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**SUBSTITUTE SENATE BILL 6184**

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**State of Washington**

**60th Legislature**

**2008 Regular Session**

**By** Senate Judiciary (originally sponsored by Senators Benton, Eide, Weinstein, McCaslin, Hargrove, Regala, Hatfield, Carrell, Tom, Franklin, Zarelli, Kline, Haugen, Keiser, Fairley, Hobbs, Marr, Kastama, Berkey, Delvin, Brandland, Spanel, Murray, Prentice, Holmquist, Hewitt, Rasmussen, Jacobsen, Sheldon, Oemig, Morton, Pflug, Roach, Pridemore, McAuliffe, Rockefeller, Parlette, Kauffman, Shin, Kohl-Welles, Stevens, Kilmer, Swecker, Honeyford, Schoesler, King, and McDermott)

READ FIRST TIME 01/25/08.

1 AN ACT Relating to most serious offenses; reenacting and amending  
2 RCW 9.94A.030; and creating a new section.

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

4 **Sec. 1.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c  
5 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and  
6 amended to read 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  
7 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
8 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
9 community subject to controls placed on the offender's movement and  
10 activities by the department. For offenders placed on community  
11 custody for crimes committed on or after July 1, 2000, the department  
12 shall assess the offender's risk of reoffense and may establish and  
13 modify conditions of community custody, in addition to those imposed by  
14 the court, based upon the risk to community safety.

15 (6) "Community custody range" means the minimum and maximum period  
16 of community custody included as part of a sentence under RCW  
17 9.94A.715, as established by the commission or the legislature under  
18 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

19 (7) "Community placement" means that period during which the  
20 offender is subject to the conditions of community custody and/or  
21 postrelease supervision, which begins either upon completion of the  
22 term of confinement (postrelease supervision) or at such time as the  
23 offender is transferred to community custody in lieu of earned release.  
24 Community placement may consist of entirely community custody, entirely  
25 postrelease supervision, or a combination of the two.

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

29 (9) "Community restitution" means compulsory service, without  
30 compensation, performed for the benefit of the community by the  
31 offender.

32 (10) "Community supervision" means a period of time during which a  
33 convicted offender is subject to crime-related prohibitions and other  
34 sentence conditions imposed by a court pursuant to this chapter or RCW  
35 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
36 a chemical dependency that has contributed to his or her offense, the  
37 conditions of supervision may, subject to available resources, include  
38 treatment. For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community  
2 supervision is the functional equivalent of probation and should be  
3 considered the same as probation by other states.

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

5 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
6 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
7 acceptance of a plea of guilty.

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

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

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

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

26 (c) The determination of a defendant's criminal history is distinct  
27 from the determination of an offender score. A prior conviction that  
28 was not included in an offender score calculated pursuant to a former  
29 version of the sentencing reform act remains part of the defendant's  
30 criminal history.

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

35 (16) "Day reporting" means a program of enhanced supervision  
36 designed to monitor the offender's daily activities and compliance with  
37 sentence conditions, and in which the offender is required to report

1 daily to a specific location designated by the department or the  
2 sentencing court.

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

4 (18) "Determinate sentence" means a sentence that states with  
5 exactitude the number of actual years, months, or days of total  
6 confinement, of partial confinement, of community supervision, the  
7 number of actual hours or days of community restitution work, or  
8 dollars or terms of a legal financial obligation. The fact that an  
9 offender through earned release can reduce the actual period of  
10 confinement shall not affect the classification of the sentence as a  
11 determinate sentence.

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

24 (20) "Drug offender sentencing alternative" is a sentencing option  
25 available to persons convicted of a felony offense other than a violent  
26 offense or a sex offense and who are eligible for the option under RCW  
27 9.94A.660.

28 (21) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of  
30 a controlled substance (RCW 69.50.4013) or forged prescription for a  
31 controlled substance (RCW 69.50.403);

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

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

1 (22) "Earned release" means earned release from confinement as  
2 provided in RCW 9.94A.728.

3 (23) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
5 first degree (RCW 9A.76.110), escape in the second degree (RCW  
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
7 willful failure to return from work release (RCW 72.65.070), or willful  
8 failure to be available for supervision by the department while in  
9 community custody (RCW 72.09.310); 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 an escape  
12 under (a) of this subsection.

13 (24) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
16 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
17 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
18 felony physical control of a vehicle while under the influence of  
19 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

23 (25) "Fine" means a specific sum of money ordered by the sentencing  
24 court to be paid by the offender to the court over a specific period of  
25 time.

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

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

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

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

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

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

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

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

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

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

8 (v)(i) A prior conviction for indecent liberties under RCW  
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

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

27 (30) "Nonviolent offense" means an offense which is not a violent  
28 offense.

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

36 (32) "Partial confinement" means confinement for no more than one  
37 year in a facility or institution operated or utilized under contract  
38 by the state or any other unit of government, or, if home detention or

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

6 (33) "Persistent offender" is an offender who:

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

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

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
18 of a child in the first degree, child molestation in the first degree,  
19 rape in the second degree, rape of a child in the second degree, or  
20 indecent liberties by forcible compulsion; (B) any of the following  
21 offenses with a finding of sexual motivation: Murder in the first  
22 degree, murder in the second degree, homicide by abuse, kidnapping in  
23 the first degree, kidnapping in the second degree, assault in the first  
24 degree, assault in the second degree, assault of a child in the first  
25 degree, assault of a child in the second degree, or burglary in the  
26 first degree; or (C) an attempt to commit any crime listed in this  
27 subsection (33)(b)(i); and

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



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

3 (34) "Postrelease supervision" is that portion of an offender's  
4 community placement that is not community custody.

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

21 (36) "Private school" means a school regulated under chapter  
22 28A.195 or 28A.205 RCW.

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

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

28 (39) "Risk assessment" means the application of an objective  
29 instrument supported by research and adopted by the department for the  
30 purpose of assessing an offender's risk of reoffense, taking into  
31 consideration the nature of the harm done by the offender, place and  
32 circumstances of the offender related to risk, the offender's  
33 relationship to any victim, and any information provided to the  
34 department by victims. The results of a risk assessment shall not be  
35 based on unconfirmed or unconfirmable allegations.

36 (40) "Serious traffic offense" means:

37 (a) Nonfelony driving while under the influence of intoxicating  
38 liquor or any drug (RCW 46.61.502), nonfelony actual physical control

1 while under the influence of intoxicating liquor or any drug (RCW  
2 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
3 attended vehicle (RCW 46.52.020(5)); or

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

7 (41) "Serious violent offense" is a subcategory of violent offense  
8 and means:

- 9 (a)(i) Murder in the first degree;  
10 (ii) Homicide by abuse;  
11 (iii) Murder in the second degree;  
12 (iv) Manslaughter in the first degree;  
13 (v) Assault in the first degree;  
14 (vi) Kidnapping in the first degree;  
15 (vii) Rape in the first degree;  
16 (viii) Assault of a child in the first degree; or  
17 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
18 commit one of these felonies; or

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

22 (42) "Sex offense" means:

- 23 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
24 RCW 9A.44.130(~~(+11)~~) (12);  
25 (ii) A violation of RCW 9A.64.020;  
26 (iii) A felony that is a violation of chapter 9.68A RCW other than  
27 RCW 9.68A.080; or  
28 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
29 criminal solicitation, or criminal conspiracy to commit such crimes;

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

33 (c) A felony with a finding of sexual motivation under RCW  
34 9.94A.835 or 13.40.135; or

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

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

4 (44) "Standard sentence range" means the sentencing court's  
5 discretionary range in imposing a nonappealable sentence.

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

10 (46) "Stranger" means that the victim did not know the offender  
11 twenty-four hours before the offense.

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

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

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

25 (50) "Violent offense" means:

26 (a) Any of the following felonies:

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

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

31 (iii) Manslaughter in the first degree;

32 (iv) Manslaughter in the second degree;

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

34 (vi) Kidnapping in the second degree;

35 (vii) Arson in the second degree;

36 (viii) Assault in the second degree;

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

38 (x) Extortion in the first degree;

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 2.** This act may be known and cited as the  
31 Chelsea Harrison act.

--- END ---