
SUBSTITUTE SENATE BILL 5119

State of Washington

63rd Legislature

2013 Regular Session

By Senate Law & Justice (originally sponsored by Senators Carrell, Pearson, Hewitt, Sheldon, Becker, Holmquist Newbry, Litzow, Roach, Honeyford, and Dammeier)

READ FIRST TIME 02/12/13.

1 AN ACT Relating to body armor; amending RCW 9.94A.030, 9.94A.533,
2 and 9.94A.728; adding a new section to chapter 9.94A RCW; prescribing
3 penalties; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.030 and 2012 c 143 s 1 are each amended to read
6 as follows:

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

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

11 (2) "Body armor" means any clothing or devices designed primarily
12 to prevent penetration by a projectile fired from a firearm or by a
13 knife, sword, or other cutting or stabbing instrument, and which is
14 worn by an individual for that specific purpose in the commission of a
15 crime.

16 (3) "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

1 and enforcing the offender's sentence with regard to the legal
2 financial obligation, receiving payment thereof from the offender, and,
3 consistent with current law, delivering daily the entire payment to the
4 superior court clerk without depositing it in a departmental account.

5 ~~((+3))~~ (4) "Commission" means the sentencing guidelines
6 commission.

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

11 ~~((+5))~~ (6) "Community custody" means that portion of an offender's
12 sentence of confinement in lieu of earned release time or imposed as
13 part of a sentence under this chapter and served in the community
14 subject to controls placed on the offender's movement and activities by
15 the department.

16 ~~((+6))~~ (7) "Community protection zone" means the area within eight
17 hundred eighty feet of the facilities and grounds of a public or
18 private school.

19 ~~((+7))~~ (8) "Community restitution" means compulsory service,
20 without compensation, performed for the benefit of the community by the
21 offender.

22 ~~((+8))~~ (9) "Confinement" means total or partial confinement.

23 ~~((+9))~~ (10) "Conviction" means an adjudication of guilt pursuant
24 to Title 10 or 13 RCW and includes a verdict of guilty, a finding of
25 guilty, and acceptance of a plea of guilty.

26 ~~((+10))~~ (11) "Crime-related prohibition" means an order of a court
27 prohibiting conduct that directly relates to the circumstances of the
28 crime for which the offender has been convicted, and shall not be
29 construed to mean orders directing an offender affirmatively to
30 participate in rehabilitative programs or to otherwise perform
31 affirmative conduct. However, affirmative acts necessary to monitor
32 compliance with the order of a court may be required by the department.

33 ~~((+11))~~ (12) "Criminal history" means the list of a defendant's
34 prior convictions and juvenile adjudications, whether in this state, in
35 federal court, or elsewhere.

36 (a) The history shall include, where known, for each conviction (i)
37 whether the defendant has been placed on probation and the length and

1 terms thereof; and (ii) whether the defendant has been incarcerated and
2 the length of incarceration.

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

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

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

22 ~~((+13+))~~ (14) "Criminal street gang associate or member" means any
23 person who actively participates in any criminal street gang and who
24 intentionally promotes, furthers, or assists in any criminal act by the
25 criminal street gang.

26 ~~((+14+))~~ (15) "Criminal street gang-related offense" means any
27 felony or misdemeanor offense, whether in this state or elsewhere, that
28 is committed for the benefit of, at the direction of, or in association
29 with any criminal street gang, or is committed with the intent to
30 promote, further, or assist in any criminal conduct by the gang, or is
31 committed for one or more of the following reasons:

- 32 (a) To gain admission, prestige, or promotion within the gang;
- 33 (b) To increase or maintain the gang's size, membership, prestige,
34 dominance, or control in any geographical area;
- 35 (c) To exact revenge or retribution for the gang or any member of
36 the gang;
- 37 (d) To obstruct justice, or intimidate or eliminate any witness
38 against the gang or any member of the gang;

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

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

12 ((+15+)) (16) "Day fine" means a fine imposed by the sentencing
13 court that equals the difference between the offender's net daily
14 income and the reasonable obligations that the offender has for the
15 support of the offender and any dependents.

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

21 ((+17+)) (18) "Department" means the department of corrections.

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

30 ((+19+)) (20) "Disposable earnings" means that part of the earnings
31 of an offender remaining after the deduction from those earnings of any
32 amount required by law to be withheld. For the purposes of this
33 definition, "earnings" means compensation paid or payable for personal
34 services, whether denominated as wages, salary, commission, bonuses, or
35 otherwise, and, notwithstanding any other provision of law making the
36 payments exempt from garnishment, attachment, or other process to
37 satisfy a court-ordered legal financial obligation, specifically
38 includes periodic payments pursuant to pension or retirement programs,

1 or insurance policies of any type, but does not include payments made
2 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
3 or Title 74 RCW.

4 ~~((+20+))~~ (21) "Domestic violence" has the same meaning as defined
5 in RCW 10.99.020 and 26.50.010.

6 ~~((+21+))~~ (22) "Drug offender sentencing alternative" is a
7 sentencing option available to persons convicted of a felony offense
8 other than a violent offense or a sex offense and who are eligible for
9 the option under RCW 9.94A.660.

10 ~~((+22+))~~ (23) "Drug offense" means:

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

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

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

20 ~~((+23+))~~ (24) "Earned release" means earned release from
21 confinement as provided in RCW 9.94A.728.

22 ~~((+24+))~~ (25) "Escape" means:

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

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

32 ~~((+25+))~~ (26) "Felony traffic offense" means:

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

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

4 ~~((+26+))~~ (27) "Fine" means a specific sum of money ordered by the
5 sentencing court to be paid by the offender to the court over a
6 specific period of time.

7 ~~((+27+))~~ (28) "First-time offender" means any person who has no
8 prior convictions for a felony and is eligible for the first-time
9 offender waiver under RCW 9.94A.650.

10 ~~((+28+))~~ (29) "Home detention" means a program of partial
11 confinement available to offenders wherein the offender is confined in
12 a private residence subject to electronic surveillance.

13 ~~((+29+))~~ (30) "Homelessness" or "homeless" means a condition where
14 an individual lacks a fixed, regular, and adequate nighttime residence
15 and who has a primary nighttime residence that is:

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

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

20 (c) A private residence where the individual stays as a transient
21 invitee.

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

36 ~~((+31+))~~ (32) "Minor child" means a biological or adopted child of
37 the offender who is under age eighteen at the time of the offender's
38 current offense.

1 (~~(32)~~) (33) "Most serious offense" means any of the following
2 felonies or a felony attempt to commit any of the following felonies:

3 (a) Any felony defined under any law as a class A felony or
4 criminal solicitation of or criminal conspiracy to commit a class A
5 felony;

6 (b) Assault in the second degree;

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

8 (d) Child molestation in the second degree;

9 (e) Controlled substance homicide;

10 (f) Extortion in the first degree;

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

12 (h) Indecent liberties;

13 (i) Kidnapping in the second degree;

14 (j) Leading organized crime;

15 (k) Manslaughter in the first degree;

16 (l) Manslaughter in the second degree;

17 (m) Promoting prostitution in the first degree;

18 (n) Rape in the third degree;

19 (o) Robbery in the second degree;

20 (p) Sexual exploitation;

21 (q) Vehicular assault, when caused by the operation or driving of
22 a vehicle by a person while under the influence of intoxicating liquor
23 or any drug or by the operation or driving of a vehicle in a reckless
24 manner;

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

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

31 (t) Any other felony with a deadly weapon verdict under RCW
32 9.94A.825;

33 (u) Any felony offense in effect at any time prior to December 2,
34 1993, that is comparable to a most serious offense under this
35 subsection, or any federal or out-of-state conviction for an offense
36 that under the laws of this state would be a felony classified as a
37 most serious offense under this subsection;

1 (v)(i) A prior conviction for indecent liberties under RCW
2 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
3 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
4 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
5 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

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

20 ~~((+33+))~~ (34) "Nonviolent offense" means an offense which is not a
21 violent offense.

22 ~~((+34+))~~ (35) "Offender" means a person who has committed a felony
23 established by state law and is eighteen years of age or older or is
24 less than eighteen years of age but whose case is under superior court
25 jurisdiction under RCW 13.04.030 or has been transferred by the
26 appropriate juvenile court to a criminal court pursuant to RCW
27 13.40.110. In addition, for the purpose of community custody
28 requirements under this chapter, "offender" also means a misdemeanor
29 or gross misdemeanor probationer ordered by a superior court to
30 probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and
31 supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011.
32 Throughout this chapter, the terms "offender" and "defendant" are used
33 interchangeably.

34 ~~((+35+))~~ (36) "Partial confinement" means confinement for no more
35 than one year in a facility or institution operated or utilized under
36 contract by the state or any other unit of government, or, if home
37 detention or work crew has been ordered by the court or home detention
38 has been ordered by the department as part of the parenting program, in

1 an approved residence, for a substantial portion of each day with the
2 balance of the day spent in the community. Partial confinement
3 includes work release, home detention, work crew, and a combination of
4 work crew and home detention.

5 ~~((+36+))~~ (37) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
35 9A.56.075);

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

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

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

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

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

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

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

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

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

8 (c) That the most recent committed offense listed in (a) of this
9 subsection occurred within three years of a prior offense listed in (a)
10 of this subsection; and

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

14 (~~(+37+)~~) (38) "Persistent offender" is an offender who:

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

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

25 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
26 of a child in the first degree, child molestation in the first degree,
27 rape in the second degree, rape of a child in the second degree, or
28 indecent liberties by forcible compulsion; (B) any of the following
29 offenses with a finding of sexual motivation: Murder in the first
30 degree, murder in the second degree, homicide by abuse, kidnapping in
31 the first degree, kidnapping in the second degree, assault in the first
32 degree, assault in the second degree, assault of a child in the first
33 degree, assault of a child in the second degree, or burglary in the
34 first degree; or (C) an attempt to commit any crime listed in this
35 subsection (~~(+37+)~~) (38)(b)(i); and

36 (ii) Has, before the commission of the offense under (b)(i) of this
37 subsection, been convicted as an offender on at least one occasion,
38 whether in this state or elsewhere, of an offense listed in (b)(i) of

1 this subsection or any federal or out-of-state offense or offense under
2 prior Washington law that is comparable to the offenses listed in
3 (b)(i) of this subsection. A conviction for rape of a child in the
4 first degree constitutes a conviction under (b)(i) of this subsection
5 only when the offender was sixteen years of age or older when the
6 offender committed the offense. A conviction for rape of a child in
7 the second degree constitutes a conviction under (b)(i) of this
8 subsection only when the offender was eighteen years of age or older
9 when the offender committed the offense.

10 ~~((+38+))~~ (39) "Predatory" means: (a) The perpetrator of the crime
11 was a stranger to the victim, as defined in this section; (b) the
12 perpetrator established or promoted a relationship with the victim
13 prior to the offense and the victimization of the victim was a
14 significant reason the perpetrator established or promoted the
15 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
16 volunteer, or other person in authority in any public or private school
17 and the victim was a student of the school under his or her authority
18 or supervision. For purposes of this subsection, "school" does not
19 include home-based instruction as defined in RCW 28A.225.010; (ii) a
20 coach, trainer, volunteer, or other person in authority in any
21 recreational activity and the victim was a participant in the activity
22 under his or her authority or supervision; (iii) a pastor, elder,
23 volunteer, or other person in authority in any church or religious
24 organization, and the victim was a member or participant of the
25 organization under his or her authority; or (iv) a teacher, counselor,
26 volunteer, or other person in authority providing home-based
27 instruction and the victim was a student receiving home-based
28 instruction while under his or her authority or supervision. For
29 purposes of this subsection: (A) "Home-based instruction" has the same
30 meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor,
31 volunteer, or other person in authority" does not include the parent or
32 legal guardian of the victim.

33 ~~((+39+))~~ (40) "Private school" means a school regulated under
34 chapter 28A.195 or 28A.205 RCW.

35 ~~((+40+))~~ (41) "Public school" has the same meaning as in RCW
36 28A.150.010.

37 ~~((+41+))~~ (42) "Repetitive domestic violence offense" means any:

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

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

5 (iii) Domestic violence violation of a protection order under
6 chapter 26.09, 26.10, 26.26, or 26.50 RCW that is not a felony offense;

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

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

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

15 ~~((42))~~ (43) "Restitution" means a specific sum of money ordered
16 by the sentencing court to be paid by the offender to the court over a
17 specified period of time as payment of damages. The sum may include
18 both public and private costs.

19 ~~((43))~~ (44) "Risk assessment" means the application of the risk
20 instrument recommended to the department by the Washington state
21 institute for public policy as having the highest degree of predictive
22 accuracy for assessing an offender's risk of reoffense.

23 ~~((44))~~ (45) "Serious traffic offense" means:

24 (a) Nonfelony driving while under the influence of intoxicating
25 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
26 while under the influence of intoxicating liquor or any drug (RCW
27 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
28 attended vehicle (RCW 46.52.020(5)); or

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

32 ~~((45))~~ (46) "Serious violent offense" is a subcategory of violent
33 offense and means:

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

35 (ii) Homicide by abuse;

36 (iii) Murder in the second degree;

37 (iv) Manslaughter in the first degree;

38 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or
6 (b) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a serious
8 violent offense under (a) of this subsection.
9 ~~((46))~~ (47) "Sex offense" means:
10 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
11 RCW 9A.44.132;
12 (ii) A violation of RCW 9A.64.020;
13 (iii) A felony that is a violation of chapter 9.68A RCW other than
14 RCW 9.68A.080;
15 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
16 criminal solicitation, or criminal conspiracy to commit such crimes; or
17 (v) A felony violation of RCW 9A.44.132(1) (failure to register) if
18 the person has been convicted of violating RCW 9A.44.132(1) (failure to
19 register) on at least one prior occasion;
20 (b) Any conviction for a felony offense in effect at any time prior
21 to July 1, 1976, that is comparable to a felony classified as a sex
22 offense in (a) of this subsection;
23 (c) A felony with a finding of sexual motivation under RCW
24 9.94A.835 or 13.40.135; or
25 (d) Any federal or out-of-state conviction for an offense that
26 under the laws of this state would be a felony classified as a sex
27 offense under (a) of this subsection.
28 ~~((47))~~ (48) "Sexual motivation" means that one of the purposes
29 for which the defendant committed the crime was for the purpose of his
30 or her sexual gratification.
31 ~~((48))~~ (49) "Standard sentence range" means the sentencing
32 court's discretionary range in imposing a nonappealable sentence.
33 ~~((49))~~ (50) "Statutory maximum sentence" means the maximum length
34 of time for which an offender may be confined as punishment for a crime
35 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
36 the crime, or other statute defining the maximum penalty for a crime.
37 ~~((50))~~ (51) "Stranger" means that the victim did not know the
38 offender twenty-four hours before the offense.

1 ~~((+51+))~~ (52) "Total confinement" means confinement inside the
2 physical boundaries of a facility or institution operated or utilized
3 under contract by the state or any other unit of government for twenty-
4 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 ~~((+52+))~~ (53) "Transition training" means written and verbal
6 instructions and assistance provided by the department to the offender
7 during the two weeks prior to the offender's successful completion of
8 the work ethic camp program. The transition training shall include
9 instructions in the offender's requirements and obligations during the
10 offender's period of community custody.

11 ~~((+53+))~~ (54) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 ~~((+54+))~~ (55) "Violent offense" means:

15 (a) Any of the following felonies:

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

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

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

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

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

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

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

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

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

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

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

7 ~~((+55+))~~ (56) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.725.

10 ~~((+56+))~~ (57) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.690 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 ~~((+57+))~~ (58) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 2.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read
21 as follows:

22 (1) The provisions of this section apply to the standard sentence
23 ranges determined by RCW 9.94A.510 or 9.94A.517.

24 (2) For persons convicted of the anticipatory offenses of criminal
25 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
26 standard sentence range is determined by locating the sentencing grid
27 sentence range defined by the appropriate offender score and the
28 seriousness level of the completed crime, and multiplying the range by
29 seventy-five percent.

30 (3) The following additional times shall be added to the standard
31 sentence range for felony crimes committed after July 23, 1995, if the
32 offender or an accomplice was armed with a firearm as defined in RCW
33 9.41.010 and the offender is being sentenced for one of the crimes
34 listed in this subsection as eligible for any firearm enhancements
35 based on the classification of the completed felony crime. If the
36 offender is being sentenced for more than one offense, the firearm
37 enhancement or enhancements must be added to the total period of

1 confinement for all offenses, regardless of which underlying offense is
2 subject to a firearm enhancement. If the offender or an accomplice was
3 armed with a firearm as defined in RCW 9.41.010 and the offender is
4 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
5 commit one of the crimes listed in this subsection as eligible for any
6 firearm enhancements, the following additional times shall be added to
7 the standard sentence range determined under subsection (2) of this
8 section based on the felony crime of conviction as classified under RCW
9 9A.28.020:

10 (a) Five years for any felony defined under any law as a class A
11 felony or with a statutory maximum sentence of at least twenty years,
12 or both, and not covered under ~~((f))~~ (g) of this subsection;

13 (b) Three years for any felony defined under any law as a class B
14 felony or with a statutory maximum sentence of ten years, or both, and
15 not covered under ~~((f))~~ (g) of this subsection;

16 (c) Eighteen months for any felony defined under any law as a class
17 C felony or with a statutory maximum sentence of five years, or both,
18 and not covered under ~~((f))~~ (g) of this subsection;

19 (d) If the offender is being sentenced for any firearm enhancements
20 under (a), (b), and/or (c) of this subsection and the offender has
21 previously been sentenced for any deadly weapon enhancements after July
22 23, 1995, under (a), (b), and/or (c) of this subsection or subsection
23 (4)(a), (b), and/or (c) of this section, or both, all firearm
24 enhancements under this subsection shall be twice the amount of the
25 enhancement listed;

26 (e) If the offender or an accomplice was wearing body armor at the
27 time of the offense, all firearm enhancements under this subsection
28 shall be twice the amount of the enhancement listed;

29 (f) Notwithstanding any other provision of law, all firearm
30 enhancements under this section are mandatory, shall be served in total
31 confinement, and shall run consecutively to all other sentencing
32 provisions, including other firearm or deadly weapon enhancements, for
33 all offenses sentenced under this chapter. However, whether or not a
34 mandatory minimum term has expired, an offender serving a sentence
35 under this subsection may be granted an extraordinary medical placement
36 when authorized under RCW 9.94A.728(3);

37 ~~((f))~~ (g) The firearm enhancements in this section shall apply to
38 all felony crimes except the following: Possession of a machine gun,

1 possessing a stolen firearm, drive-by shooting, theft of a firearm,
2 unlawful possession of a firearm in the first and second degree, and
3 use of a machine gun in a felony;

4 ~~((g))~~ (h) If the standard sentence range under this section
5 exceeds the statutory maximum sentence for the offense, the statutory
6 maximum sentence shall be the presumptive sentence unless the offender
7 is a persistent offender. If the addition of a firearm enhancement
8 increases the sentence so that it would exceed the statutory maximum
9 for the offense, the portion of the sentence representing the
10 enhancement may not be reduced.

11 (4) The following additional times shall be added to the standard
12 sentence range for felony crimes committed after July 23, 1995, if the
13 offender or an accomplice was armed with a deadly weapon other than a
14 firearm as defined in RCW 9.41.010 and the offender is being sentenced
15 for one of the crimes listed in this subsection as eligible for any
16 deadly weapon enhancements based on the classification of the completed
17 felony crime. If the offender is being sentenced for more than one
18 offense, the deadly weapon enhancement or enhancements must be added to
19 the total period of confinement for all offenses, regardless of which
20 underlying offense is subject to a deadly weapon enhancement. If the
21 offender or an accomplice was armed with a deadly weapon other than a
22 firearm as defined in RCW 9.41.010 and the offender is being sentenced
23 for an anticipatory offense under chapter 9A.28 RCW to commit one of
24 the crimes listed in this subsection as eligible for any deadly weapon
25 enhancements, the following additional times shall be added to the
26 standard sentence range determined under subsection (2) of this section
27 based on the felony crime of conviction as classified under RCW
28 9A.28.020:

29 (a) Two years for any felony defined under any law as a class A
30 felony or with a statutory maximum sentence of at least twenty years,
31 or both, and not covered under (f) of this subsection;

32 (b) One year for any felony defined under any law as a class B
33 felony or with a statutory maximum sentence of ten years, or both, and
34 not covered under (f) of this subsection;

35 (c) Six months for any felony defined under any law as a class C
36 felony or with a statutory maximum sentence of five years, or both, and
37 not covered under (f) of this subsection;

1 (d) If the offender is being sentenced under (a), (b), and/or (c)
2 of this subsection for any deadly weapon enhancements and the offender
3 has previously been sentenced for any deadly weapon enhancements after
4 July 23, 1995, under (a), (b), and/or (c) of this subsection or
5 subsection (3)(a), (b), and/or (c) of this section, or both, or the
6 offender or an accomplice was wearing body armor at the time of the
7 offense, all deadly weapon enhancements under this subsection shall be
8 twice the amount of the enhancement listed;

9 (e) Notwithstanding any other provision of law, all deadly weapon
10 enhancements under this section are mandatory, shall be served in total
11 confinement, and shall run consecutively to all other sentencing
12 provisions, including other firearm or deadly weapon enhancements, for
13 all offenses sentenced under this chapter. However, whether or not a
14 mandatory minimum term has expired, an offender serving a sentence
15 under this subsection may be granted an extraordinary medical placement
16 when authorized under RCW 9.94A.728(3);

17 (f) The deadly weapon enhancements in this section shall apply to
18 all felony crimes except the following: Possession of a machine gun,
19 possessing a stolen firearm, drive-by shooting, theft of a firearm,
20 unlawful possession of a firearm in the first and second degree, and
21 use of a machine gun in a felony;

22 (g) If the standard sentence range under this section exceeds the
23 statutory maximum sentence for the offense, the statutory maximum
24 sentence shall be the presumptive sentence unless the offender is a
25 persistent offender. If the addition of a deadly weapon enhancement
26 increases the sentence so that it would exceed the statutory maximum
27 for the offense, the portion of the sentence representing the
28 enhancement may not be reduced.

29 (5) The following additional times shall be added to the standard
30 sentence range if the offender or an accomplice committed the offense
31 while in a county jail or state correctional facility and the offender
32 is being sentenced for one of the crimes listed in this subsection. If
33 the offender or an accomplice committed one of the crimes listed in
34 this subsection while in a county jail or state correctional facility,
35 and the offender is being sentenced for an anticipatory offense under
36 chapter 9A.28 RCW to commit one of the crimes listed in this
37 subsection, the following additional times shall be added to the

1 standard sentence range determined under subsection (2) of this
2 section:

3 (a) Eighteen months for offenses committed under RCW 69.50.401(2)
4 (a) or (b) or 69.50.410;

5 (b) Fifteen months for offenses committed under RCW 69.50.401(2)
6 (c), (d), or (e);

7 (c) Twelve months for offenses committed under RCW 69.50.4013.

8 For the purposes of this subsection, all of the real property of a
9 state correctional facility or county jail shall be deemed to be part
10 of that facility or county jail.

11 (6) An additional twenty-four months shall be added to the standard
12 sentence range for any ranked offense involving a violation of chapter
13 69.50 RCW if the offense was also a violation of RCW 69.50.435 or
14 9.94A.827. All enhancements under this subsection shall run
15 consecutively to all other sentencing provisions, for all offenses
16 sentenced under this chapter.

17 (7) An additional two years shall be added to the standard sentence
18 range for vehicular homicide committed while under the influence of
19 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
20 prior offense as defined in RCW 46.61.5055. All enhancements under
21 this subsection shall be mandatory, shall be served in total
22 confinement, and shall run consecutively to all other sentencing
23 provisions.

24 (8)(a) The following additional times shall be added to the
25 standard sentence range for felony crimes committed on or after July 1,
26 2006, if the offense was committed with sexual motivation, as that term
27 is defined in RCW 9.94A.030. If the offender is being sentenced for
28 more than one offense, the sexual motivation enhancement must be added
29 to the total period of total confinement for all offenses, regardless
30 of which underlying offense is subject to a sexual motivation
31 enhancement. If the offender committed the offense with sexual
32 motivation and the offender is being sentenced for an anticipatory
33 offense under chapter 9A.28 RCW, the following additional times shall
34 be added to the standard sentence range determined under subsection (2)
35 of this section based on the felony crime of conviction as classified
36 under RCW 9A.28.020:

37 (i) Two years for any felony defined under the law as a class A

1 felony or with a statutory maximum sentence of at least twenty years,
2 or both;

3 (ii) Eighteen months for any felony defined under any law as a
4 class B felony or with a statutory maximum sentence of ten years, or
5 both;

6 (iii) One year for any felony defined under any law as a class C
7 felony or with a statutory maximum sentence of five years, or both;

8 (iv) If the offender is being sentenced for any sexual motivation
9 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
10 the offender has previously been sentenced for any sexual motivation
11 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii)
12 of this subsection, all sexual motivation enhancements under this
13 subsection shall be twice the amount of the enhancement listed;

14 (b) Notwithstanding any other provision of law, all sexual
15 motivation enhancements under this subsection are mandatory, shall be
16 served in total confinement, and shall run consecutively to all other
17 sentencing provisions, including other sexual motivation enhancements,
18 for all offenses sentenced under this chapter. However, whether or not
19 a mandatory minimum term has expired, an offender serving a sentence
20 under this subsection may be granted an extraordinary medical placement
21 when authorized under RCW 9.94A.728(3);

22 (c) The sexual motivation enhancements in this subsection apply to
23 all felony crimes;

24 (d) If the standard sentence range under this subsection exceeds
25 the statutory maximum sentence for the offense, the statutory maximum
26 sentence shall be the presumptive sentence unless the offender is a
27 persistent offender. If the addition of a sexual motivation
28 enhancement increases the sentence so that it would exceed the
29 statutory maximum for the offense, the portion of the sentence
30 representing the enhancement may not be reduced;

31 (e) The portion of the total confinement sentence which the
32 offender must serve under this subsection shall be calculated before
33 any earned early release time is credited to the offender;

34 (f) Nothing in this subsection prevents a sentencing court from
35 imposing a sentence outside the standard sentence range pursuant to RCW
36 9.94A.535.

37 (9) An additional one-year enhancement shall be added to the
38 standard sentence range for the felony crimes of RCW 9A.44.073,

1 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
2 or after July 22, 2007, if the offender engaged, agreed, or offered to
3 engage the victim in the sexual conduct in return for a fee. If the
4 offender is being sentenced for more than one offense, the one-year
5 enhancement must be added to the total period of total confinement for
6 all offenses, regardless of which underlying offense is subject to the
7 enhancement. If the offender is being sentenced for an anticipatory
8 offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079,
9 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted,
10 solicited another, or conspired to engage, agree, or offer to engage
11 the victim in the sexual conduct in return for a fee, an additional
12 one-year enhancement shall be added to the standard sentence range
13 determined under subsection (2) of this section. For purposes of this
14 subsection, "sexual conduct" means sexual intercourse or sexual
15 contact, both as defined in chapter 9A.44 RCW.

16 (10)(a) For a person age eighteen or older convicted of any
17 criminal street gang-related felony offense for which the person
18 compensated, threatened, or solicited a minor in order to involve the
19 minor in the commission of the felony offense, the standard sentence
20 range is determined by locating the sentencing grid sentence range
21 defined by the appropriate offender score and the seriousness level of
22 the completed crime, and multiplying the range by one hundred twenty-
23 five percent. If the standard sentence range under this subsection
24 exceeds the statutory maximum sentence for the offense, the statutory
25 maximum sentence is the presumptive sentence unless the offender is a
26 persistent offender.

27 (b) This subsection does not apply to any criminal street gang-
28 related felony offense for which involving a minor in the commission of
29 the felony offense is an element of the offense.

30 (c) The increased penalty specified in (a) of this subsection is
31 unavailable in the event that the prosecution gives notice that it will
32 seek an exceptional sentence based on an aggravating factor under RCW
33 9.94A.535.

34 (11) An additional twelve months and one day shall be added to the
35 standard sentence range for a conviction of attempting to elude a
36 police vehicle as defined by RCW 46.61.024, if the conviction included
37 a finding by special allegation of endangering one or more persons
38 under RCW 9.94A.834.

1 (12) An additional twelve months shall be added to the standard
2 sentence range for an offense that is also a violation of RCW
3 9.94A.831.

4 (13) An additional twelve months shall be added to the standard
5 sentence range for vehicular homicide committed while under the
6 influence of intoxicating liquor or any drug as defined by RCW
7 46.61.520 or for vehicular assault committed while under the influence
8 of intoxicating liquor or any drug as defined by RCW 46.61.522, or for
9 any felony driving under the influence (RCW 46.61.502(6)) or felony
10 physical control under the influence (RCW 46.61.504(6)) for each child
11 passenger under the age of sixteen who is an occupant in the
12 defendant's vehicle. These enhancements shall be mandatory, shall be
13 served in total confinement, and shall run consecutively to all other
14 sentencing provisions. If the addition of a minor child enhancement
15 increases the sentence so that it would exceed the statutory maximum
16 for the offense, the portion of the sentence representing the
17 enhancement may not be reduced.

18 **Sec. 3.** RCW 9.94A.728 and 2010 c 224 s 6 are each amended to read
19 as follows:

20 No person serving a sentence imposed pursuant to this chapter and
21 committed to the custody of the department shall leave the confines of
22 the correctional facility or be released prior to the expiration of the
23 sentence except as follows:

24 (1) An offender may earn early release time as authorized by RCW
25 9.94A.729;

26 (2) An offender may leave a correctional facility pursuant to an
27 authorized furlough or leave of absence. In addition, offenders may
28 leave a correctional facility when in the custody of a corrections
29 officer or officers;

30 (3)(a) The secretary may authorize an extraordinary medical
31 placement for an offender when all of the following conditions exist:

32 (i) The offender has a medical condition that is serious and is
33 expected to require costly care or treatment;

34 (ii) The offender poses a low risk to the community because he or
35 she is currently physically incapacitated due to age or the medical
36 condition or is expected to be so at the time of release; and

1 (iii) It is expected that granting the extraordinary medical
2 placement will result in a cost savings to the state.

3 (b) An offender sentenced to death or to life imprisonment without
4 the possibility of release or parole is not eligible for an
5 extraordinary medical placement.

6 (c) The secretary shall require electronic monitoring for all
7 offenders in extraordinary medical placement unless the electronic
8 monitoring equipment interferes with the function of the offender's
9 medical equipment or results in the loss of funding for the offender's
10 medical care, in which case, an alternative type of monitoring shall be
11 utilized. The secretary shall specify who shall provide the monitoring
12 services and the terms under which the monitoring shall be performed.

13 (d) The secretary may revoke an extraordinary medical placement
14 under this subsection at any time.

15 (e) Persistent offenders are not eligible for extraordinary medical
16 placement;

17 (4) The governor, upon recommendation from the clemency and pardons
18 board, may grant an extraordinary release for reasons of serious health
19 problems, senility, advanced age, extraordinary meritorious acts, or
20 other extraordinary circumstances;

21 (5) No more than the final six months of the offender's term of
22 confinement may be served in partial confinement designed to aid the
23 offender in finding work and reestablishing himself or herself in the
24 community or no more than the final twelve months of the offender's
25 term of confinement may be served in partial confinement as part of the
26 parenting program in RCW 9.94A.6551. This is in addition to that
27 period of earned early release time that may be exchanged for partial
28 confinement pursuant to RCW 9.94A.729(5)(d);

29 (6) The governor may pardon any offender;

30 (7) The department may release an offender from confinement any
31 time within ten days before a release date calculated under this
32 section;

33 (8) An offender or accomplice wearing body armor at the time of the
34 offense shall not receive any good time credits or earned release time
35 for that portion of his or her sentence that results from any body
36 armor enhancements;

37 (9) An offender may leave a correctional facility prior to

1 completion of his or her sentence if the sentence has been reduced as
2 provided in RCW 9.94A.870; and

3 ~~((9))~~ (10) Notwithstanding any other provisions of this section,
4 an offender sentenced for a felony crime listed in RCW 9.94A.540 as
5 subject to a mandatory minimum sentence of total confinement shall not
6 be released from total confinement before the completion of the listed
7 mandatory minimum sentence for that felony crime of conviction unless
8 allowed under RCW 9.94A.540.

9 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW
10 to read as follows:

11 In a criminal case wherein there has been a special allegation and
12 evidence establishing that the accused or an accomplice was armed with
13 a firearm as defined in RCW 9.41.010 or deadly weapon and the offender
14 or an accomplice was wearing body armor as defined in RCW 9.94A.030 at
15 the time of the commission of the crime, the court shall make a finding
16 of fact of whether or not the accused or an accomplice was armed with
17 a firearm or deadly weapon and wearing body armor at the time of the
18 commission of the crime, or if a jury trial is had, the jury shall, if
19 it finds the defendant guilty, also find a special verdict as to
20 whether or not the defendant or an accomplice was armed with a firearm
21 or deadly weapon and wearing body armor at the time of the commission
22 of the crime.

23 NEW SECTION. **Sec. 5.** This act takes effect August 1, 2013.

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