
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5291

State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 02/28/19.

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

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

5 **Sec. 1.** RCW 9.94A.030 and 2018 c 166 s 3 are each amended to
6 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,
17 and, consistent with current law, delivering daily the entire payment
18 to the superior court clerk without depositing it in a departmental
19 account.

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

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

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

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

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

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

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

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

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

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

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

1 (c) The determination of a defendant's criminal history is
2 distinct from the determination of an offender score. A prior
3 conviction that was not included in an offender score calculated
4 pursuant to a former version of the sentencing reform act remains
5 part of the defendant's 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
19 the 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
25 is 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,
28 prestige, 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
39 (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen
40 property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88

1 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual
2 abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter
3 9.68 RCW).

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

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

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

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

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

34 (20) "Domestic violence" has the same meaning as defined in RCW
35 10.99.020 and 26.50.010.

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

40 (22) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession
2 of a controlled substance (RCW 69.50.4013) or forged prescription for
3 a controlled substance (RCW 69.50.403);

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

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

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

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

17 (a) Radio frequency signaling technology, which detects if the
18 monitored individual is or is not at an approved location and
19 notifies the monitoring agency of the time that the monitored
20 individual either leaves the approved location or tampers with or
21 removes the monitoring device; or

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

25 (25) "Escape" means:

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

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

35 (26) "Felony traffic offense" means:

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

1 or felony physical control of a vehicle while under the influence of
2 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

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

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

26 (c) A private residence where the individual stays as a transient
27 invitee.

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

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

3 (32) "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 (33) "Most serious offense" means any of the following felonies
7 or 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
28 liquor or any drug or by the operation or driving of a vehicle in a
29 reckless 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
33 of 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;

38 (u) Any felony offense in effect at any time prior to December 2,
39 1993, that is comparable to a most serious offense under this
40 subsection, or any federal or out-of-state conviction for an offense

1 that under the laws of this state would be a felony classified as a
2 most serious offense under this subsection;

3 (v) (i) A prior conviction for indecent liberties under RCW
4 9A.44.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
5 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b),
6 and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
7 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986,
8 until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator
13 is included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,
15 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,
16 1993, through July 27, 1997;

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

23 (34) "Nonviolent offense" means an offense which is not a violent
24 offense.

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

37 (36) "Partial confinement" means confinement for no more than one
38 year in a facility or institution operated or utilized under contract
39 by the state or any other unit of government, or, if home detention,
40 electronic monitoring, or work crew has been ordered by the court or

1 home detention has been ordered by the department as part of the
2 parenting program or the graduated reentry program, in an approved
3 residence, for a substantial portion of each day with the balance of
4 the day spent in the community. Partial confinement includes work
5 release, home detention, work crew, electronic monitoring, and a
6 combination of work crew, electronic monitoring, and home detention.

7 (37) "Pattern of criminal street gang activity" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (xvii) Taking a Motor Vehicle Without Permission 1 (RCW
36 9A.56.070);

37 (xviii) Taking a Motor Vehicle Without Permission 2 (RCW
38 9A.56.075);

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

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

1 (xxi) Intimidating a Witness (RCW 9A.72.110);
2 (xxii) Tampering with a Witness (RCW 9A.72.120);
3 (xxiii) Reckless Endangerment (RCW 9A.36.050);
4 (xxiv) Coercion (RCW 9A.36.070);
5 (xxv) Harassment (RCW 9A.46.020); or
6 (xxvi) Malicious Mischief 3 (RCW 9A.48.090);

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

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

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

15 (38) "Persistent offender" is an offender who:

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

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

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

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

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

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

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

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

36 (42) "Repetitive domestic violence offense" means any:

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

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

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

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

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

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

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

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

20 (45) "Serious traffic offense" means:

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

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

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

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

32 (ii) Homicide by abuse;

33 (iii) Murder in the second degree;

34 (iv) Manslaughter in the first degree;

35 (v) Assault in the first degree;

36 (vi) Kidnapping in the first degree;

37 (vii) Rape in the first degree;

38 (viii) Assault of a child in the first degree; or

39 (ix) An attempt, criminal solicitation, or criminal conspiracy to
40 commit one of these felonies; 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
3 serious violent offense under (a) of this subsection.

4 (47) "Sex offense" means:

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

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

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

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

13 (v) A felony violation of RCW 9A.44.132(1) (failure to register
14 as a sex offender) if the person has been convicted of violating RCW
15 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130
16 prior to June 10, 2010, on at least one prior occasion;

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

20 (c) A felony with a finding of sexual motivation under RCW
21 9.94A.835 or 13.40.135; or

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

25 (48) "Sexual motivation" means that one of the purposes for which
26 the defendant committed the crime was for the purpose of his or her
27 sexual gratification.

28 (49) "Standard sentence range" means the sentencing court's
29 discretionary range in imposing a nonappealable sentence.

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

35 (51) "Stranger" means that the victim did not know the offender
36 twenty-four hours before the offense.

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

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

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

10 (55) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

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

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

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

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

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

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

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

14 (59) "Expectant parent" means a pregnant or other parent awaiting
15 the birth of his or her child, or an adoptive parent or person in
16 process of a final adoption.

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

19 (1) An offender is eligible for the parenting sentencing
20 alternative if:

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

23 (b) The offender has no prior or current conviction for a felony
24 (~~that is a~~) sex offense or a serious violent offense;

25 (c) The offender has (~~not been found by the United States~~
26 ~~attorney general to be subject to a deportation detainer or order and~~
27 ~~does not become subject to a deportation order during the period of~~
28 ~~the sentence~~) a current or prior conviction for a nonviolent
29 offense, or the offender has a current or prior conviction for a
30 violent offense and has been determined to be a low risk to reoffend;

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

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

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

38 (ii) An expectant parent;

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

1 (iv) A biological parent, adoptive parent, custodian, or
2 stepparent with a proven, established, ongoing, and substantial
3 relationship with a minor child that existed at the time of the
4 offense.

5 (2) Prior juvenile adjudications are not considered offenses when
6 considering eligibility for the parenting sentencing alternative.

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

12 ~~((3))~~ (4) If the court is considering this alternative, the
13 court shall request that the department contact the department of
14 children, youth, and families to determine if the agency has an open
15 child welfare case or prior substantiated referral of abuse or
16 neglect involving the offender or if the agency is aware of any
17 substantiated case of abuse or neglect with a tribal child welfare
18 agency involving the offender.

19 (a) If the offender has an open child welfare case, the
20 department will provide the release of information waiver and request
21 that the department of children, youth, and families or the tribal
22 child welfare agency provide a report to the court. The department of
23 children, youth, and families shall provide a copy of the most recent
24 court order, if any, or if there is no court involvement or no court
25 order, the agency shall report within seven business days of the
26 request that includes, at the minimum, the following:

27 (i) Legal status of the child welfare case or child abuse or
28 neglect investigation;

29 (ii) Length of time the department of children, youth, and
30 families has ~~((been involved with))~~ had an open child welfare case,
31 or open child abuse or neglect investigation involving the offender;

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

33 (iv) Any special needs of the child~~((~~

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

37 ~~((vi))~~ (b) The department of corrections shall report if the
38 ~~((offender))~~ individual has been convicted of a crime against a
39 child.

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

5 ~~((e))~~ (d) If the offender does not have an open child welfare
6 case with the department of children, youth, and families or with a
7 tribal child welfare agency but has prior involvement, the department
8 will obtain information from the department of children, youth, and
9 families on the number and type of past substantiated referrals of
10 abuse or neglect and report that information to the court. If the
11 department of children, youth, and families has never had any
12 substantiated referrals or an open case with the offender, the
13 department will inform the court.

14 ~~((4))~~ (5) The existence of a prior substantiated referral of
15 child abuse or neglect or of an open child welfare case shall not,
16 alone, disqualify the parent from applying or participating in this
17 alternative. The court shall consider whether the child-parent
18 relationship can be readily maintained during parental incarceration;
19 and whether due to the existence of an open child welfare case,
20 parental incarceration exacerbates the likelihood of termination of
21 the child-parent relationship.

22 (6) If the sentencing court determines that the offender is
23 eligible for a sentencing alternative under this section and that the
24 sentencing alternative is appropriate and should be imposed, the
25 court shall waive imposition of a sentence within the standard
26 sentence range and impose a sentence consisting of twelve months of
27 community custody. The court shall consider the offender's criminal
28 history when determining if the alternative is appropriate.

29 ~~((5))~~ (7) When a court imposes a sentence of community custody
30 under this section:

31 (a) The court may impose conditions as provided in RCW 9.94A.703
32 and may impose other affirmative conditions as the court considers
33 appropriate.

34 (b) The department may impose conditions as authorized in RCW
35 9.94A.704 that may include, but are not limited to:

- 36 (i) Parenting classes;
- 37 (ii) Chemical dependency treatment;
- 38 (iii) Mental health treatment;
- 39 (iv) Vocational training;
- 40 (v) ~~((Offender))~~ Change programs;

1 (vi) Life skills classes.

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

4 ~~((+6+))~~ (8) The department shall provide the court with quarterly
5 progress reports regarding the offender's progress in required
6 programming, treatment, and other supervision conditions. When an
7 offender has an open child welfare case, the department will seek to
8 coordinate services with the department of children, youth, and
9 families.

10 ~~((+7+))~~ (9)(a) The court may bring any offender sentenced under
11 this section back into court at any time during the period of
12 community custody on its own initiative to evaluate the offender's
13 progress in treatment, or to determine if any violations of the
14 conditions of the sentence have occurred.

15 (b) At the commencement of such a hearing, the court shall advise
16 the person sentenced under this section of the person's right to
17 assistance of counsel and appoint counsel if the person is indigent.

18 (c) If the offender is brought back to court, the court may
19 modify the conditions of community custody or impose sanctions under
20 ~~((+e+))~~ (d) of this subsection, including extending the length of
21 participation in the alternative program, by no more than six months.
22 The court shall also consider modification to the participant's
23 support and rehabilitation plan as needed.

24 ~~((+e+))~~ (d) The court may order the offender to serve a term of
25 total confinement within the standard range of the offender's current
26 offense at any time during the period of community custody, if the
27 offender violates the conditions or requirements of the sentence or
28 if the offender is failing to make satisfactory progress in
29 treatment.

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

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

36 (10) For the purposes of this section and RCW 9.94A.6551, "minor
37 child" means a child under the age of eighteen at the time of the
38 current offense.

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

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

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

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

14 (b) The offender has no current conviction for a felony (~~that is~~
15 ~~a~~) sex offense or a serious violent offense;

16 (c) The offender has a current conviction for a nonviolent
17 offense, or has a current conviction for a violent offense and has
18 been determined to be low risk to reoffend;

19 ~~(d) The offender ((has not been found by the United States~~
20 ~~attorney general to be subject to a deportation detainer or order and~~
21 ~~does not become subject to a deportation order during the period of~~
22 ~~the sentence)):~~

23 (i) Is a parent with physical or legal custody of a minor child;

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

28 (iii) Is the legal guardian of a minor child; or

29 (iv) Is an expectant parent;

30 ~~((d))~~ (e) The offender signs any release of information waivers
31 required to allow information regarding current or prior child
32 welfare cases to be shared with the department and the court;

33 ~~((e) The offender:~~

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

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

38 ~~(iii) Is a legal guardian of a child that was under the age of~~
39 ~~eighteen at the time of the current offense;)) and~~

1 (f) The department determines that such a placement is in the
2 best interests of the child.

3 (2) Prior juvenile adjudications are not considered offenses when
4 considering eligibility for the parenting program developed by the
5 department.

6 (3) When the department is considering partial confinement as
7 part of the parenting program for an offender, the department shall
8 inquire of the individual and the department of children, youth, and
9 families whether the agency has an open child welfare case or prior
10 substantiated referral for abuse or neglect involving the
11 (~~offender~~) individual.

12 (a) The fact that the child-parent relationship has been
13 terminated by a court does not preclude an application for
14 consideration under this sentencing alternative, where:

15 (i) The child and parent have been permitted ongoing contact;

16 (ii) The child is legally free and the child's permanent plan has
17 not been achieved; or

18 (iii) The parent's participation in the program may assist the
19 child in achieving reinstatement of parental rights or achieving
20 long-term permanency.

21 (b) If the department of children, youth, and families or a
22 tribal jurisdiction has an open child welfare case, the department
23 will seek input from the department of children, youth, and families
24 or the involved tribal jurisdiction as to: (~~(a)~~) (i) The status of
25 the child welfare case; and (~~(b)~~) (ii) recommendations regarding
26 placement of the offender (~~and services required of the department~~
27 ~~and the court governing~~), services agreed to by the individual
28 working voluntarily with the department, or services ordered by the
29 court within the individual's child welfare case. The department and
30 its officers, agents, and employees are not liable for the acts of
31 offenders participating in the parenting program unless the
32 department or its officers, agents, and employees acted with willful
33 and wanton disregard.

34 (~~(3)~~) (4) All offenders placed on home detention as part of the
35 parenting program shall provide an approved residence and living
36 arrangement prior to transfer to home detention.

37 (~~(4)~~) (5) While in the community on home detention as part of
38 the parenting program, the department shall:

39 (a) Require the offender to be placed on electronic home
40 monitoring;

1 (b) Require the offender to participate in programming and
2 treatment that the department and offender collectively
3 determine((s)) is needed;

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

7 (d) If the offender has an open child welfare case with the
8 department of children, youth, and families, collaborate and
9 communicate with the identified social worker in the provision of
10 services.

11 ((+5)) (6) The department has the authority to return any
12 offender serving partial confinement in the parenting program to
13 total confinement if the offender is not complying with sentence
14 requirements.

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