to believe such  
2 probationer is violating the terms of his or her probation, or engaging  
3 in criminal practices, or is abandoned to improper associates, or  
4 living a vicious life, he or she shall cause the probationer to be  
5 brought before the court wherein the probation was granted. For this  
6 purpose any peace officer or state parole officer may rearrest any such  
7 person without warrant or other process. The court may thereupon in  
8 its discretion without notice revoke and terminate such probation. In  
9 the event the judgment has been pronounced by the court and the  
10 execution thereof suspended, the court may revoke such suspension,  
11 whereupon the judgment shall be in full force and effect, and the  
12 defendant shall be delivered to the sheriff to be transported to the  
13 penitentiary or reformatory as the case may be. If the judgment has  
14 not been pronounced, the court shall pronounce judgment after such  
15 revocation of probation and the defendant shall be delivered to the  
16 sheriff to be transported to the penitentiary or reformatory, in  
17 accordance with the sentence imposed.

18 (2) If a probationer is being supervised by the department of  
19 corrections pursuant to RCW 9.95.204, the department shall have  
20 authority to issue a warrant for the arrest of an offender who violates  
21 a condition of community custody, as provided in RCW 9.94A.716. Any  
22 sanctions shall be imposed by the department pursuant to RCW 9.94A.737.  
23 The department shall provide a copy of the violation hearing report to  
24 the sentencing court in a timely manner. Nothing in this subsection is  
25 intended to limit the power of the sentencing court to respond to a  
26 probationer's violation of conditions.

27 **Sec. 12.** RCW 9.94A.633 and 2009 c 28 s 7 are each amended to read  
28 as follows:

29 (1)(a) An offender who violates any condition or requirement of a  
30 sentence may be sanctioned with up to sixty days' confinement for each  
31 violation.

32 (b) In lieu of confinement, an offender may be sanctioned with work  
33 release, home detention with electronic monitoring, work crew,  
34 community restitution, inpatient treatment, daily reporting, curfew,  
35 educational or counseling sessions, supervision enhanced through  
36 electronic monitoring, or any other sanctions available in the  
37 community.

1 (2) If an offender was under community custody pursuant to one of  
2 the following statutes, the offender may be sanctioned as follows:

3 (a) If the offender was transferred to community custody in lieu of  
4 earned early release in accordance with RCW 9.94A.728(2), the offender  
5 may be transferred to a more restrictive confinement status to serve up  
6 to the remaining portion of the sentence, less credit for any period  
7 actually spent in community custody or in detention awaiting  
8 disposition of an alleged violation.

9 (b) If the offender was sentenced under the drug offender  
10 sentencing alternative set out in RCW 9.94A.660, the offender may be  
11 sanctioned in accordance with that section.

12 (c) If the offender was sentenced under the special sexual offender  
13 sentencing alternative set out in RCW 9.94A.670, the suspended sentence  
14 may be revoked and the offender committed to serve the original  
15 sentence of confinement.

16 (d) If the offender was sentenced to a work ethic camp pursuant to  
17 RCW 9.94A.690, the offender may be reclassified to serve the unexpired  
18 term of his or her sentence in total confinement.

19 (e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the  
20 offender may be transferred to a more restrictive confinement status to  
21 serve up to the remaining portion of the sentence, less credit for any  
22 period actually spent in community custody or in detention awaiting  
23 disposition of an alleged violation.

24 (3) If a probationer is being supervised by the department pursuant  
25 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
26 sanctioned pursuant to subsection (1) of this section. The department  
27 shall have authority to issue a warrant for the arrest of an offender  
28 who violates a condition of community custody, as provided in RCW  
29 9.94A.716. Any sanctions shall be imposed by the department pursuant  
30 to RCW 9.94A.737. The department shall provide a copy of the violation  
31 hearing report to the sentencing court in a timely manner. Nothing in  
32 this subsection is intended to limit the power of the sentencing court  
33 to respond to a probationer's violation of conditions.

34 **Sec. 13.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to  
35 read as follows:

36 (1) If an offender violates any condition or requirement of  
37 community custody, the department may transfer the offender to a more

1 restrictive confinement status to serve up to the remaining portion of  
2 the sentence, less credit for any period actually spent in community  
3 custody or in detention awaiting disposition of an alleged violation  
4 and subject to the limitations of subsection (3) of this section.

5 (2) If an offender has not completed his or her maximum term of  
6 total confinement and is subject to a third violation hearing for any  
7 violation of community custody and is found to have committed the  
8 violation, the department shall return the offender to total  
9 confinement in a state correctional facility to serve up to the  
10 remaining portion of his or her sentence, unless it is determined that  
11 returning the offender to a state correctional facility would  
12 substantially interfere with the offender's ability to maintain  
13 necessary community supports or to participate in necessary treatment  
14 or programming and would substantially increase the offender's  
15 likelihood of reoffending.

16 (3)(a) For a sex offender sentenced to a term of community custody  
17 under RCW 9.94A.670 who violates any condition of community custody,  
18 the department may impose a sanction of up to sixty days' confinement  
19 in a local correctional facility for each violation. If the department  
20 imposes a sanction, the department shall submit within seventy-two  
21 hours a report to the court and the prosecuting attorney outlining the  
22 violation or violations and the sanctions imposed.

23 (b) For a sex offender sentenced to a term of community custody  
24 under RCW 9.94A.710 who violates any condition of community custody  
25 after having completed his or her maximum term of total confinement,  
26 including time served on community custody in lieu of earned release,  
27 the department may impose a sanction of up to sixty days in a local  
28 correctional facility for each violation.

29 (c) For an offender sentenced to a term of community custody under  
30 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,  
31 for a crime committed on or after July 1, 2000, who violates any  
32 condition of community custody after having completed his or her  
33 maximum term of total confinement, including time served on community  
34 custody in lieu of earned release, the department may impose a sanction  
35 of up to sixty days in total confinement for each violation. The  
36 department may impose sanctions such as work release, home detention  
37 with electronic monitoring, work crew, community restitution, inpatient

1 treatment, daily reporting, curfew, educational or counseling sessions,  
2 supervision enhanced through electronic monitoring, or any other  
3 sanctions available in the community.

4 (d) For an offender sentenced to a term of community placement  
5 under RCW 9.94A.705 who violates any condition of community placement  
6 after having completed his or her maximum term of total confinement,  
7 including time served on community custody in lieu of earned release,  
8 the department may impose a sanction of up to sixty days in total  
9 confinement for each violation. The department may impose sanctions  
10 such as work release, home detention with electronic monitoring, work  
11 crew, community restitution, inpatient treatment, daily reporting,  
12 curfew, educational or counseling sessions, supervision enhanced  
13 through electronic monitoring, or any other sanctions available in the  
14 community.

15 (e) If a probationer is being supervised by the department pursuant  
16 to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be  
17 sanctioned by the department pursuant to (c) of this subsection. The  
18 department shall have authority to issue a warrant for the arrest of an  
19 offender who violates a condition of community custody, as provided in  
20 RCW 9.94A.740. The department shall provide a copy of the violation  
21 hearing report to the sentencing court in a timely manner. Nothing in  
22 this subsection is intended to limit the power of the sentencing court  
23 to respond to a probationer's violation of conditions.

24 (4) If an offender has been arrested for a new felony offense while  
25 under community supervision, community custody, or community placement,  
26 the department shall hold the offender in total confinement until a  
27 hearing before the department as provided in this section or until the  
28 offender has been formally charged for the new felony offense,  
29 whichever is earlier. Nothing in this subsection shall be construed as  
30 to permit the department to hold an offender past his or her maximum  
31 term of total confinement if the offender has not completed the maximum  
32 term of total confinement or to permit the department to hold an  
33 offender past the offender's term of community supervision, community  
34 custody, or community placement.

35 (5) The department shall be financially responsible for any portion  
36 of the sanctions authorized by this section that are served in a local  
37 correctional facility as the result of action by the department.

1 (6) If an offender is accused of violating any condition or  
2 requirement of community custody, he or she is entitled to a hearing  
3 before the department prior to the imposition of sanctions. The  
4 hearing shall be considered as offender disciplinary proceedings and  
5 shall not be subject to chapter 34.05 RCW. The department shall  
6 develop hearing procedures and a structure of graduated sanctions.

7 (7) The hearing procedures required under subsection (6) of this  
8 section shall be developed by rule and include the following:

9 (a) Hearing officers shall report through a chain of command  
10 separate from that of community corrections officers;

11 (b) The department shall provide the offender with written notice  
12 of the violation, the evidence relied upon, and the reasons the  
13 particular sanction was imposed. The notice shall include a statement  
14 of the rights specified in this subsection, and the offender's right to  
15 file a personal restraint petition under court rules after the final  
16 decision of the department;

17 (c) The hearing shall be held unless waived by the offender, and  
18 shall be electronically recorded. For offenders not in total  
19 confinement, the hearing shall be held within fifteen working days, but  
20 not less than twenty-four hours, after notice of the violation. For  
21 offenders in total confinement, the hearing shall be held within five  
22 working days, but not less than twenty-four hours, after notice of the  
23 violation;

24 (d) The offender shall have the right to: (i) Be present at the  
25 hearing; (ii) have the assistance of a person qualified to assist the  
26 offender in the hearing, appointed by the hearing officer if the  
27 offender has a language or communications barrier; (iii) testify or  
28 remain silent; (iv) call witnesses and present documentary evidence;  
29 and (v) question witnesses who appear and testify; and

30 (e) The sanction shall take effect if affirmed by the hearing  
31 officer. Within seven days after the hearing officer's decision, the  
32 offender may appeal the decision to a panel of three reviewing officers  
33 designated by the secretary or by the secretary's designee. The  
34 sanction shall be reversed or modified if a majority of the panel finds  
35 that the sanction was not reasonably related to any of the following:  
36 (i) The crime of conviction; (ii) the violation committed; (iii) the  
37 offender's risk of reoffending; or (iv) the safety of the community.

1 (8) For purposes of this section, no finding of a violation of  
2 conditions may be based on unconfirmed or unconfirmable allegations.

3 (9) The department shall work with the Washington association of  
4 sheriffs and police chiefs to establish and operate an electronic  
5 monitoring program for low-risk offenders who violate the terms of  
6 their community custody. Between January 1, 2006, and December 31,  
7 2006, the department shall endeavor to place at least one hundred low-  
8 risk community custody violators on the electronic monitoring program  
9 per day if there are at least that many low-risk offenders who qualify  
10 for the electronic monitoring program.

11 (10) Local governments, their subdivisions and employees, the  
12 department and its employees, and the Washington association of  
13 sheriffs and police chiefs and its employees shall be immune from civil  
14 liability for damages arising from incidents involving low-risk  
15 offenders who are placed on electronic monitoring unless it is shown  
16 that an employee acted with gross negligence or bad faith.

17 **Sec. 14.** RCW 9.94A.6332 and 2009 c 28 s 8 are each amended to read  
18 as follows:

19 The procedure for imposing sanctions for violations of sentence  
20 conditions or requirements is as follows:

21 (1) If the offender was sentenced under the drug offender  
22 sentencing alternative, any sanctions shall be imposed by the  
23 department or the court pursuant to RCW 9.94A.660.

24 (2) If the offender was sentenced under the special sexual offender  
25 sentencing alternative, any sanctions shall be imposed by the  
26 department or the court pursuant to RCW 9.94A.670.

27 (3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any  
28 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

29 (4) In any other case, if the offender is being supervised by the  
30 department, any sanctions shall be imposed by the department pursuant  
31 to RCW 9.94A.737. If a probationer is being supervised by the  
32 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon  
33 receipt of a violation hearing report from the department, the court  
34 retains any authority that those statutes provide to respond to a  
35 probationer's violation of conditions.

36 (5) If the offender is not being supervised by the department, any  
37 sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.





1 department, or sentenced after the effective date of this section.

--- END ---