
HOUSE BILL 1293

State of Washington

67th Legislature

2021 Regular Session

By Representatives Simmons and Taylor

1 AN ACT Relating to reducing unduly harsh sentences for offenses
2 committed by domestic violence survivors; amending RCW 9.94A.501,
3 9.94A.535, 9.94A.540, 9.94A.570, 9.94A.640, and 9.96.060; reenacting
4 and amending RCW 9.94A.533; adding new sections to chapter 9.94A RCW;
5 adding a new section to chapter 9.96 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** This act shall be known and cited as the
8 survivors justice act.

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

11 (1) Notwithstanding any other provision of this chapter, the
12 court may reduce any term of incarceration or other criminal
13 penalties under this chapter or impose available alternatives as
14 provided under subsection (3) of this section when sentencing any
15 defendant for one or more crimes where: The defendant is a survivor
16 of domestic violence committed by an intimate partner; the domestic
17 violence suffered by the defendant was a significant contributing
18 factor to the defendant's criminal conduct; and the generally
19 applicable sentencing requirements under this chapter would be unduly

1 harsh given the nature and circumstances of the crime and the
2 history, character, and condition of the defendant.

3 (2) (a) Prior to reducing a term of incarceration or imposing
4 alternatives under this section, the court shall make findings as to
5 whether the defendant qualifies under this section. The court may
6 determine a defendant qualifies under this section regardless if the
7 defendant previously raised any defense related to the domestic
8 violence.

9 (b) The court may consider the following when making its finding
10 as to whether the domestic violence suffered by the defendant was a
11 significant contributing factor to his or her criminal conduct:
12 Whether the defendant is being sentenced for a crime against an
13 intimate partner who committed domestic violence against the
14 defendant; whether, at any point in time, the defendant has been
15 diagnosed with or treated for any behavioral health condition related
16 to prior victimization; evidence that the defendant's prior
17 victimization has affected how the defendant perceives their safety
18 and security; evidence that the defendant's prior victimization has
19 affected how the defendant perceives their ability to receive help
20 through law enforcement or other government entities; evidence that
21 the defendant's prior victimization has limited the defendant's
22 ability to achieve financial independence; and any other factors
23 deemed relevant by the court.

24 (c) In making findings under this section, the court may consider
25 any of the following: Oral and written arguments; a written statement
26 from the defendant; testimony from the defendant or from witnesses
27 offered by either party; written statements from third parties
28 regarding whether the defendant is a survivor of domestic violence,
29 sexual assault, or stalking including, but not limited to, statements
30 from a mental health or victim service provider or school
31 administrator or teacher; medical records and documents; physical
32 evidence; copies of restraining, antiharassment, or protection
33 orders; police reports; recordings of 911 calls; expert testimony;
34 and any other relevant evidence.

35 (3) If the court finds that a defendant qualifies under this
36 section, the court may, in its discretion:

37 (a) Impose a sentence below the standard range under RCW
38 9.94A.510, and below any mandatory minimum terms under RCW 9.94A.540
39 and 9.94A.570;

1 (b) Depart downward from any sentencing enhancements under RCW
2 9.94A.533; or

3 (c) Impose the sentencing alternative under section 3 of this
4 act.

5 (4) Nothing in this section modifies the authority of the court
6 to impose any other available sentencing alternatives for a
7 qualifying defendant including, but not limited to, alternatives
8 under RCW 9.94A.650, 9.94A.655, 9.94A.660, 9.94A.670, or 9.94A.711.

9 (5) For the purposes of this section:

10 (a) "Domestic violence" has the same meaning as provided in RCW
11 26.50.010.

12 (b) "Intimate partner" has the same meaning as provided in RCW
13 26.50.010.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A
15 RCW to read as follows:

16 (1) A person is eligible for the sentencing alternative under
17 this section if the court finds that he or she meets the criteria
18 under section 2 of this act. To assist the court in determining
19 whether the alternative is appropriate for the defendant, the court
20 may order the department to complete a risk assessment report or a
21 chemical dependency screening report as provided in RCW 9.94A.500.

22 (2) If the sentencing court determines that the person is
23 eligible for the sentencing alternative under this section and that
24 the sentencing alternative is appropriate and should be imposed, the
25 court shall waive the sentence within the standard sentence range and
26 any applicable enhancements, and instead impose: A reduced term of
27 confinement with an extended term of community custody, as determined
28 by the court; or waive the term of confinement and impose an extended
29 term of community custody. The court has complete discretion to
30 determine the term of incarceration and community custody, provided
31 that the combined length of both does not exceed the standard range
32 and enhancements applicable to the underlying crime or crimes for
33 which the defendant has been convicted. For the term of community
34 custody, the court may impose conditions as provided in RCW 9.94A.703
35 and may impose other affirmative conditions as the court considers
36 appropriate, and the department may impose conditions and sanctions
37 as authorized in RCW 9.94A.704 and 9.94A.737.

38 (3) For any person serving a term of community custody under this
39 section:

1 (a) The department shall report to the court if the person
2 commits any violations of the conditions imposed by the court or the
3 department;

4 (b) The court may order the person to report to court at any time
5 during the period of community custody in order to evaluate the
6 person's compliance or progress with his or her conditions, or to
7 determine if any violations of the conditions have occurred;

8 (c) The court may modify the conditions of community custody or
9 impose sanctions for violations, including extending the term of
10 community custody; and

11 (d) The court may order the person to serve a term of total
12 confinement within the standard range for the offense at any time
13 during the period of community custody, if the person violates the
14 conditions or requirements of the sentence.

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

17 (1) Any person who is currently serving a sentence imposed prior
18 to the effective date of this section may petition the sentencing
19 court for resentencing on the basis that he or she is a survivor of
20 domestic violence committed by an intimate partner, the domestic
21 violence he or she suffered was a significant contributing factor to
22 his or her criminal conduct, and the prior sentence imposed by the
23 court was unduly harsh given his or her personal history, character,
24 and condition as well as the nature and circumstances of the crime.

25 (2) The court may deny a petition for resentencing without a
26 hearing. If the court orders a hearing on the petition, the court may
27 receive testimony and evidence as provided under section 2(2) of this
28 act. If the court grants a petition, the court may resentence the
29 person in accordance with section 2(3) of this act, provided that any
30 new sentence may not be greater than the initial sentence.

31 (3) If a hearing on a petition is scheduled pursuant to this
32 section, the prosecuting attorney shall make reasonable efforts to
33 notify victims and survivors of victims of the petition and the date
34 of hearing. The prosecuting attorney shall provide victims and
35 survivors of victims access to available victim advocates and other
36 related services. The court shall provide an opportunity for victims
37 and survivors of victims of any crimes for which the defendant has
38 been convicted to present a statement personally or by

1 representation. The prosecuting attorney and the court shall comply
2 with the requirements set forth in chapter 7.69 RCW.

3 (4) A petition filed under this section does not reopen the
4 defendant's conviction to challenges that would otherwise be barred.

5 (5) For the purposes of this section:

6 (a) "Domestic violence" has the same meaning as provided in RCW
7 26.50.010.

8 (b) "Intimate partner" has the same meaning as provided in RCW
9 26.50.010.

10 **Sec. 5.** RCW 9.94A.501 and 2020 c 275 s 1 are each amended to
11 read as follows:

12 (1) The department shall supervise the following offenders who
13 are sentenced to probation in superior court, pursuant to RCW
14 9.92.060, 9.95.204, or 9.95.210:

15 (a) Offenders convicted of:

16 (i) Sexual misconduct with a minor second degree;

17 (ii) Custodial sexual misconduct second degree;

18 (iii) Communication with a minor for immoral purposes; and

19 (iv) Violation of RCW 9A.44.132(2) (failure to register); and

20 (b) Offenders who have:

21 (i) A current conviction for a repetitive domestic violence
22 offense where domestic violence has been pleaded and proven after
23 August 1, 2011; and

24 (ii) A prior conviction for a repetitive domestic violence
25 offense or domestic violence felony offense where domestic violence
26 has been pleaded and proven after August 1, 2011.

27 (2) Misdemeanor and gross misdemeanor offenders supervised by the
28 department pursuant to this section shall be placed on community
29 custody.

30 (3) The department shall supervise every felony offender
31 sentenced to community custody pursuant to RCW 9.94A.701 or 9.94A.702
32 whose risk assessment classifies the offender as one who is at a high
33 risk to reoffend.

34 (4) Notwithstanding any other provision of this section, the
35 department shall supervise an offender sentenced to community custody
36 regardless of risk classification if the offender:

37 (a) Has a current conviction for a sex offense or a serious
38 violent offense and was sentenced to a term of community custody
39 pursuant to RCW 9.94A.701, 9.94A.702, or 9.94A.507;

1 (b) Has been identified by the department as a dangerous mentally
2 ill offender pursuant to RCW 72.09.370;

3 (c) Has an indeterminate sentence and is subject to parole
4 pursuant to RCW 9.95.017;

5 (d) Has a current conviction for violating RCW 9A.44.132(1)
6 (failure to register) and was sentenced to a term of community
7 custody pursuant to RCW 9.94A.701;

8 (e)(i) Has a current conviction for a domestic violence felony
9 offense where domestic violence has been pleaded and proven after
10 August 1, 2011, and a prior conviction for a repetitive domestic
11 violence offense or domestic violence felony offense where domestic
12 violence was pleaded and proven after August 1, 2011. This subsection
13 (4)(e)(i) applies only to offenses committed prior to July 24, 2015;

14 (ii) Has a current conviction for a domestic violence felony
15 offense where domestic violence was pleaded and proven. The state and
16 its officers, agents, and employees shall not be held criminally or
17 civilly liable for its supervision of an offender under this
18 subsection (4)(e)(ii) unless the state and its officers, agents, and
19 employees acted with gross negligence;

20 (f) Was sentenced under RCW 9.94A.650, 9.94A.655, 9.94A.660,
21 9.94A.670, section 3 of this act, or 9.94A.711;

22 (g) Is subject to supervision pursuant to RCW 9.94A.745; or

23 (h) Was convicted and sentenced under RCW 46.61.520 (vehicular
24 homicide), RCW 46.61.522 (vehicular assault), RCW 46.61.502(6)
25 (felony DUI), or RCW 46.61.504(6) (felony physical control).

26 (5) The department shall supervise any offender who is released
27 by the indeterminate sentence review board and who was sentenced to
28 community custody or subject to community custody under the terms of
29 release.

30 (6) The department is not authorized to, and may not, supervise
31 any offender sentenced to a term of community custody or any
32 probationer unless the offender or probationer is one for whom
33 supervision is required under this section or RCW 9.94A.5011.

34 (7) The department shall conduct a risk assessment for every
35 felony offender sentenced to a term of community custody who may be
36 subject to supervision under this section or RCW 9.94A.5011.

37 (8) The period of time the department is authorized to supervise
38 an offender under this section may not exceed the duration of
39 community custody specified under RCW 9.94B.050, 9.94A.701 (1)

1 through (8), or 9.94A.702, except in cases where the court has
2 imposed an exceptional term of community custody under RCW 9.94A.535.

3 (9) The period of time the department is authorized to supervise
4 an offender under this section may be reduced by the earned award of
5 supervision compliance credit pursuant to RCW 9.94A.717.

6 **Sec. 6.** RCW 9.94A.533 and 2020 c 330 s 1 and 2020 c 141 s 1 are
7 each reenacted and amended to read as follows:

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

10 (2) For persons convicted of the anticipatory offenses of
11 criminal attempt, solicitation, or conspiracy under chapter 9A.28
12 RCW, the standard sentence range is determined by locating the
13 sentencing grid sentence range defined by the appropriate offender
14 score and the seriousness level of the completed crime, and
15 multiplying the range by (~~seventy-five~~) 75 percent.

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

33 (a) Five years for any felony defined under any law as a class A
34 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
35 years, or both, and not covered under (f) of this subsection;

36 (b) Three years for any felony defined under any law as a class B
37 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
38 both, and not covered under (f) of this subsection;

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

4 (d) If the offender is being sentenced for any firearm
5 enhancements under (a), (b), and/or (c) of this subsection and the
6 offender has previously been sentenced for any deadly weapon
7 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
8 subsection or subsection (4)(a), (b), and/or (c) of this section, or
9 both, all firearm enhancements under this subsection shall be twice
10 the amount of the enhancement listed;

11 (e) Notwithstanding any other provision of law, all firearm
12 enhancements under this section are mandatory, shall be served in
13 total confinement, and shall run consecutively to all other
14 sentencing provisions, including other firearm or deadly weapon
15 enhancements, for all offenses sentenced under this chapter. However,
16 whether or not a mandatory minimum term has expired, an offender
17 serving a sentence under this subsection may be:

18 (i) Granted an extraordinary medical placement when authorized
19 under RCW 9.94A.728(1)(c); or

20 (ii) Released under the provisions of RCW 9.94A.730;

21 (f) The firearm enhancements in this section shall apply to all
22 felony crimes except the following: Possession of a machine gun or
23 bump-fire stock, possessing a stolen firearm, drive-by shooting,
24 theft of a firearm, unlawful possession of a firearm in the first and
25 second degree, and use of a machine gun or bump-fire stock in a
26 felony;

27 (g) If the standard sentence range under this section exceeds the
28 statutory maximum sentence for the offense, the statutory maximum
29 sentence shall be the presumptive sentence unless the offender is a
30 persistent offender. If the addition of a firearm enhancement
31 increases the sentence so that it would exceed the statutory maximum
32 for the offense, the portion of the sentence representing the
33 enhancement may not be reduced.

34 (4) The following additional times shall be added to the standard
35 sentence range for felony crimes committed after July 23, 1995, if
36 the offender or an accomplice was armed with a deadly weapon other
37 than a firearm as defined in RCW 9.41.010 and the offender is being
38 sentenced for one of the crimes listed in this subsection as eligible
39 for any deadly weapon enhancements based on the classification of the
40 completed felony crime. If the offender is being sentenced for more

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

12 (a) Two years for any felony defined under any law as a class A
13 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
14 years, or both, and not covered under (f) of this subsection;

15 (b) One year for any felony defined under any law as a class B
16 felony or with a statutory maximum sentence of (~~ten~~) 10 years, or
17 both, and not covered under (f) of this subsection;

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

21 (d) If the offender is being sentenced under (a), (b), and/or (c)
22 of this subsection for any deadly weapon enhancements and the
23 offender has previously been sentenced for any deadly weapon
24 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
25 subsection or subsection (3)(a), (b), and/or (c) of this section, or
26 both, all deadly weapon enhancements under this subsection shall be
27 twice the amount of the enhancement listed;

28 (e) Notwithstanding any other provision of law, all deadly weapon
29 enhancements under this section are mandatory, shall be served in
30 total confinement, and shall run consecutively to all other
31 sentencing provisions, including other firearm or deadly weapon
32 enhancements, for all offenses sentenced under this chapter. However,
33 whether or not a mandatory minimum term has expired, an offender
34 serving a sentence under this subsection may be:

35 (i) Granted an extraordinary medical placement when authorized
36 under RCW 9.94A.728(1)(c); or

37 (ii) Released under the provisions of RCW 9.94A.730;

38 (f) The deadly weapon enhancements in this section shall apply to
39 all felony crimes except the following: Possession of a machine gun
40 or bump-fire stock, possessing a stolen firearm, drive-by shooting,

1 theft of a firearm, unlawful possession of a firearm in the first and
2 second degree, and use of a machine gun or bump-fire stock in a
3 felony;

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

11 (5) The following additional times shall be added to the standard
12 sentence range if the offender or an accomplice committed the offense
13 while in a county jail or state correctional facility and the
14 offender is being sentenced for one of the crimes listed in this
15 subsection. If the offender or an accomplice committed one of the
16 crimes listed in this subsection while in a county jail or state
17 correctional facility, and the offender is being sentenced for an
18 anticipatory offense under chapter 9A.28 RCW to commit one of the
19 crimes listed in this subsection, the following additional times
20 shall be added to the standard sentence range determined under
21 subsection (2) of this section:

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

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

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

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

30 (6) An additional (~~twenty-four~~) 24 months shall be added to the
31 standard sentence range for any ranked offense involving a violation
32 of chapter 69.50 RCW if the offense was also a violation of RCW
33 69.50.435 or 9.94A.827. All enhancements under this subsection shall
34 run consecutively to all other sentencing provisions, for all
35 offenses sentenced under this chapter.

36 (7) An additional two years shall be added to the standard
37 sentence range for vehicular homicide committed while under the
38 influence of intoxicating liquor or any drug as defined by RCW
39 46.61.502 for each prior offense as defined in RCW 46.61.5055.

1 Notwithstanding any other provision of law, all impaired driving
2 enhancements under this subsection are mandatory, shall be served in
3 total confinement, and shall run consecutively to all other
4 sentencing provisions, including other impaired driving enhancements,
5 for all offenses sentenced under this chapter.

6 An offender serving a sentence under this subsection may be
7 granted an extraordinary medical placement when authorized under RCW
8 9.94A.728(1)(c).

9 (8)(a) The following additional times shall be added to the
10 standard sentence range for felony crimes committed on or after July
11 1, 2006, if the offense was committed with sexual motivation, as that
12 term is defined in RCW 9.94A.030. If the offender is being sentenced
13 for more than one offense, the sexual motivation enhancement must be
14 added to the total period of total confinement for all offenses,
15 regardless of which underlying offense is subject to a sexual
16 motivation enhancement. If the offender committed the offense with
17 sexual motivation and the offender is being sentenced for an
18 anticipatory offense under chapter 9A.28 RCW, the following
19 additional times shall be added to the standard sentence range
20 determined under subsection (2) of this section based on the felony
21 crime of conviction as classified under RCW 9A.28.020:

22 (i) Two years for any felony defined under the law as a class A
23 felony or with a statutory maximum sentence of at least (~~twenty~~) 20
24 years, or both;

25 (ii) Eighteen months for any felony defined under any law as a
26 class B felony or with a statutory maximum sentence of (~~ten~~) 10
27 years, or both;

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

30 (iv) If the offender is being sentenced for any sexual motivation
31 enhancements under (a)(i), (ii), and/or (iii) of this subsection and
32 the offender has previously been sentenced for any sexual motivation
33 enhancements on or after July 1, 2006, under (a)(i), (ii), and/or
34 (iii) of this subsection, all sexual motivation enhancements under
35 this subsection shall be twice the amount of the enhancement listed;

36 (b) Notwithstanding any other provision of law, all sexual
37 motivation enhancements under this subsection are mandatory, shall be
38 served in total confinement, and shall run consecutively to all other
39 sentencing provisions, including other sexual motivation
40 enhancements, for all offenses sentenced under this chapter. However,

1 whether or not a mandatory minimum term has expired, an offender
2 serving a sentence under this subsection may be:

3 (i) Granted an extraordinary medical placement when authorized
4 under RCW 9.94A.728(1)(c); or

5 (ii) Released under the provisions of RCW 9.94A.730;

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

8 (d) If the standard sentence range under this subsection exceeds
9 the statutory maximum sentence for the offense, the statutory maximum
10 sentence shall be the presumptive sentence unless the offender is a
11 persistent offender. If the addition of a sexual motivation
12 enhancement increases the sentence so that it would exceed the
13 statutory maximum for the offense, the portion of the sentence
14 representing the enhancement may not be reduced;

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

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

21 (9) An additional one-year enhancement shall be added to the
22 standard sentence range for the felony crimes of RCW 9A.44.073,
23 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on
24 or after July 22, 2007, if the offender engaged, agreed, or offered
25 to engage the victim in the sexual conduct in return for a fee. If
26 the offender is being sentenced for more than one offense, the
27 one-year enhancement must be added to the total period of total
28 confinement for all offenses, regardless of which underlying offense
29 is subject to the enhancement. If the offender is being sentenced for
30 an anticipatory offense for the felony crimes of RCW 9A.44.073,
31 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the
32 offender attempted, solicited another, or conspired to engage, agree,
33 or offer to engage the victim in the sexual conduct in return for a
34 fee, an additional one-year enhancement shall be added to the
35 standard sentence range determined under subsection (2) of this
36 section. For purposes of this subsection, "sexual conduct" means
37 sexual intercourse or sexual contact, both as defined in chapter
38 9A.44 RCW.

39 (10)(a) For a person age (~~eighteen~~) 18 or older convicted of
40 any criminal street gang-related felony offense for which the person

1 compensated, threatened, or solicited a minor in order to involve the
2 minor in the commission of the felony offense, the standard sentence
3 range is determined by locating the sentencing grid sentence range
4 defined by the appropriate offender score and the seriousness level
5 of the completed crime, and multiplying the range by (~~one hundred~~
6 ~~twenty-five~~) 125 percent. If the standard sentence range under this
7 subsection exceeds the statutory maximum sentence for the offense,
8 the statutory maximum sentence is the presumptive sentence unless the
9 offender is a persistent offender.

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

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

17 (11) An additional (~~twelve~~) 12 months and one day shall be
18 added to the standard sentence range for a conviction of attempting
19 to elude a police vehicle as defined by RCW 46.61.024, if the
20 conviction included a finding by special allegation of endangering
21 one or more persons under RCW 9.94A.834.

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

25 (13) An additional (~~twelve~~) 12 months shall be added to the
26 standard sentence range for vehicular homicide committed while under
27 the influence of intoxicating liquor or any drug as defined by RCW
28 46.61.520 or for vehicular assault committed while under the
29 influence of intoxicating liquor or any drug as defined by RCW
30 46.61.522, or for any felony driving under the influence (RCW
31 46.61.502(6)) or felony physical control under the influence (RCW
32 46.61.504(6)) for each child passenger under the age of (~~sixteen~~)
33 16 who is an occupant in the defendant's vehicle. These enhancements
34 shall be mandatory, shall be served in total confinement, and shall
35 run consecutively to all other sentencing provisions, including other
36 minor child enhancements, for all offenses sentenced under this
37 chapter. If the addition of a minor child enhancement increases the
38 sentence so that it would exceed the statutory maximum for the
39 offense, the portion of the sentence representing the enhancement

1 shall be mandatory, shall be served in total confinement, and shall
2 run consecutively to all other sentencing provisions.

3 (14) An additional (~~twelve~~) 12 months shall be added to the
4 standard sentence range for an offense that is also a violation of
5 RCW 9.94A.832.

6 (15) Regardless of any provisions in this section, if a person is
7 being sentenced in adult court for a crime committed under age
8 eighteen, the court has full discretion to depart from mandatory
9 sentencing enhancements and to take the particular circumstances
10 surrounding the defendant's youth into account.

11 (16) Regardless of any provisions in this section, if the court
12 finds a person qualifies under section 2 of this act, the court has
13 full discretion to depart downward from mandatory sentencing
14 enhancements.

15 **Sec. 7.** RCW 9.94A.535 and 2019 c 219 s 1 are each amended to
16 read as follows:

17 The court may impose a sentence outside the standard sentence
18 range for an offense if it finds, considering the purpose of this
19 chapter, that there are substantial and compelling reasons justifying
20 an exceptional sentence. Facts supporting aggravated sentences, other
21 than the fact of a prior conviction, shall be determined pursuant to
22 the provisions of RCW 9.94A.537.

23 Whenever a sentence outside the standard sentence range is
24 imposed, the court shall set forth the reasons for its decision in
25 written findings of fact and conclusions of law. A sentence outside
26 the standard sentence range shall be a determinate sentence.

27 If the sentencing court finds that an exceptional sentence
28 outside the standard sentence range should be imposed, the sentence
29 is subject to review only as provided for in RCW 9.94A.585(4).

30 A departure from the standards in RCW 9.94A.589 (1) and (2)
31 governing whether sentences are to be served consecutively or
32 concurrently is an exceptional sentence subject to the limitations in
33 this section, and may be appealed by the offender or the state as set
34 forth in RCW 9.94A.585 (2) through (6).

35 (1) Mitigating Circumstances - Court to Consider

36 The court may impose an exceptional sentence below the standard
37 range if it finds that mitigating circumstances are established by a
38 preponderance of the evidence. The following are illustrative only

1 and are not intended to be exclusive reasons for exceptional
2 sentences.

3 (a) To a significant degree, the victim was an initiator, willing
4 participant, aggressor, or provoker of the incident.

5 (b) Before detection, the defendant compensated, or made a good
6 faith effort to compensate, the victim of the criminal conduct for
7 any damage or injury sustained.

8 (c) The defendant committed the crime under duress, coercion,
9 threat, or compulsion insufficient to constitute a complete defense
10 but which significantly affected his or her conduct.

11 (d) The defendant, with no apparent predisposition to do so, was
12 induced by others to participate in the crime.

13 (e) The defendant's capacity to appreciate the wrongfulness of
14 his or her conduct, or to conform his or her conduct to the
15 requirements of the law, was significantly impaired. Voluntary use of
16 drugs or alcohol is excluded.

17 (f) The offense was principally accomplished by another person
18 and the defendant manifested extreme caution or sincere concern for
19 the safety or well-being of the victim.

20 (g) The operation of the multiple offense policy of RCW 9.94A.589
21 results in a presumptive sentence that is clearly excessive in light
22 of the purpose of this chapter, as expressed in RCW 9.94A.010.

23 (h) The defendant or the defendant's children suffered a
24 continuing pattern of physical or sexual abuse by the victim of the
25 offense and the offense is a response to that abuse.

26 (i) The defendant was making a good faith effort to obtain or
27 provide medical assistance for someone who is experiencing a drug-
28 related overdose.

29 (j) The current offense involved domestic violence, as defined in
30 RCW 10.99.020, and the defendant suffered a continuing pattern of
31 coercion, control, or abuse by the victim of the offense and the
32 offense is a response to that coercion, control, or abuse.

33 (k) The defendant was convicted of vehicular homicide, by the
34 operation of a vehicle in a reckless manner and has committed no
35 other previous serious traffic offenses as defined in RCW 9.94A.030,
36 and the sentence is clearly excessive in light of the purpose of this
37 chapter, as expressed in RCW 9.94A.010.

38 (l) The defendant is a survivor of domestic violence committed by
39 an intimate partner, the domestic violence suffered by the defendant
40 was a significant contributing factor to the defendant's criminal

1 conduct, and the sentence would be unduly harsh given the nature and
2 circumstances of the crime and the history, character, and condition
3 of the defendant.

4 (2) Aggravating Circumstances - Considered and Imposed by the
5 Court

6 The trial court may impose an aggravated exceptional sentence
7 without a finding of fact by a jury under the following
8 circumstances:

9 (a) The defendant and the state both stipulate that justice is
10 best served by the imposition of an exceptional sentence outside the
11 standard range, and the court finds the exceptional sentence to be
12 consistent with and in furtherance of the interests of justice and
13 the purposes of the sentencing reform act.

14 (b) The defendant's prior unscored misdemeanor or prior unscored
15 foreign criminal history results in a presumptive sentence that is
16 clearly too lenient in light of the purpose of this chapter, as
17 expressed in RCW 9.94A.010.

18 (c) The defendant has committed multiple current offenses and the
19 defendant's high offender score results in some of the current
20 offenses going unpunished.

21 (d) The failure to consider the defendant's prior criminal
22 history which was omitted from the offender score calculation
23 pursuant to RCW 9.94A.525 results in a presumptive sentence that is
24 clearly too lenient.

25 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
26 the Court

27 Except for circumstances listed in subsection (2) of this
28 section, the following circumstances are an exclusive list of factors
29 that can support a sentence above the standard range. Such facts
30 should be determined by procedures specified in RCW 9.94A.537.

31 (a) The defendant's conduct during the commission of the current
32 offense manifested deliberate cruelty to the victim.

33 (b) The defendant knew or should have known that the victim of
34 the current offense was particularly vulnerable or incapable of
35 resistance.

36 (c) The current offense was a violent offense, and the defendant
37 knew that the victim of the current offense was pregnant.

38 (d) The current offense was a major economic offense or series of
39 offenses, so identified by a consideration of any of the following
40 factors:

1 (i) The current offense involved multiple victims or multiple
2 incidents per victim;

3 (ii) The current offense involved attempted or actual monetary
4 loss substantially greater than typical for the offense;

5 (iii) The current offense involved a high degree of
6 sophistication or planning or occurred over a lengthy period of time;
7 or

8 (iv) The defendant used his or her position of trust, confidence,
9 or fiduciary responsibility to facilitate the commission of the
10 current offense.

11 (e) The current offense was a major violation of the Uniform
12 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
13 trafficking in controlled substances, which was more onerous than the
14 typical offense of its statutory definition: The presence of ANY of
15 the following may identify a current offense as a major VUCSA:

16 (i) The current offense involved at least three separate
17 transactions in which controlled substances were sold, transferred,
18 or possessed with intent to do so;

19 (ii) The current offense involved an attempted or actual sale or
20 transfer of controlled substances in quantities substantially larger
21 than for personal use;

22 (iii) The current offense involved the manufacture of controlled
23 substances for use by other parties;

24 (iv) The circumstances of the current offense reveal the offender
25 to have occupied a high position in the drug distribution hierarchy;

26 (v) The current offense involved a high degree of sophistication
27 or planning, occurred over a lengthy period of time, or involved a
28 broad geographic area of disbursement; or

29 (vi) The offender used his or her position or status to
30 facilitate the commission of the current offense, including positions
31 of trust, confidence or fiduciary responsibility (e.g., pharmacist,
32 physician, or other medical professional).

33 (f) The current offense included a finding of sexual motivation
34 pursuant to RCW 9.94A.835.

35 (g) The offense was part of an ongoing pattern of sexual abuse of
36 the same victim under the age of (~~eighteen~~) 18 years manifested by
37 multiple incidents over a prolonged period of time.

38 (h) The current offense involved domestic violence, as defined in
39 RCW 10.99.020, or stalking, as defined in RCW 9A.46.110, and one or
40 more of the following was present:

1 (i) The offense was part of an ongoing pattern of psychological,
2 physical, or sexual abuse of a victim or multiple victims manifested
3 by multiple incidents over a prolonged period of time;

4 (ii) The offense occurred within sight or sound of the victim's
5 or the offender's minor children under the age of (~~eighteen~~) 18
6 years; or

7 (iii) The offender's conduct during the commission of the current
8 offense manifested deliberate cruelty or intimidation of the victim.

9 (i) The offense resulted in the pregnancy of a child victim of
10 rape.

11 (j) The defendant knew that the victim of the current offense was
12 a youth who was not residing with a legal custodian and the defendant
13 established or promoted the relationship for the primary purpose of
14 victimization.

15 (k) The offense was committed with the intent to obstruct or
16 impair human or animal health care or agricultural or forestry
17 research or commercial production.

18 (l) The current offense is trafficking in the first degree or
19 trafficking in the second degree and any victim was a minor at the
20 time of the offense.

21 (m) The offense involved a high degree of sophistication or
22 planning.

23 (n) The defendant used his or her position of trust, confidence,
24 or fiduciary responsibility to facilitate the commission of the
25 current offense.

26 (o) The defendant committed a current sex offense, has a history
27 of sex offenses, and is not amenable to treatment.

28 (p) The offense involved an invasion of the victim's privacy.

29 (q) The defendant demonstrated or displayed an egregious lack of
30 remorse.

31 (r) The offense involved a destructive and foreseeable impact on
32 persons other than the victim.

33 (s) The defendant committed the offense to obtain or maintain his
34 or her membership or to advance his or her position in the hierarchy
35 of an organization, association, or identifiable group.

36 (t) The defendant committed the current offense shortly after
37 being released from incarceration.

38 (u) The current offense is a burglary and the victim of the
39 burglary was present in the building or residence when the crime was
40 committed.

1 (v) The offense was committed against a law enforcement officer
2 who was performing his or her official duties at the time of the
3 offense, the offender knew that the victim was a law enforcement
4 officer, and the victim's status as a law enforcement officer is not
5 an element of the offense.

6 (w) The defendant committed the offense against a victim who was
7 acting as a good samaritan.

8 (x) The defendant committed the offense against a public official
9 or officer of the court in retaliation of the public official's
10 performance of his or her duty to the criminal justice system.

11 (y) The victim's injuries substantially exceed the level of
12 bodily harm necessary to satisfy the elements of the offense. This
13 aggravator is not an exception to RCW 9.94A.530(2).

14 (z) (i) (A) The current offense is theft in the first degree, theft
15 in the second degree, possession of stolen property in the first
16 degree, or possession of stolen property in the second degree; (B)
17 the stolen property involved is metal property; and (C) the property
18 damage to the victim caused in the course of the theft of metal
19 property is more than three times the value of the stolen metal
20 property, or the theft of the metal property creates a public hazard.

21 (ii) For purposes of this subsection, "metal property" means
22 commercial metal property, private metal property, or nonferrous
23 metal property, as defined in RCW 19.290.010.

24 (aa) The defendant committed the offense with the intent to
25 directly or indirectly cause any benefit, aggrandizement, gain,
26 profit, or other advantage to or for a criminal street gang as
27 defined in RCW 9.94A.030, its reputation, influence, or membership.

28 (bb) The current offense involved paying to view, over the
29 internet in violation of RCW 9.68A.075, depictions of a minor engaged
30 in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)

31 (a) through (g).

32 (cc) The offense was intentionally committed because the
33 defendant perceived the victim to be homeless, as defined in RCW
34 9.94A.030.

35 (dd) The current offense involved a felony crime against persons,
36 except for assault in the third degree pursuant to RCW
37 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's
38 chamber, or any waiting area or corridor immediately adjacent to a
39 courtroom, jury room, or judge's chamber. This subsection shall apply
40 only: (i) During the times when a courtroom, jury room, or judge's

1 chamber is being used for judicial purposes during court proceedings;
2 and (ii) if signage was posted in compliance with RCW 2.28.200 at the
3 time of the offense.

4 (ee) During the commission of the current offense, the defendant
5 was driving in the opposite direction of the normal flow of traffic
6 on a multiple lane highway, as defined by RCW 46.04.350, with a
7 posted speed limit of (~~forty-five~~) 45 miles per hour or greater.

8 (ff) The current offense involved the assault of a utility
9 employee of any publicly or privately owned utility company or
10 agency, who is at the time of the act engaged in official duties,
11 including: (i) The maintenance or repair of utility poles, lines,
12 conduits, pipes, or other infrastructure; or (ii) connecting,
13 disconnecting, or recording utility meters.

14 **Sec. 8.** RCW 9.94A.540 and 2014 c 130 s 2 are each amended to
15 read as follows:

16 (1) Except to the extent provided in subsections (3) and (4) of
17 this section, the following minimum terms of total confinement are
18 mandatory and shall not be varied or modified under RCW 9.94A.535:

19 (a) An offender convicted of the crime of murder in the first
20 degree shall be sentenced to a term of total confinement not less
21 than (~~twenty~~) 20 years.

22 (b) An offender convicted of the crime of assault in the first
23 degree or assault of a child in the first degree where the offender
24 used force or means likely to result in death or intended to kill the
25 victim shall be sentenced to a term of total confinement not less
26 than five years.

27 (c) An offender convicted of the crime of rape in the first
28 degree shall be sentenced to a term of total confinement not less
29 than five years.

30 (d) An offender convicted of the crime of sexually violent
31 predator escape shall be sentenced to a minimum term of total
32 confinement not less than (~~sixty~~) 60 months.

33 (e) An offender convicted of the crime of aggravated first degree
34 murder for a murder that was committed prior to the offender's
35 (~~eighteenth~~) 18th birthday shall be sentenced to a term of total
36 confinement not less than (~~twenty-five~~) 25 years.

37 (2) During such minimum terms of total confinement, no offender
38 subject to the provisions of this section is eligible for community
39 custody, earned release time, furlough, home detention, partial

1 confinement, work crew, work release, or any other form of early
2 release authorized under RCW 9.94A.728, or any other form of
3 authorized leave of absence from the correctional facility while not
4 in the direct custody of a corrections officer. The provisions of
5 this subsection shall not apply: (a) In the case of an offender in
6 need of emergency medical treatment; (b) for the purpose of
7 commitment to an inpatient treatment facility in the case of an
8 offender convicted of the crime of rape in the first degree; or (c)
9 for an extraordinary medical placement when authorized under RCW
10 9.94A.728(~~(+3)~~) (1)(c).

11 (3)(a) Subsection (1)(a) through (d) of this section shall not be
12 applied in sentencing of juveniles tried as adults pursuant to RCW
13 13.04.030(1)(e)(i).

14 (b) This subsection (3) applies only to crimes committed on or
15 after July 24, 2005.

16 (4) The mandatory minimum terms under this section do not apply
17 if a court finds that a defendant qualifies for reduced or
18 alternative sentencing under section 2 of this act.

19 **Sec. 9.** RCW 9.94A.570 and 2000 c 28 s 6 are each amended to read
20 as follows:

21 (~~Notwithstanding~~) (1) Except as provided under subsection (2)
22 of this section, and notwithstanding the statutory maximum sentence
23 or any other provision of this chapter, a persistent offender shall
24 be sentenced to a term of total confinement for life without the
25 possibility of release or, when authorized by RCW 10.95.030 for the
26 crime of aggravated murder in the first degree, sentenced to death.
27 In addition, no offender subject to this section may be eligible for
28 community custody, earned release time, furlough, home detention,
29 partial confinement, work crew, work release, or any other form of
30 release as defined under RCW 9.94A.728(1)(~~(, (2), (3), (4), (6), (8),~~
31 ~~or (9)~~) (b), (c), (e), (h), and (i), or any other form of authorized
32 leave from a correctional facility while not in the direct custody of
33 a corrections officer or officers, except: (~~(+1)~~) (a) In the case of
34 an offender in need of emergency medical treatment; or (~~(+2)~~) (b)
35 for the purpose of commitment to an inpatient treatment facility in
36 the case of an offender convicted of the crime of rape in the first
37 degree.

1 (2) This section does not apply if a court finds a defendant
2 qualifies for reduced or alternative sentencing under section 2 of
3 this act.

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

6 (1) Any person who has been discharged under RCW 9.94A.637 may
7 apply to the sentencing court for a vacation of his or her record of
8 conviction for an offense occurring prior to the effective date of
9 this section on the basis that: The person is a survivor of domestic
10 violence committed by an intimate partner; the domestic violence
11 suffered by the person was a significant contributing factor to the
12 defendant's criminal conduct; and the collateral consequences of the
13 record of conviction create an unduly harsh burden on the person
14 given his or her personal history, character, and condition as well
15 as the nature and circumstances of the particular offense.

16 (2) In considering an application under this section, the court
17 may consider the factors specified in section 2(2)(b) of this act and
18 any evidence offered by the applicant, the prosecutor, and third
19 parties including, but not limited to, those specified in section
20 2(2)(c) of this act; however, the court, in its discretion, may rely
21 solely upon the sworn testimony of the applicant at a hearing before
22 the court when granting an application under this section.

23 (3) If the court finds that an applicant qualifies under this
24 section, the court may, in the interest of justice, waive the
25 restrictions under RCW 9.94A.640(2) and vacate the conviction
26 according to the process provided in RCW 9.94A.640(1).

27 (4) For the purposes of this section:

28 (a) "Domestic violence" has the same meaning as provided in RCW
29 26.50.010.

30 (b) "Intimate partner" has the same meaning as provided in RCW
31 26.50.010.

32 **Sec. 11.** RCW 9.94A.640 and 2019 c 331 s 3 are each amended to
33 read as follows:

34 (1) Every offender who has been discharged under RCW 9.94A.637
35 may apply to the sentencing court for a vacation of the offender's
36 record of conviction. If the court finds the offender meets the tests
37 prescribed in subsection (2) of this section or section 10 of this
38 act, the court may clear the record of conviction by: (a) Permitting

1 the offender to withdraw the offender's plea of guilty and to enter a
2 plea of not guilty; or (b) if the offender has been convicted after a
3 plea of not guilty, by the court setting aside the verdict of guilty;
4 and (c) by the court dismissing the information or indictment against
5 the offender.

6 (2) (~~(A)~~) Except as provided under section 10 of this act, an
7 offender may not have the record of conviction cleared if:

8 (a) There are any criminal charges against the offender pending
9 in any court of this state or another state, or in any federal court;

10 (b) The offense was a violent offense as defined in RCW 9.94A.030
11 or crime against children or other persons as defined in RCW
12 43.43.830, except the following offenses may be vacated if the
13 conviction did not include a firearm, deadly weapon, or sexual
14 motivation enhancement: (i) Assault in the second degree under RCW
15 9A.36.021; (ii) assault in the third degree under RCW 9A.36.031 when
16 not committed against a law enforcement officer or peace officer; and
17 (iii) robbery in the second degree under RCW 9A.56.210;

18 (c) The offense is a class B felony and the offender has been
19 convicted of a new crime in this state, another state, or federal
20 court in the (~~(ten)~~) 10 years prior to the application for vacation;

21 (d) The offense is a class C felony and the offender has been
22 convicted of a new crime in this state, another state, or federal
23 court in the five years prior to the application for vacation;

24 (e) The offense is a class B felony and less than (~~(ten)~~) 10
25 years have passed since the later of: (i) The applicant's release
26 from community custody; (ii) the applicant's release from full and
27 partial confinement; or (iii) the applicant's sentencing date;

28 (f) The offense was a class C felony, other than a class C felony
29 described in RCW 46.61.502(6) or 46.61.504(6), and less than five
30 years have passed since the later of: (i) The applicant's release
31 from community custody; (ii) the applicant's release from full and
32 partial confinement; or (iii) the applicant's sentencing date; or

33 (g) The offense was a felony described in RCW 46.61.502 or
34 46.61.504.

35 (3) (a) Except as otherwise provided, once the court vacates a
36 record of conviction under subsection (1) of this section, the fact
37 that the offender has been convicted of the offense shall not be
38 included in the offender's criminal history for purposes of
39 determining a sentence in any subsequent conviction, and the offender
40 shall be released from all penalties and disabilities resulting from

1 the offense. For all purposes, including responding to questions on
2 employment applications, an offender whose conviction has been
3 vacated may state that the offender has never been convicted of that
4 crime. A conviction that has been vacated under this section may not
5 be disseminated or disclosed by the state patrol or local law
6 enforcement agency to any person, except other criminal justice
7 enforcement agencies. Nothing in this section affects or prevents the
8 use of an offender's prior conviction in a later criminal
9 prosecution, and nothing in this section affects the requirements for
10 restoring a right to possess a firearm under RCW 9.41.040.

11 (b) A conviction vacated on or after July 28, 2019, qualifies as
12 a prior conviction for the purpose of charging a present recidivist
13 offense occurring on or after July 28, 2019, and may be used to
14 establish an ongoing pattern of abuse for purposes of RCW 9.94A.535.

15 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.96
16 RCW to read as follows:

17 (1) Any person who has completed the conditions of his or
18 sentence may apply to the sentencing court for a vacation of his or
19 her record of conviction for an offense occurring prior to the
20 effective date of this section on the basis that: The person is a
21 survivor of domestic violence committed by an intimate partner; the
22 domestic violence suffered by the person was a significant
23 contributing factor to the defendant's criminal conduct; and the
24 collateral consequences of the record of conviction create an unduly
25 harsh burden on the person given his or her personal history,
26 character, and condition as well as the nature and circumstances of
27 the particular offense.

28 (2) In considering an application under this section, the court
29 may consider the factors specified in section 2(2)(b) of this act.
30 The court may consider any evidence offered by the defendant, the
31 prosecutor, and third parties including, but not limited to, the
32 types specified in section 2(2)(c) of this act; however, the court,
33 in its discretion, may rely solely upon the sworn testimony of the
34 applicant at a hearing before the court when granting an application
35 under this section.

36 (3) If the court finds that an applicant qualifies under this
37 section, the court may, in the interest of justice, waive the
38 restrictions under RCW 9.96.060(2) and vacate the conviction
39 according to the process provided in RCW 9.96.060(1).

1 (4) For the purposes of this section:

2 (a) "Domestic violence" has the same meaning as provided in RCW
3 26.50.010.

4 (b) "Intimate partner" has the same meaning as provided in RCW
5 26.50.010.

6 **Sec. 13.** RCW 9.96.060 and 2020 c 29 s 18 are each amended to
7 read as follows:

8 (1) When vacating a conviction under this section or section 12
9 of this act, the court effectuates the vacation by: (a) (i) Permitting
10 the applicant to withdraw the applicant's plea of guilty and to enter
11 a plea of not guilty; or (ii) if the applicant has been convicted
12 after a plea of not guilty, the court setting aside the verdict of
13 guilty; and (b) the court dismissing the information, indictment,
14 complaint, or citation against the applicant and vacating the
15 judgment and sentence.

16 (2) Every person convicted of a misdemeanor or gross misdemeanor
17 offense may apply to the sentencing court for a vacation of the
18 applicant's record of conviction for the offense. If the court finds
19 the applicant meets the requirements of this subsection, the court
20 may in its discretion vacate the record of conviction. Except as
21 provided in subsections (3), (4), and (5) of this section and section
22 12 of this act, an applicant may not have the record of conviction
23 for a misdemeanor or gross misdemeanor offense vacated if any one of
24 the following is present:

25 (a) The applicant has not completed all of the terms of the
26 sentence for the offense;

27 (b) There are any criminal charges against the applicant pending
28 in any court of this state or another state, or in any federal or
29 tribal court, at the time of application;

30 (c) The offense was a violent offense as defined in RCW 9.94A.030
31 or an attempt to commit a violent offense;

32 (d) The offense was a violation of RCW 46.61.502 (driving while
33 under the influence), 46.61.504 (actual physical control while under
34 the influence), 9.91.020 (operating a railroad, etc. while
35 intoxicated), or the offense is considered a "prior offense" under
36 RCW 46.61.5055 and the applicant has had a subsequent alcohol or drug
37 violation within (~~ten~~) 10 years of the date of arrest for the prior
38 offense or less than (~~ten~~) 10 years has elapsed since the date of
39 the arrest for the prior offense;

1 (e) The offense was any misdemeanor or gross misdemeanor
2 violation, including attempt, of chapter 9.68 RCW (obscenity and
3 pornography), chapter 9.68A RCW (sexual exploitation of children), or
4 chapter 9A.44 RCW (sex offenses), except for failure to register as a
5 sex offender under RCW 9A.44.132;

6 (f) The applicant was convicted of a misdemeanor or gross
7 misdemeanor offense as defined in RCW 10.99.020, or the court
8 determines after a review of the court file that the offense was
9 committed by one family or household member against another or by one
10 intimate partner against another, or the court, after considering the
11 damage to person or property that resulted in the conviction, any
12 prior convictions for crimes defined in RCW 10.99.020, or for
13 comparable offenses in another state or in federal court, and the
14 totality of the records under review by the court regarding the
15 conviction being considered for vacation, determines that the offense
16 involved domestic violence, and any one of the following factors
17 exist:

18 (i) The applicant has not provided written notification of the
19 vacation petition to the prosecuting attorney's office that
20 prosecuted the offense for which vacation is sought, or has not
21 provided that notification to the court;

22 (ii) The applicant has two or more domestic violence convictions
23 stemming from different incidents. For purposes of this subsection,
24 however, if the current application is for more than one conviction
25 that arose out of a single incident, none of those convictions counts
26 as a previous conviction;

27 (iii) The applicant has signed an affidavit under penalty of
28 perjury affirming that the applicant has not previously had a
29 conviction for a domestic violence offense, and a criminal history
30 check reveals that the applicant has had such a conviction; or

31 (iv) Less than five years have elapsed since the person completed
32 the terms of the original conditions of the sentence, including any
33 financial obligations and successful completion of any treatment
34 ordered as a condition of sentencing;

35 (g) For any offense other than those described in (f) of this
36 subsection, less than three years have passed since the person
37 completed the terms of the sentence, including any financial
38 obligations;

1 (h) The offender has been convicted of a new crime in this state,
2 another state, or federal or tribal court in the three years prior to
3 the vacation application; or

4 (i) The applicant is currently restrained by a domestic violence
5 protection order, a no-contact order, an antiharassment order, or a
6 civil restraining order which restrains one party from contacting the
7 other party or was previously restrained by such an order and was
8 found to have committed one or more violations of the order in the
9 five years prior to the vacation application.

10 (3) Subject to RCW 9.96.070, every person convicted of
11 prostitution under RCW 9A.88.030 who committed the offense as a
12 result of being a victim of trafficking, RCW 9A.40.100, promoting
13 prostitution in the first degree, RCW 9A.88.070, promoting commercial
14 sexual abuse of a minor, RCW 9.68A.101, or trafficking in persons
15 under the trafficking victims protection act of 2000, 22 U.S.C. Sec.
16 7101 et seq. may apply to the sentencing court for vacation of the
17 applicant's record of conviction for the prostitution offense. An
18 applicant may not have the record of conviction for prostitution
19 vacated if any one of the following is present:

20 (a) There are any criminal charges against the applicant pending
21 in any court of this state or another state, or in any federal court,
22 for any crime other than prostitution; or

23 (b) The offender has been convicted of another crime, except
24 prostitution, in this state, another state, or federal court since
25 the date of conviction. The limitation in this subsection (3)(b) does
26 not apply to convictions where the offender proves by a preponderance
27 of the evidence that he or she committed the crime as a result of
28 being a victim of trafficking, RCW 9A.40.100, promoting prostitution
29 in the first degree, RCW 9A.88.070, promoting commercial sexual abuse
30 of a minor, RCW 9.68A.101, or trafficking in persons under the
31 trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et
32 seq., according to the requirements provided in RCW 9.96.070 for each
33 respective conviction.

34 (4) Every person convicted prior to January 1, 1975, of violating
35 any statute or rule regarding the regulation of fishing activities,
36 including, but not limited to, RCW 75.08.260, 75.12.060, 75.12.070,
37 75.12.160, 77.16.020, 77.16.030, 77.16.040, 77.16.060, and 77.16.240
38 who claimed to be exercising a treaty Indian fishing right, may apply
39 to the sentencing court for vacation of the applicant's record of the
40 misdemeanor, gross misdemeanor, or felony conviction for the offense.

1 If the person is deceased, a member of the person's family or an
2 official representative of the tribe of which the person was a member
3 may apply to the court on behalf of the deceased person.
4 Notwithstanding the requirements of RCW 9.94A.640, the court shall
5 vacate the record of conviction if:

6 (a) The applicant is a member of a tribe that may exercise treaty
7 Indian fishing rights at the location where the offense occurred; and

8 (b) The state has been enjoined from taking enforcement action of
9 the statute or rule to the extent that it interferes with a treaty
10 Indian fishing right as determined under *United States v. Washington*,
11 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp.
12 899 (D. Oregon 1969), and any posttrial orders of those courts, or
13 any other state supreme court or federal court decision.

14 (5) Every person convicted of a misdemeanor marijuana offense,
15 who was (~~twenty-one~~) 21 years of age or older at the time of the
16 offense, may apply to the sentencing court for a vacation of the
17 applicant's record of conviction for the offense. A misdemeanor
18 marijuana offense includes, but is not limited to: Any offense under
19 RCW 69.50.4014, from July 1, 2004, onward, and its predecessor
20 statutes, including RCW 69.50.401(e), from March 21, 1979, to July 1,
21 2004, and RCW 69.50.401(d), from May 21, 1971, to March 21, 1979, and
22 any offense under an equivalent municipal ordinance. If an applicant
23 qualifies under this subsection, the court shall vacate the record of
24 conviction.

25 (6)(a) Except as provided in (c) of this subsection, once the
26 court vacates a record of conviction under this section, the person
27 shall be released from all penalties and disabilities resulting from
28 the offense and the fact that the person has been convicted of the
29 offense shall not be included in the person's criminal history for
30 purposes of determining a sentence in any subsequent conviction. For
31 all purposes, including responding to questions on employment or
32 housing applications, a person whose conviction has been vacated
33 under this section may state that he or she has never been convicted
34 of that crime. However, nothing in this section affects the
35 requirements for restoring a right to possess a firearm under RCW
36 9.41.040. Except as provided in (b) of this subsection, nothing in
37 this section affects or prevents the use of an offender's prior
38 conviction in a later criminal prosecution.

39 (b) When a court vacates a record of domestic violence as defined
40 in RCW 10.99.020 under this section, the state may not use the

1 vacated conviction in a later criminal prosecution unless the
2 conviction was for: (i) Violating the provisions of a restraining
3 order, no-contact order, or protection order restraining or enjoining
4 the person or restraining the person from going on to the grounds of
5 or entering a residence, workplace, school, or day care, or
6 prohibiting the person from knowingly coming within, or knowingly
7 remaining within, a specified distance of a location (RCW 10.99.040,
8 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.44.063, 26.44.150,
9 26.50.060, 26.50.070, 26.50.130, 26.52.070, or 74.34.145); or (ii)
10 stalking (RCW 9A.46.110). A vacated conviction under this section is
11 not considered a conviction of such an offense for the purposes of 27
12 C.F.R. 478.11.

13 (c) A conviction vacated on or after July 28, 2019, qualifies as
14 a prior conviction for the purpose of charging a present recidivist
15 offense as defined in RCW 9.94A.030 occurring on or after July 28,
16 2019.

17 (7) The clerk of the court in which the vacation order is entered
18 shall immediately transmit the order vacating the conviction to the
19 Washington state patrol identification section and to the local
20 police agency, if any, which holds criminal history information for
21 the person who is the subject of the conviction. The Washington state
22 patrol and any such local police agency shall immediately update
23 their records to reflect the vacation of the conviction, and shall
24 transmit the order vacating the conviction to the federal bureau of
25 investigation. A conviction that has been vacated under this section
26 may not be disseminated or disclosed by the state patrol or local law
27 enforcement agency to any person, except other criminal justice
28 enforcement agencies.

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