
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5291

AS AMENDED BY THE HOUSE

Passed Legislature - 2020 Regular Session

State of Washington **66th Legislature** **2019 Regular Session**

By Senate Ways & Means (originally sponsored by Senators Darneille, Randall, Kuderer, Frockt, Hasegawa, Nguyen, and Saldaña)

READ FIRST TIME 02/28/19.

1 AN ACT Relating to creating alternatives to total confinement for
2 certain qualifying persons with minor children; amending RCW
3 9.94A.655 and 9.94A.6551; and reenacting and amending RCW 9.94A.030.

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

5 **Sec. 1.** RCW 9.94A.030 and 2019 c 331 s 5, 2019 c 271 s 6, 2019 c
6 187 s 1, and 2019 c 46 s 5007 are each reenacted and amended to read
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 includes a vacated prior conviction for the sole purpose of
2 establishing that such vacated prior conviction constitutes an
3 element of the present recidivist offense as provided in RCW
4 9.94A.640(3)(b) and 9.96.060(5)(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (19) "Disposable earnings" means that part of the earnings of an
28 offender remaining after the deduction from those earnings of any
29 amount required by law to be withheld. For the purposes of this
30 definition, "earnings" means compensation paid or payable for
31 personal services, whether denominated as wages, salary, commission,
32 bonuses, or otherwise, and, notwithstanding any other provision of
33 law making the payments exempt from garnishment, attachment, or other
34 process to satisfy a court-ordered legal financial obligation,
35 specifically includes periodic payments pursuant to pension or
36 retirement programs, or insurance policies of any type, but does not
37 include payments made under Title 50 RCW, except as provided in RCW
38 50.40.020 and 50.40.050, or Title 74 RCW.

39 (20) "Domestic violence" has the same meaning as defined in RCW
40 10.99.020 and 26.50.010.

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

5 (22) "Drug offense" means:

6 (a) Any felony violation of chapter 69.50 RCW except possession
7 of a controlled substance (RCW 69.50.4013) or forged prescription for
8 a controlled substance (RCW 69.50.403);

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

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

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

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

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

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

30 (25) "Escape" means:

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

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

40 (26) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

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

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

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

6 ~~(32) ("Minor child" means a biological or adopted child of the
7 offender who is under age eighteen at the time of the offender's
8 current offense.~~

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

11 (a) Any felony defined under any law as a class A felony or
12 criminal solicitation of or criminal conspiracy to commit a class A
13 felony;

14 (b) Assault in the second degree;

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

16 (d) Child molestation in the second degree;

17 (e) Controlled substance homicide;

18 (f) Extortion in the first degree;

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

20 (h) Indecent liberties;

21 (i) Kidnapping in the second degree;

22 (j) Leading organized crime;

23 (k) Manslaughter in the first degree;

24 (l) Manslaughter in the second degree;

25 (m) Promoting prostitution in the first degree;

26 (n) Rape in the third degree;

27 (o) Sexual exploitation;

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

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

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

38 (s) Any other felony with a deadly weapon verdict under RCW
39 9.94A.825;

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

6 (u)(i) A prior conviction for indecent liberties under RCW
7 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
8 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
9 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
10 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
11 until July 1, 1988;

12 (ii) A prior conviction for indecent liberties under RCW
13 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
14 if: (A) The crime was committed against a child under the age of
15 fourteen; or (B) the relationship between the victim and perpetrator
16 is included in the definition of indecent liberties under RCW
17 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
18 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
19 1993, through July 27, 1997;

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

26 (~~(34)~~) (33) "Nonviolent offense" means an offense which is not
27 a violent offense.

28 (~~(35)~~) (34) "Offender" means a person who has committed a
29 felony established by state law and is eighteen years of age or older
30 or is less than eighteen years of age but whose case is under
31 superior court jurisdiction under RCW 13.04.030 or has been
32 transferred by the appropriate juvenile court to a criminal court
33 pursuant to RCW 13.40.110. In addition, for the purpose of community
34 custody requirements under this chapter, "offender" also means a
35 misdemeanor or gross misdemeanor probationer ordered by a superior
36 court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210
37 and supervised by the department pursuant to RCW 9.94A.501 and
38 9.94A.5011. Throughout this chapter, the terms "offender" and
39 "defendant" are used interchangeably.

1 (~~(36)~~) (35) "Partial confinement" means confinement for no more
2 than one year in a facility or institution operated or utilized under
3 contract by the state or any other unit of government, or, if home
4 detention, electronic monitoring, or work crew has been ordered by
5 the court or home detention has been ordered by the department as
6 part of the parenting program or the graduated reentry program, in an
7 approved residence, for a substantial portion of each day with the
8 balance of the day spent in the community. Partial confinement
9 includes work release, home detention, work crew, electronic
10 monitoring, and a combination of work crew, electronic monitoring,
11 and home detention.

12 (~~(37)~~) (36) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

1 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
2 9A.56.070);

3 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
4 9A.56.075);

5 (xix) Extortion 1 (RCW 9A.56.120);

6 (xx) Extortion 2 (RCW 9A.56.130);

7 (xxi) Intimidating a Witness (RCW 9A.72.110);

8 (xxii) Tampering with a Witness (RCW 9A.72.120);

9 (xxiii) Reckless Endangerment (RCW 9A.36.050);

10 (xxiv) Coercion (RCW 9A.36.070);

11 (xxv) Harassment (RCW 9A.46.020); or

12 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

15 (c) That the most recent committed offense listed in (a) of this
16 subsection occurred within three years of a prior offense listed in
17 (a) of this subsection; and

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

21 (~~((38))~~) (37) "Persistent offender" is an offender who:

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

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

32 (b) (i) Has been convicted of: (A) Rape in the first degree, rape
33 of a child in the first degree, child molestation in the first
34 degree, rape in the second degree, rape of a child in the second
35 degree, or indecent liberties by forcible compulsion; (B) any of the
36 following offenses with a finding of sexual motivation: Murder in the
37 first degree, murder in the second degree, homicide by abuse,
38 kidnapping in the first degree, kidnapping in the second degree,
39 assault in the first degree, assault in the second degree, assault of
40 a child in the first degree, assault of a child in the second degree,

1 or burglary in the first degree; or (C) an attempt to commit any
2 crime listed in this subsection (~~(38)~~) (37)(b)(i); and

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

15 (~~(39)~~) (38) "Predatory" means: (a) The perpetrator of the crime
16 was a stranger to the victim, as defined in this section; (b) the
17 perpetrator established or promoted a relationship with the victim
18 prior to the offense and the victimization of the victim was a
19 significant reason the perpetrator established or promoted the
20 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
21 volunteer, or other person in authority in any public or private
22 school and the victim was a student of the school under his or her
23 authority or supervision. For purposes of this subsection, "school"
24 does not include home-based instruction as defined in RCW
25 28A.225.010; (ii) a coach, trainer, volunteer, or other person in
26 authority in any recreational activity and the victim was a
27 participant in the activity under his or her authority or
28 supervision; (iii) a pastor, elder, volunteer, or other person in
29 authority in any church or religious organization, and the victim was
30 a member or participant of the organization under his or her
31 authority; or (iv) a teacher, counselor, volunteer, or other person
32 in authority providing home-based instruction and the victim was a
33 student receiving home-based instruction while under his or her
34 authority or supervision. For purposes of this subsection: (A) "Home-
35 based instruction" has the same meaning as defined in RCW
36 28A.225.010; and (B) "teacher, counselor, volunteer, or other person
37 in authority" does not include the parent or legal guardian of the
38 victim.

39 (~~(40)~~) (39) "Private school" means a school regulated under
40 chapter 28A.195 or 28A.205 RCW.

1 (~~(41)~~) (40) "Public school" has the same meaning as in RCW
2 28A.150.010.

3 (~~(42)~~) (41) "Recidivist offense" means a felony offense where a
4 prior conviction of the same offense or other specified offense is an
5 element of the crime including, but not limited to:

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

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

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

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

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

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

13 (g) Violation of a no-contact or protection order, RCW
14 26.50.110(5).

15 (~~(43)~~) (42) "Repetitive domestic violence offense" means any:

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

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

20 (iii) Domestic violence violation of a protection order under
21 chapter 26.09, 26.10, 26.26A, 26.26B, or 26.50 RCW that is not a
22 felony offense;

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

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

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

31 (~~(44)~~) (43) "Restitution" means a specific sum of money ordered
32 by the sentencing court to be paid by the offender to the court over
33 a specified period of time as payment of damages. The sum may include
34 both public and private costs.

35 (~~(45)~~) (44) "Risk assessment" means the application of the risk
36 instrument recommended to the department by the Washington state
37 institute for public policy as having the highest degree of
38 predictive accuracy for assessing an offender's risk of reoffense.

39 (~~(46)~~) (45) "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
7 for an offense that under the laws of this state would be classified
8 as a serious traffic offense under (a) of this subsection.

9 (~~((47))~~) (46) "Serious violent offense" is a subcategory of
10 violent 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
23 serious violent offense under (a) of this subsection.

24 (~~((48))~~) (47) "Sex offense" means:

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

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

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

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

33 (v) A felony violation of RCW 9A.44.132(1) (failure to register
34 as a sex offender) if the person has been convicted of violating RCW
35 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
36 prior to June 10, 2010, on at least one prior occasion;

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

1 (c) A felony with a finding of sexual motivation under RCW
2 9.94A.835 or 13.40.135; or

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

6 ~~((49))~~ (48) "Sexual motivation" means that one of the purposes
7 for which the defendant committed the crime was for the purpose of
8 his or her sexual gratification.

9 ~~((50))~~ (49) "Standard sentence range" means the sentencing
10 court's discretionary range in imposing a nonappealable sentence.

11 ~~((51))~~ (50) "Statutory maximum sentence" means the maximum
12 length of time for which an offender may be confined as punishment
13 for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the
14 statute defining the crime, or other statute defining the maximum
15 penalty for a crime.

16 ~~((52))~~ (51) "Stranger" means that the victim did not know the
17 offender twenty-four hours before the offense.

18 ~~((53))~~ (52) "Total confinement" means confinement inside the
19 physical boundaries of a facility or institution operated or utilized
20 under contract by the state or any other unit of government for
21 twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

22 ~~((54))~~ (53) "Transition training" means written and verbal
23 instructions and assistance provided by the department to the
24 offender during the two weeks prior to the offender's successful
25 completion of the work ethic camp program. The transition training
26 shall include instructions in the offender's requirements and
27 obligations during the offender's period of community custody.

28 ~~((55))~~ (54) "Victim" means any person who has sustained
29 emotional, psychological, physical, or financial injury to person or
30 property as a direct result of the crime charged.

31 ~~((56))~~ (55) "Violent offense" means:

32 (a) Any of the following felonies:

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

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

37 (iii) Manslaughter in the first degree;

38 (iv) Manslaughter in the second degree;

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

40 (vi) Kidnapping in the second degree;

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

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

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

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

21 (~~(57)~~) (56) "Work crew" means a program of partial confinement
22 consisting of civic improvement tasks for the benefit of the
23 community that complies with RCW 9.94A.725.

24 (~~(58)~~) (57) "Work ethic camp" means an alternative
25 incarceration program as provided in RCW 9.94A.690 designed to reduce
26 recidivism and lower the cost of corrections by requiring offenders
27 to complete a comprehensive array of real-world job and vocational
28 experiences, character-building work ethics training, life management
29 skills development, substance abuse rehabilitation, counseling,
30 literacy training, and basic adult education.

31 (~~(59)~~) (58) "Work release" means a program of partial
32 confinement available to offenders who are employed or engaged as a
33 student in a regular course of study at school.

34 **Sec. 2.** RCW 9.94A.655 and 2018 c 58 s 45 are each amended to
35 read as follows:

36 (1) An offender is eligible for the parenting sentencing
37 alternative if:

38 (a) The high end of the standard sentence range for the current
39 offense is greater than one year;

1 (b) The offender has no prior or current conviction for ~~((a))~~: A
2 felony ~~((that is a))~~ sex offense ~~((or))~~; a serious violent offense;
3 or a felony offense where the offender was armed with a firearm or
4 deadly weapon in the commission of the offense;

5 (c) The offender has ~~((not been found by the United States~~
6 ~~attorney general to be subject to a deportation detainer or order and~~
7 ~~does not become subject to a deportation order during the period of~~
8 ~~the sentence))~~ no current conviction for a violent offense;

9 (d) The offender signs any release of information waivers
10 required to allow information regarding current or prior child
11 welfare cases to be shared with the department and the court; and

12 (e) The offender ~~((has physical custody of his or her minor child~~
13 ~~or is a legal guardian or custodian with physical custody of a child~~
14 ~~under the age of eighteen at the time of the current offense))~~ is:

15 (i) A parent with physical custody of a minor child;

16 (ii) An expectant parent;

17 (iii) A legal guardian of a minor child; or

18 (iv) A biological parent, adoptive parent, custodian, or
19 stepparent with a proven, established, ongoing, and substantial
20 relationship with a minor child that existed at the time of the
21 offense.

22 (2) Prior juvenile adjudications are not considered offenses when
23 considering eligibility under this section, except for any sex
24 offense, serious violent offense, or felony offense where the
25 offender was armed with a firearm or deadly weapon in the commission
26 of the offense.

27 (3) To assist the court in making its determination, the court
28 may order the department to complete ~~((either))~~ a risk assessment
29 report, including a family impact statement, or a chemical dependency
30 screening report as provided in RCW 9.94A.500 ~~((, or both reports))~~
31 prior to sentencing.

32 ~~((3))~~ (4) If the court is considering this alternative, the
33 court shall request that the department contact the department of
34 children, youth, and families to determine if the agency has an open
35 child welfare case or prior substantiated referral of abuse or
36 neglect involving the offender or if the agency is aware of any
37 substantiated case of abuse or neglect with a tribal child welfare
38 agency involving the offender.

39 (a) If the offender has an open child welfare case or child abuse
40 or neglect investigation, the department will provide the release of

1 information waiver and request that the department of children,
2 youth, and families or the tribal child welfare agency provide a
3 report to the court. The department of children, youth, and families
4 shall ~~((provide a report))~~, within seven business days of the
5 request: Provide a copy of the most recent court order entered in
6 proceedings under chapter 13.34 or 13.36 RCW pertaining to the
7 offender, and provide a report regarding whether the offender has
8 been cooperative with services ordered by the court in those
9 proceedings; or, if there is no court order or there has not been
10 court involvement, provide a report that includes, at the minimum,
11 the following:

12 (i) Legal status of the child welfare case or child protective
13 services response;

14 (ii) Length of time the department of children, youth, and
15 families has ~~((been involved with))~~ had an open child welfare case or
16 child protective services response involving the offender; and

17 (iii) ~~((Legal status of the case and permanent plan;~~

18 ~~(iv))~~ Any special needs of the child~~((;~~

19 ~~(v) Whether or not the offender has been cooperative with~~
20 ~~services ordered by a juvenile court under a child welfare case; and~~

21 ~~(vi) If the offender)).~~

22 (b) The department shall report to the court if the offender has
23 been convicted of a crime against a child.

24 ~~((b))~~ (c) If a report is required from a tribal child welfare
25 agency, the department shall attempt to obtain information that is
26 similar to what is required for the report provided by the department
27 of children, youth, and families in a timely manner.

28 ~~((e))~~ (d) If the offender does not have an open child welfare
29 case with the department of children, youth, and families or with a
30 tribal child welfare agency but has prior involvement, the department
31 will obtain information from the department of children, youth, and
32 families on the number and type of past substantiated referrals of
33 abuse or neglect and report that information to the court. If the
34 department of children, youth, and families has never had any
35 substantiated referrals or an open case with the offender, the
36 department will inform the court.

37 ~~((4))~~ (e) The existence of a prior substantiated referral of
38 child abuse or neglect or of an open child welfare case does not,
39 alone, disqualify the parent from applying or participating in this
40 alternative. The court shall consider whether the child-parent

1 relationship can be readily maintained during parental incarceration,
2 and whether, due to the existence of an open child welfare case,
3 parental incarceration exacerbates the likelihood of termination of
4 the child-parent relationship.

5 (5) If the sentencing court determines that the offender is
6 eligible for a sentencing alternative under this section and that the
7 sentencing alternative is appropriate and should be imposed, the
8 court shall waive imposition of a sentence within the standard
9 sentence range and impose a sentence consisting of twelve months of
10 community custody. The court shall consider the offender's criminal
11 history when determining if the alternative is appropriate. The court
12 shall also give great weight to the minor child's best interest.

13 ~~((5))~~ (6) When a court imposes a sentence of community custody
14 under this section:

15 (a) The court may impose conditions as provided in RCW 9.94A.703
16 and may impose other affirmative conditions as the court considers
17 appropriate.

18 (b) The department may impose conditions as authorized in RCW
19 9.94A.704 that may include, but are not limited to:

- 20 (i) Parenting classes;
- 21 (ii) Chemical dependency treatment;
- 22 (iii) Mental health treatment;
- 23 (iv) Vocational training;
- 24 (v) ~~((Offender change))~~ Change programs;
- 25 (vi) Life skills classes.

26 (c) The department shall report to the court if the offender
27 commits any violations of his or her sentence conditions.

28 ~~((6))~~ (7) The department shall provide the court with quarterly
29 progress reports regarding the offender's progress in required
30 programming, treatment, and other supervision conditions. When an
31 offender has an open child welfare case, the department will seek to
32 coordinate services with the department of children, youth, and
33 families.

34 ~~((7))~~ (8)(a) The court may bring any offender sentenced under
35 this section back into court at any time during the period of
36 community custody on its own initiative to evaluate the offender's
37 progress in treatment, or to determine if any violations of the
38 conditions of the sentence have occurred.

39 (b) At the commencement of such a hearing, the court shall advise
40 the offender sentenced under this section of the offender's right to

1 assistance of counsel and appoint counsel if the offender is
2 indigent.

3 (c) If the offender is brought back to court, the court may
4 modify the conditions of community custody or impose sanctions under
5 ((~~e~~)) (d) of this subsection, including extending the length of
6 participation in the alternative program by no more than six months.

7 ((~~e~~)) (d) The court may order the offender to serve a term of
8 total confinement within the standard range of the offender's current
9 offense at any time during the period of community custody, if the
10 offender violates the conditions or requirements of the sentence or
11 if the offender is failing to make satisfactory progress in
12 treatment.

13 ((~~d~~)) (e) An offender ordered to serve a term of total
14 confinement under ((~~e~~)) (d) of this subsection shall receive credit
15 for any time previously served in confinement under this section.

16 (f) An offender sentenced under this section is subject to all
17 rules relating to earned release time with respect to any period
18 served in total confinement.

19 (9) The state and its agencies, officers, agents, or employees
20 are not liable for the acts of offenders participating in the
21 sentencing alternative under this section unless the state or its
22 agencies, officers, agents, or employees act with willful disregard
23 of a known risk of immediate harm.

24 (10) For the purposes of this section:

25 (a) "Expectant parent" means a pregnant or other parent awaiting
26 the birth of his or her child, or an adoptive parent or person in the
27 process of a final adoption.

28 (b) "Minor child" means a child under the age of eighteen.

29 **Sec. 3.** RCW 9.94A.6551 and 2018 c 58 s 47 are each amended to
30 read as follows:

31 For an offender(~~s~~) not sentenced under RCW 9.94A.655, but
32 otherwise eligible under this section, no more than the final twelve
33 months of the offender's term of confinement may be served in partial
34 confinement as home detention as part of the parenting program
35 developed by the department.

36 (1) The secretary may transfer an offender from a correctional
37 facility to home detention in the community if it is determined that
38 the parenting program is an appropriate placement and when all of the
39 following conditions exist:

1 (a) The offender is serving a sentence in which the high end of
2 the range is greater than one year;

3 (b) The offender has no current conviction for a felony that is
4 classified as a sex offense or a serious violent offense;

5 (c) The offender has ~~((not been found by the United States~~
6 ~~attorney general to be subject to a deportation detainer or order and~~
7 ~~does not become subject to a deportation order during the period of~~
8 ~~the sentence))~~ no current conviction for a violent offense, or where
9 the offender has a current conviction for a violent offense, he or
10 she has not been determined to be a high risk to reoffend;

11 (d) The offender signs any release of information waivers
12 required to allow information regarding current or prior child
13 welfare cases to be shared with the department and the court;

14 (e) The offender is:

15 (i) ~~((Has physical or legal custody of a minor child;~~

16 ~~(ii) Has a proven, established, ongoing, and substantial~~
17 ~~relationship with his or her minor child that existed prior to the~~
18 ~~commission of the current offense; or~~

19 ~~(iii) Is a legal guardian of a child that was under the age of~~
20 ~~eighteen at the time of the current offense))~~ A parent with
21 guardianship or legal custody of a minor child;

22 (ii) An expectant parent; or

23 (iii) A biological parent, adoptive parent, custodian, or
24 stepparent with a proven, established, ongoing, and substantial
25 relationship with a minor child that existed at the time of the
26 offense; and

27 (f) The department determines that ~~((such a placement))~~ the
28 offender's participation in the parenting program is in the best
29 interests of the child. Nothing in this section provides the
30 department with authority to determine placement of a minor child.

31 (2) Except for sex offenses and serious violent offenses, prior
32 juvenile adjudications are not considered offenses when considering
33 eligibility for the parenting program developed by the department.

34 (3) When the department is considering partial confinement as
35 part of the parenting program for an offender, the department shall
36 inquire of the individual and the department of children, youth, and
37 families whether the agency has an open child welfare case or prior
38 substantiated referral for abuse or neglect involving the offender.

39 (4) If the department of children, youth, and families or a
40 tribal jurisdiction has an open child welfare case, the department

1 will seek input from the department of children, youth, and families
2 or the involved tribal jurisdiction as to: (a) The status of the
3 child welfare case; and (b) recommendations regarding placement of
4 the offender (~~(and services required of the department and the court~~
5 ~~governing)), services agreed to by the offender working voluntarily
6 with the department, or services ordered by the court within the
7 ~~((individual's)) offender's child welfare case. The department and
8 its officers, agents, and employees are not liable for the acts of
9 offenders participating in the parenting program unless the
10 department or its officers, agents, and employees acted with willful
11 and wanton disregard.~~~~

12 ~~((3))~~ (5) All offenders placed on home detention as part of the
13 parenting program shall provide an approved residence and living
14 arrangement prior to transfer to home detention.

15 ~~((4))~~ (6) While in the community on home detention as part of
16 the parenting program, the department shall:

17 (a) Require the offender to be placed on electronic home
18 monitoring;

19 (b) Require the offender to participate in programming and
20 treatment that the department determines is needed after
21 consideration of the offender's stated needs;

22 (c) Assign a community corrections officer who will monitor the
23 offender's compliance with conditions of partial confinement and
24 programming requirements; and

25 (d) If the offender has an open child welfare case with the
26 department of children, youth, and families, collaborate and
27 communicate with the identified social worker in the provision of
28 services.

29 ~~((5))~~ (7) The department has the authority to return any
30 offender serving partial confinement in the parenting program to
31 total confinement if the offender is not complying with sentence
32 requirements.

33 (8) For the purposes of this section:

34 (a) "Expectant parent" means a pregnant or other parent awaiting
35 the birth of his or her child, or an adoptive parent or person in the
36 process of a final adoption.

37 (b) "Minor child" means a child under the age of eighteen.

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