
SENATE BILL 5292

State of Washington 61st Legislature 2009 Regular Session

By Senators Kline, Hargrove, Pridemore, Kohl-Welles, Regala, and McDermott

Read first time 01/20/09. Referred to Committee on Judiciary.

1 AN ACT Relating to persistent offenders; reenacting and amending
2 RCW 9.94A.030; adding a new section to chapter 9.94A RCW; providing an
3 effective date; and providing an expiration date.

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

5 **Sec. 1.** RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008
6 c 230 s 2, and 2008 c 7 s 1 are each reenacted and amended to read as
7 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, and,
18 consistent with current law, delivering daily the entire payment to the
19 superior court clerk without depositing it in a departmental account.

- 1 (3) "Commission" means the sentencing guidelines commission.
- 2 (4) "Community corrections officer" means an employee of the
3 department who is responsible for carrying out specific duties in
4 supervision of sentenced offenders and monitoring of sentence
5 conditions.
- 6 (5) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed as
8 part of a sentence and served in the community subject to controls
9 placed on the offender's movement and activities by the department.
- 10 (6) "Community custody range" means the minimum and maximum period
11 of community custody included as part of a sentence under RCW
12 (~~(9.94A.715)~~) 9.94A.701, as established by the commission or the
13 legislature under RCW 9.94A.850.
- 14 (7) "Community protection zone" means the area within eight hundred
15 eighty feet of the facilities and grounds of a public or private
16 school.
- 17 (8) "Community restitution" means compulsory service, without
18 compensation, performed for the benefit of the community by the
19 offender.
- 20 (9) "Confinement" means total or partial confinement.
- 21 (10) "Conviction" means an adjudication of guilt pursuant to
22 Title(~~(§)~~) 10 or 13 RCW and includes a verdict of guilty, a finding of
23 guilty, and acceptance of a plea of guilty.
- 24 (11) "Crime-related prohibition" means an order of a court
25 prohibiting conduct that directly relates to the circumstances of the
26 crime for which the offender has been convicted, and shall not be
27 construed to mean orders directing an offender affirmatively to
28 participate in rehabilitative programs or to otherwise perform
29 affirmative conduct. However, affirmative acts necessary to monitor
30 compliance with the order of a court may be required by the department.
- 31 (12) "Criminal history" means the list of a defendant's prior
32 convictions and juvenile adjudications, whether in this state, in
33 federal court, or elsewhere.
- 34 (a) The history shall include, where known, for each conviction (i)
35 whether the defendant has been placed on probation and the length and
36 terms thereof; and (ii) whether the defendant has been incarcerated and
37 the length of incarceration.

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

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

10 (13) "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 (14) "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 the
23 criminal street gang.

24 (15) "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 is
29 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, prestige,
32 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,

1 gain, profit, or other advantage for the gang, its reputation,
2 influence, or membership; or

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

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

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

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

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

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

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

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

7 (22) "Drug offense" means:

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

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

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

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

19 (24) "Escape" means:

20 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
21 first degree (RCW 9A.76.110), escape in the second degree (RCW
22 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
23 willful failure to return from work release (RCW 72.65.070), or willful
24 failure to be available for supervision by the department while in
25 community custody (RCW 72.09.310); or

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

29 (25) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
32 run injury-accident (RCW 46.52.020(4)), felony driving while under the
33 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
34 felony physical control of a vehicle while under the influence of
35 intoxicating liquor or any drug (RCW 46.61.504(6)); 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 a felony
38 traffic offense under (a) of this subsection.

1 (26) "Fine" means a specific sum of money ordered by the sentencing
2 court to be paid by the offender to the court over a specific period of
3 time.

4 (27) "First-time offender" means any person who has no prior
5 convictions for a felony and is eligible for the first-time offender
6 waiver under RCW 9.94A.650.

7 (28) "Home detention" means a program of partial confinement
8 available to offenders wherein the offender is confined in a private
9 residence subject to electronic surveillance.

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

24 (30) "Most serious offense" means any of the following felonies or
25 a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) (~~Robbery in the second degree;~~
5 ~~p~~) Sexual exploitation;
6 (~~q~~) (p) Vehicular assault, when caused by the operation or
7 driving of a vehicle by a person while under the influence of
8 intoxicating liquor or any drug or by the operation or driving of a
9 vehicle in a reckless manner;
10 (~~r~~) (q) Vehicular homicide, when proximately caused by the
11 driving of any vehicle by any person while under the influence of
12 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
13 operation of any vehicle in a reckless manner;
14 (~~s~~) (r) Any other class B felony offense with a finding of
15 sexual motivation;
16 (~~t~~) (s) Any other felony with a deadly weapon verdict under RCW
17 9.94A.602;
18 (~~u~~) (t) Any felony offense in effect at any time prior to
19 December 2, 1993, that is comparable to a most serious offense under
20 this subsection, or any federal or out-of-state conviction for an
21 offense that under the laws of this state would be a felony classified
22 as a most serious offense under this subsection;
23 (~~v~~) (u)(i) A prior conviction for indecent liberties under RCW
24 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
25 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
26 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
27 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
28 (ii) A prior conviction for indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
30 if: (A) The crime was committed against a child under the age of
31 fourteen; or (B) the relationship between the victim and perpetrator is
32 included in the definition of indecent liberties under RCW
33 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
34 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
35 through July 27, 1997;
36 (~~w~~) (v) Any out-of-state conviction for a felony offense with
37 a finding of sexual motivation if the minimum sentence imposed was ten
38 years or more; provided that the out-of-state felony offense must be

1 comparable to a felony offense under Title 9 or 9A RCW and the out-of-
2 state definition of sexual motivation must be comparable to the
3 definition of sexual motivation contained in this section.

4 (31) "Nonviolent offense" means an offense which is not a violent
5 offense.

6 (32) "Offender" means a person who has committed a felony
7 established by state law and is eighteen years of age or older or is
8 less than eighteen years of age but whose case is under superior court
9 jurisdiction under RCW 13.04.030 or has been transferred by the
10 appropriate juvenile court to a criminal court pursuant to RCW
11 13.40.110. Throughout this chapter, the terms "offender" and
12 "defendant" are used interchangeably.

13 (33) "Partial confinement" means confinement for no more than one
14 year in a facility or institution operated or utilized under contract
15 by the state or any other unit of government, or, if home detention or
16 work crew has been ordered by the court, in an approved residence, for
17 a substantial portion of each day with the balance of the day spent in
18 the community. Partial confinement includes work release, home
19 detention, work crew, and a combination of work crew and home
20 detention.

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

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

25 (i) Any "serious violent" felony offense as defined in RCW
26 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of
27 a Child 1 (RCW 9A.36.120);

28 (ii) Any "violent" offense as defined by RCW 9.94A.030, excluding
29 Assault of a Child 2 (RCW 9A.36.130);

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

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

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

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

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

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

1 (ix) Criminal Gang Intimidation (RCW 9A.46.120);
2 (x) Any felony conviction by a person eighteen years of age or
3 older with a special finding of involving a juvenile in a felony
4 offense under RCW 9.94A.833;
5 (xi) Residential Burglary (RCW 9A.52.025);
6 (xii) Burglary 2 (RCW 9A.52.030);
7 (xiii) Malicious Mischief 1 (RCW 9A.48.070);
8 (xiv) Malicious Mischief 2 (RCW 9A.48.080);
9 (xv) Theft of a Motor Vehicle (RCW 9A.56.065);
10 (xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);
11 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);
12 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
13 9A.56.075);
14 (xix) Extortion 1 (RCW 9A.56.120);
15 (xx) Extortion 2 (RCW 9A.56.130);
16 (xxi) Intimidating a Witness (RCW 9A.72.110);
17 (xxii) Tampering with a Witness (RCW 9A.72.120);
18 (xxiii) Reckless Endangerment (RCW 9A.36.050);
19 (xxiv) Coercion (RCW 9A.36.070);
20 (xxv) Harassment (RCW 9A.46.020); or
21 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
22 (b) That at least one of the offenses listed in (a) of this
23 subsection shall have occurred after July 1, 2008;
24 (c) That the most recent committed offense listed in (a) of this
25 subsection occurred within three years of a prior offense listed in (a)
26 of this subsection; and
27 (d) Of the offenses that were committed in (a) of this subsection,
28 the offenses occurred on separate occasions or were committed by two or
29 more persons.
30 (35) "Persistent offender" is an offender who:
31 (a)(i) Has been convicted in this state of any felony considered a
32 most serious offense; and
33 (ii) Has, before the commission of the offense under (a) of this
34 subsection, been convicted as an offender on at least two separate
35 occasions, whether in this state or elsewhere, of felonies that under
36 the laws of this state would be considered most serious offenses and
37 would be included in the offender score under RCW 9.94A.525; provided

1 that of the two or more previous convictions, at least one conviction
2 must have occurred before the commission of any of the other most
3 serious offenses for which the offender was previously convicted; or

4 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
5 of a child in the first degree, child molestation in the first degree,
6 rape in the second degree, rape of a child in the second degree, or
7 indecent liberties by forcible compulsion; (B) any of the following
8 offenses with a finding of sexual motivation: Murder in the first
9 degree, murder in the second degree, homicide by abuse, kidnapping in
10 the first degree, kidnapping in the second degree, assault in the first
11 degree, assault in the second degree, assault of a child in the first
12 degree, assault of a child in the second degree, or burglary in the
13 first degree; or (C) an attempt to commit any crime listed in this
14 subsection (35)(b)(i); and

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

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

1 authority or supervision; or (iii) a pastor, elder, volunteer, or other
2 person in authority in any church or religious organization, and the
3 victim was a member or participant of the organization under his or her
4 authority.

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

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

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

12 (40) "Risk assessment" means the application of an objective
13 instrument supported by research and adopted by the department for the
14 purpose of assessing an offender's risk of reoffense, taking into
15 consideration the nature of the harm done by the offender, place and
16 circumstances of the offender related to risk, the offender's
17 relationship to any victim, and any information provided to the
18 department by victims. The results of a risk assessment shall not be
19 based on unconfirmed or unconfirmable allegations.

20 (41) "Serious traffic offense" means:

21 (a) Nonfelony driving while under the influence of intoxicating
22 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
23 while under the influence of intoxicating liquor or any drug (RCW
24 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
25 attended vehicle (RCW 46.52.020(5)); or

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

29 (42) "Serious violent offense" is a subcategory of violent offense
30 and means:

- 31 (a)(i) Murder in the first degree;
- 32 (ii) Homicide by abuse;
- 33 (iii) Murder in the second degree;
- 34 (iv) Manslaughter in the first degree;
- 35 (v) Assault in the first degree;
- 36 (vi) Kidnapping in the first degree;
- 37 (vii) Rape in the first degree;
- 38 (viii) Assault of a child in the first degree; or

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

3 (b) 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 serious
5 violent offense under (a) of this subsection.

6 (43) "Sex offense" means:

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

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

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

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

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

17 (c) A felony with a finding of sexual motivation under RCW
18 9.94A.835 or 13.40.135; or

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

22 (44) "Sexual motivation" means that one of the purposes for which
23 the defendant committed the crime was for the purpose of his or her
24 sexual gratification.

25 (45) "Standard sentence range" means the sentencing court's
26 discretionary range in imposing a nonappealable sentence.

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

31 (47) "Stranger" means that the victim did not know the offender
32 twenty-four hours before the offense.

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

37 (49) "Transition training" means written and verbal instructions
38 and assistance provided by the department to the offender during the

1 two weeks prior to the offender's successful completion of the work
2 ethic camp program. The transition training shall include instructions
3 in the offender's requirements and obligations during the offender's
4 period of community custody.

5 (50) "Victim" means any person who has sustained emotional,
6 psychological, physical, or financial injury to person or property as
7 a direct result of the crime charged.

8 (51) "Violent offense" means:

9 (a) Any of the following felonies:

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

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

14 (iii) Manslaughter in the first degree;

15 (iv) Manslaughter in the second degree;

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

17 (vi) Kidnapping in the second degree;

18 (vii) Arson in the second degree;

19 (viii) Assault in the second degree;

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

21 (x) Extortion in the first degree;

22 (xi) Robbery in the second degree;

23 (xii) Drive-by shooting;

24 (xiii) Vehicular assault, when caused by the operation or driving
25 of a vehicle by a person while under the influence of intoxicating
26 liquor or any drug or by the operation or driving of a vehicle in a
27 reckless manner; and

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

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 violent
34 offense in (a) of this subsection; and

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

1 (52) "Work crew" means a program of partial confinement consisting
2 of civic improvement tasks for the benefit of the community that
3 complies with RCW 9.94A.725.

4 (53) "Work ethic camp" means an alternative incarceration program
5 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
6 the cost of corrections by requiring offenders to complete a
7 comprehensive array of real-world job and vocational experiences,
8 character-building work ethics training, life management skills
9 development, substance abuse rehabilitation, counseling, literacy
10 training, and basic adult education.

11 (54) "Work release" means a program of partial confinement
12 available to offenders who are employed or engaged as a student in a
13 regular course of study at school.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
15 to read as follows:

16 In any criminal case wherein an offender has been sentenced as a
17 persistent offender prior to the effective date of this act, the
18 offender shall have a resentencing hearing if a current or past
19 conviction for robbery in the second degree was used as a basis for the
20 finding that the offender was a persistent offender. The prosecuting
21 attorney for the county in which any offender was sentenced as a
22 persistent offender shall review each sentencing document. If a
23 current or past conviction for robbery in the second degree was used as
24 a basis for a finding that an offender was a persistent offender, the
25 prosecuting attorney shall, or the offender may, make a motion for
26 relief from sentence to the original sentencing court.

27 The sentencing court shall grant the motion if it finds that a
28 current or past conviction for robbery in the second degree was used as
29 a basis for a finding that the offender was a persistent offender and
30 shall immediately set an expedited date for resentencing. At
31 resentencing, the court shall sentence the offender as if robbery in
32 the second degree was not a most serious offense at the time the
33 original sentence was imposed.

34 This section expires July 1, 2011.

1 NEW SECTION. **Sec. 3.** This act takes effect August 1, 2009.

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