
HOUSE BILL 2543

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Shea, Overstreet, Taylor, and Short

Read first time 01/20/14. Referred to Committee on Public Safety.

1 AN ACT Relating to electronic monitoring; amending RCW 9.94A.030
2 and 9.94A.734; adding a new section to chapter 9.94A RCW; and
3 prescribing penalties.

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

19 (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 by
9 the department.

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

27 (11) "Criminal history" means the list of a defendant's prior
28 convictions and juvenile adjudications, whether in this state, in
29 federal court, or elsewhere.

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

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

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

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

16 (13) "Criminal street gang associate or member" means any person
17 who actively participates in any criminal street gang and who
18 intentionally promotes, furthers, or assists in any criminal act by the
19 criminal street gang.

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

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

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

29 (c) To exact revenge or retribution for the gang or any member of
30 the gang;

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

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

36 (f) To provide the gang with any advantage in, or any control or
37 dominance over any criminal market sector, including, but not limited
38 to, manufacturing, delivering, or selling any controlled substance

1 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
2 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88
3 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
4 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
5 9.68 RCW).

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

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

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

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

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

36 (20) "Domestic violence" has the same meaning as defined in RCW
37 10.99.020 and 26.50.010.

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

5 (22) "Drug offense" means:

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

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

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

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

17 (24) "Escape" means:

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

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

27 (25) "Felony traffic offense" means:

28 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
29 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
30 run injury-accident (RCW 46.52.020(4)), felony driving while under the
31 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
32 felony physical control of a vehicle while under the influence of
33 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

37 (26) "Fine" means a specific sum of money ordered by the sentencing

1 court to be paid by the offender to the court over a specific period of
2 time.

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

6 (28) "Home detention" means a program of partial confinement
7 available to offenders wherein the offender is confined in a private
8 residence subject to electronic surveillance that determines the
9 monitored individual's presence at an approved location through either:

10 (a) Signaling, which continuously detects whether the monitored
11 individual is at the approved location and notifies the monitoring
12 agency of the time that the monitored individual leaves the approved
13 location, tampers with, or removes the monitoring device; or

14 (b) Satellite monitoring, which continuously detects the location
15 of the monitored individual and notifies a home detention monitor of
16 the monitored individual's location at all times.

17 (29) "Homelessness" or "homeless" means a condition where an
18 individual lacks a fixed, regular, and adequate nighttime residence and
19 who has a primary nighttime residence that is:

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

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

24 (c) A private residence where the individual stays as a transient
25 invitee.

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

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

3 (31) "Minor child" means a biological or adopted child of the
4 offender who is under age eighteen at the time of the offender's
5 current offense.

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

8 (a) Any felony defined under any law as a class A felony or
9 criminal solicitation of or criminal conspiracy to commit a class A
10 felony;

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

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

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Robbery in the second degree;

25 (p) Sexual exploitation;

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

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

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

36 (t) Any other felony with a deadly weapon verdict under RCW
37 9.94A.825;

1 (u) 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 (v)(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. sess.
8 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
9 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
10 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

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

25 (33) "Nonviolent offense" means an offense which is not a violent
26 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
2 9A.56.075);
3 (xix) Extortion 1 (RCW 9A.56.120);
4 (xx) Extortion 2 (RCW 9A.56.130);
5 (xxi) Intimidating a Witness (RCW 9A.72.110);
6 (xxii) Tampering with a Witness (RCW 9A.72.120);
7 (xxiii) Reckless Endangerment (RCW 9A.36.050);
8 (xxiv) Coercion (RCW 9A.36.070);
9 (xxv) Harassment (RCW 9A.46.020); or
10 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);
11 (b) That at least one of the offenses listed in (a) of this
12 subsection shall have occurred after July 1, 2008;
13 (c) That the most recent committed offense listed in (a) of this
14 subsection occurred within three years of a prior offense listed in (a)
15 of this subsection; and
16 (d) Of the offenses that were committed in (a) of this subsection,
17 the offenses occurred on separate occasions or were committed by two or
18 more persons.
19 (37) "Persistent offender" is an offender who:
20 (a)(i) Has been convicted in this state of any felony considered a
21 most serious offense; and
22 (ii) Has, before the commission of the offense under (a) of this
23 subsection, been convicted as an offender on at least two separate
24 occasions, whether in this state or elsewhere, of felonies that under
25 the laws of this state would be considered most serious offenses and
26 would be included in the offender score under RCW 9.94A.525; provided
27 that of the two or more previous convictions, at least one conviction
28 must have occurred before the commission of any of the other most
29 serious offenses for which the offender was previously convicted; or
30 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
31 of a child in the first degree, child molestation in the first degree,
32 rape in the second degree, rape of a child in the second degree, or
33 indecent liberties by forcible compulsion; (B) any of the following
34 offenses with a finding of sexual motivation: Murder in the first
35 degree, murder in the second degree, homicide by abuse, kidnapping in
36 the first degree, kidnapping in the second degree, assault in the first
37 degree, assault in the second degree, assault of a child in the first

1 degree, assault of a child in the second degree, or burglary in the
2 first degree; or (C) an attempt to commit any crime listed in this
3 subsection (37)(b)(i); and

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

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

1 (39) "Private school" means a school regulated under chapter
2 28A.195 or 28A.205 RCW.

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

4 (41) "Repetitive domestic violence offense" means any:

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

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

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

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

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

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

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

23 (43) "Risk assessment" means the application of the risk instrument
24 recommended to the department by the Washington state institute for
25 public policy as having the highest degree of predictive accuracy for
26 assessing an offender's risk of reoffense.

27 (44) "Serious traffic offense" means:

28 (a) Nonfelony driving while under the influence of intoxicating
29 liquor or any drug (RCW 46.61.502), nonfelony actual physical control
30 while under the influence of intoxicating liquor or any drug (RCW
31 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an
32 attended vehicle (RCW 46.52.020(5)); or

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

36 (45) "Serious violent offense" is a subcategory of violent offense
37 and means:

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

1 (ii) Homicide by abuse;
2 (iii) Murder in the second degree;
3 (iv) Manslaughter in the first degree;
4 (v) Assault in the first degree;
5 (vi) Kidnapping in the first degree;
6 (vii) Rape in the first degree;
7 (viii) Assault of a child in the first degree; or
8 (ix) An attempt, criminal solicitation, or criminal conspiracy to
9 commit one of these felonies; or
10 (b) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a serious
12 violent offense under (a) of this subsection.
13 (46) "Sex offense" means:
14 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
15 RCW 9A.44.132;
16 (ii) A violation of RCW 9A.64.020;
17 (iii) A felony that is a violation of chapter 9.68A RCW other than
18 RCW 9.68A.080;
19 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
20 criminal solicitation, or criminal conspiracy to commit such crimes; or
21 (v) A felony violation of RCW 9A.44.132(1) (failure to register) if
22 the person has been convicted of violating RCW 9A.44.132(1) (failure to
23 register) on at least one prior occasion;
24 (b) Any conviction for a felony offense in effect at any time prior
25 to July 1, 1976, that is comparable to a felony classified as a sex
26 offense in (a) of this subsection;
27 (c) A felony with a finding of sexual motivation under RCW
28 9.94A.835 or 13.40.135; or
29 (d) Any federal or out-of-state conviction for an offense that
30 under the laws of this state would be a felony classified as a sex
31 offense under (a) of this subsection.
32 (47) "Sexual motivation" means that one of the purposes for which
33 the defendant committed the crime was for the purpose of his or her
34 sexual gratification.
35 (48) "Standard sentence range" means the sentencing court's
36 discretionary range in imposing a nonappealable sentence.
37 (49) "Statutory maximum sentence" means the maximum length of time

1 for which an offender may be confined as punishment for a crime as
2 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
3 crime, or other statute defining the maximum penalty for a crime.

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

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

10 (52) "Transition training" means written and verbal instructions
11 and assistance provided by the department to the offender during the
12 two weeks prior to the offender's successful completion of the work
13 ethic camp program. The transition training shall include instructions
14 in the offender's requirements and obligations during the offender's
15 period of community custody.

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

19 (54) "Violent offense" means:

20 (a) Any of the following felonies:

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

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

25 (iii) Manslaughter in the first degree;

26 (iv) Manslaughter in the second degree;

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

28 (vi) Kidnapping in the second degree;

29 (vii) Arson in the second degree;

30 (viii) Assault in the second degree;

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

32 (x) Extortion in the first degree;

33 (xi) Robbery in the second degree;

34 (xii) Drive-by shooting;

35 (xiii) Vehicular assault, when caused by the operation or driving
36 of a vehicle by a person while under the influence of intoxicating
37 liquor or any drug or by the operation or driving of a vehicle in a
38 reckless manner; and

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

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

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

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

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

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

24 **Sec. 2.** RCW 9.94A.734 and 2010 c 224 s 9 are each amended to read
25 as follows:

26 (1) Home detention may not be imposed for offenders convicted of
27 the following offenses, unless imposed as partial confinement in the
28 department's parenting program under RCW 9.94A.6551:

29 (a) A violent offense;

30 (b) Any sex offense;

31 (c) Any drug offense;

32 (d) Reckless burning in the first or second degree as defined in
33 RCW 9A.48.040 or 9A.48.050;

34 (e) Assault in the third degree as defined in RCW 9A.36.031;

35 (f) Assault of a child in the third degree;

36 (g) Unlawful imprisonment as defined in RCW 9A.40.040; or

37 (h) Harassment as defined in RCW 9A.46.020.

1 Home detention may be imposed for offenders convicted of possession of
2 a controlled substance under RCW 69.50.4013 or forged prescription for
3 a controlled substance under RCW 69.50.403 if the offender fulfills the
4 participation conditions set forth in this section and is monitored for
5 drug use by a treatment alternatives to street crime program or a
6 comparable court or agency-referred program.

7 (2) Home detention may be imposed for offenders convicted of
8 burglary in the second degree as defined in RCW 9A.52.030 or
9 residential burglary conditioned upon the offender:

10 (a) Successfully completing twenty-one days in a work release
11 program;

12 (b) Having no convictions for burglary in the second degree or
13 residential burglary during the preceding two years and not more than
14 two prior convictions for burglary or residential burglary;

15 (c) Having no convictions for a violent felony offense during the
16 preceding two years and not more than two prior convictions for a
17 violent felony offense;

18 (d) Having no prior charges of escape; and

19 (e) Fulfilling the other conditions of the home detention program.

20 (3) Home detention may be imposed for offenders convicted of taking
21 a motor vehicle without permission in the second degree as defined in
22 RCW 9A.56.075, theft of a motor vehicle as defined under RCW 9A.56.065,
23 or possession of a stolen motor vehicle as defined under RCW 9A.56.068
24 conditioned upon the offender:

25 (a) Having no convictions for taking a motor vehicle without
26 permission, theft of a motor vehicle or possession of a stolen motor
27 vehicle during the preceding five years and not more than two prior
28 convictions for taking a motor vehicle without permission, theft of a
29 motor vehicle or possession of a stolen motor vehicle;

30 (b) Having no convictions for a violent felony offense during the
31 preceding two years and not more than two prior convictions for a
32 violent felony offense;

33 (c) Having no prior charges of escape; and

34 (d) Fulfilling the other conditions of the home detention program.

35 (4) Participation in a home detention program shall be conditioned
36 upon:

37 (a) The offender obtaining or maintaining current employment or

1 attending a regular course of school study at regularly defined hours,
2 or the offender performing parental duties to offspring or minors
3 normally in the custody of the offender;

4 (b) Abiding by the rules of the home detention program; and

5 (c) Compliance with court-ordered legal financial obligations.

6 (5) The home detention program may also be made available to
7 offenders whose charges and convictions do not otherwise disqualify
8 them if medical or health-related conditions, concerns or treatment
9 would be better addressed under the home detention program, or where
10 the health and welfare of the offender, other inmates, or staff would
11 be jeopardized by the offender's incarceration. Participation in the
12 home detention program for medical or health-related reasons is
13 conditioned on the offender abiding by the rules of the home detention
14 program and complying with court-ordered restitution.

15 (6) Unless specified differently by the court, a home detention
16 program must not allow the monitored individual to be away from his or
17 her residence more than:

18 (a) Sixty-five hours per week for employment purposes;

19 (b) Six days in a row for employment purposes; and

20 (c) Twelve hours a week for any approved nonemployment purposes.

21 (7) A home detention program must be administered by a monitoring
22 agency that meets the conditions described in section 3 of this act.

23 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW
24 to read as follows:

25 (1) A monitoring agency shall:

26 (a) Provide notification within twenty-four hours to local law
27 enforcement when a monitored individual is unaccounted for for twenty-
28 four hours and notification, as specified by local law enforcement,
29 when a monitored individual is unaccounted for for a period less than
30 twenty-four hours;

31 (b) Provide weekly notification to the court(s) that ordered home
32 detention, as well as the law enforcement agency and prosecuting
33 attorney for the counties or cities that have jurisdiction over the
34 monitored individual, of any violations of the court order or rules of
35 the monitoring agency;

36 (c) Document and verify the monitored individual's attendance at
37 employment, school, or other court-ordered activities;

1 (d) Arrange for in-person contact at least once a month; and
2 (e) Ensure compliance with any other conditions ordered by the
3 court or otherwise required by law.

4 (2) Additionally, a monitoring agency shall:

5 (a) Hold general liability insurance in an amount not less than one
6 hundred thousand dollars;

7 (b) Obtain a surety bond in the amount of ten thousand dollars,
8 running to the state of Washington for the benefit of a person injured
9 by a wrongful act of the monitoring agency and executed by a surety
10 company authorized to do business in the state of Washington;

11 (c) Have detailed contingency plans for the monitoring agency's
12 operation with provisions for power outage, loss of telephone service,
13 fire, flood, malfunction of equipment, death, incapacitation or
14 personal emergency of a monitor, and financial insolvency of the
15 monitoring agency;

16 (d) Prohibit certain relationships between a monitored individual
17 and a monitored agency, including:

18 (i) Personal associations between a monitored individual and a
19 monitoring agency or agency employee;

20 (ii) A monitoring agency or employee entering into another business
21 relationship with a monitored individual or monitored individual's
22 family during the monitoring; and

23 (iii) A monitoring agency or employee employing a monitored
24 individual for at least one year after the termination of the
25 monitoring;

26 (e) Not employ or be owned by any person convicted of a felony
27 offense within the past four years; and

28 (f) Obtain a background check through the Washington state patrol
29 for every partner, director, officer, owner, or operator of the
30 monitoring agency, at the monitoring agency's expense.

31 (3) A monitoring agency that fails to comply with any of the
32 conditions in subsection (2) of this section may be subject to a civil
33 penalty, as determined by a court of competent jurisdiction, in an
34 amount of not more than one thousand dollars for every violation, in
35 addition to any penalties imposed by contract.

36 (4) For the purposes of this section, "monitoring agency" means an
37 entity, private or public, which supervises a monitored offender,

1 pursuant to a home detention program. A monitoring agency may be a
2 sheriff's office, a police department, or a private entity.

3 NEW SECTION. **Sec. 4.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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