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HOUSE BILL 1139

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State of Washington

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By Representatives Campbell, Ballasiotes, Chappell, Johanson, Mielke, Dorn, Lemmon, Mastin, R. Meyers, Padden, Vance, Ballard, Holm, Kremen, Brough, Jones, Quall, L. Johnson, Dyer, Rayburn, Kessler, Sheahan, Fuhrman, Horn, Long, Grant, Basich, Sheldon, Brumsickle, H. Myers, Van Luven, Talcott, Lisk, Edmondson, Casada, Thomas, Schoesler, Shin, Reams, Cooke, Springer, Miller, Karahalios, Morton, Wood, Tate, Foreman, Sehlin, Roland, Silver, J. Kohl and Forner

Read first time 01/18/93. Referred to Committee on Corrections.

1 AN ACT Relating to persistent offenders; reenacting and amending  
2 RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing  
3 penalties.

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

5 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature of  
6 the state of Washington find and declare that:

7 (a) Community protection from persistent offenders is a priority  
8 for any civilized society.

9 (b) Nearly fifty percent of the criminals convicted in Washington  
10 state have active prior criminal histories.

11 (c) Punishments for criminal offenses should be proportionate to  
12 both the seriousness of the crime and the prior criminal history.

13 (d) The public has the right and the responsibility to determine  
14 when to impose a life sentence.

15 (2) By sentencing three-time, most serious offenders to prison for  
16 life without the possibility of parole, the legislature intends to:

17 (a) Improve public safety by placing the most dangerous criminals  
18 in prison.

1 (b) Reduce the number of serious, repeat offenders by tougher  
2 sentencing.

3 (c) Set proper and simplified sentencing practices that both the  
4 victims and persistent offenders can understand.

5 (d) Restore public trust in our criminal justice system.

6 **Sec. 2.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992  
7 c 45 s 5 are each reenacted and amended to read as follows:

8 ENFORCEMENT OF MANDATORY MINIMUM SENTENCES. When a person is  
9 convicted of a felony, the court shall impose punishment as provided in  
10 this section.

11 (1) Except as authorized in subsections (2), (4), (5), and (7) of  
12 this section, the court shall impose a sentence within the sentence  
13 range for the offense.

14 (2) The court may impose a sentence outside the standard sentence  
15 range for that offense if it finds, considering the purpose of this  
16 chapter, that there are substantial and compelling reasons justifying  
17 an exceptional sentence.

18 (3) Whenever a sentence outside the standard range is imposed, the  
19 court shall set forth the reasons for its decision in written findings  
20 of fact and conclusions of law. A sentence outside the standard range  
21 shall be a determinate sentence.

22 (4) A persistent offender shall be sentenced to a term of total  
23 confinement for life without the possibility of parole or, when  
24 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
25 first degree, sentenced to death, notwithstanding the maximum sentence  
26 under any other law. An offender convicted of the crime of murder in  
27 the first degree shall be sentenced to a term of total confinement not  
28 less than twenty years. An offender convicted of the crime of assault  
29 in the first degree or assault of a child in the first degree where the  
30 offender used force or means likely to result in death or intended to  
31 kill the victim shall be sentenced to a term of total confinement not  
32 less than five years. An offender convicted of the crime of rape in  
33 the first degree shall be sentenced to a term of total confinement not  
34 less than five years(~~(, and shall not be eligible for furlough, work~~  
35 ~~release or other authorized leave of absence from the correctional~~  
36 ~~facility during such minimum five year term except for the purpose of~~  
37 ~~commitment to an inpatient treatment facility)). The foregoing minimum  
38 terms of total confinement are mandatory and shall not be varied or~~

1 modified as provided in subsection (2) of this section. In addition,  
2 all offenders subject to the provisions of this subsection shall not be  
3 eligible for community custody, earned early release time, furlough,  
4 home detention, partial confinement, work crew, work release, or any  
5 other form of early release as defined under RCW 9.94A.150 (1), (2),  
6 (3), (5), (7), or (8), or any other form of authorized leave of absence  
7 from the correctional facility while not in the direct custody of a  
8 corrections officer or officers during such minimum terms of total  
9 confinement except in the case of an offender in need of emergency  
10 medical treatment or for the purpose of commitment to an inpatient  
11 treatment facility in the case of an offender convicted of the crime of  
12 rape in the first degree.

13 (5) In sentencing a first-time offender the court may waive the  
14 imposition of a sentence within the sentence range and impose a  
15 sentence which may include up to ninety days of confinement in a  
16 facility operated or utilized under contract by the county and a  
17 requirement that the offender refrain from committing new offenses.  
18 The sentence may also include up to two years of community supervision,  
19 which, in addition to crime-related prohibitions, may include  
20 requirements that the offender perform any one or more of the  
21 following:

22 (a) Devote time to a specific employment or occupation;

23 (b) Undergo available outpatient treatment for up to two years, or  
24 inpatient treatment not to exceed the standard range of confinement for  
25 that offense;

26 (c) Pursue a prescribed, secular course of study or vocational  
27 training;

28 (d) Remain within prescribed geographical boundaries and notify the  
29 court or the community corrections officer prior to any change in the  
30 offender's address or employment;

31 (e) Report as directed to the court and a community corrections  
32 officer; or

33 (f) Pay all court-ordered legal financial obligations as provided  
34 in RCW 9.94A.030 and/or perform community service work.

35 (6) If a sentence range has not been established for the  
36 defendant's crime, the court shall impose a determinate sentence which  
37 may include not more than one year of confinement, community service  
38 work, a term of community supervision not to exceed one year, and/or  
39 other legal financial obligations. The court may impose a sentence

1 which provides more than one year of confinement if the court finds,  
2 considering the purpose of this chapter, that there are substantial and  
3 compelling reasons justifying an exceptional sentence.

4 (7)(a)(i) When an offender is convicted of a sex offense other than  
5 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
6 violent offense and has no prior convictions for a sex offense or any  
7 other felony sex offenses in this or any other state, the sentencing  
8 court, on its own motion or the motion of the state or the defendant,  
9 may order an examination to determine whether the defendant is amenable  
10 to treatment.

11 The report of the examination shall include at a minimum the  
12 following: The defendant's version of the facts and the official  
13 version of the facts, the defendant's offense history, an assessment of  
14 problems in addition to alleged deviant behaviors, the offender's  
15 social and employment situation, and other evaluation measures used.  
16 The report shall set forth the sources of the evaluator's information.

17 The examiner shall assess and report regarding the defendant's  
18 amenability to treatment and relative risk to the community. A  
19 proposed treatment plan shall be provided and shall include, at a  
20 minimum:

21 (A) Frequency and type of contact between offender and therapist;

22 (B) Specific issues to be addressed in the treatment and  
23 description of planned treatment modalities;

24 (C) Monitoring plans, including any requirements regarding living  
25 conditions, lifestyle requirements, and monitoring by family members  
26 and others;

27 (D) Anticipated length of treatment; and

28 (E) Recommended crime-related prohibitions.

29 The court on its own motion may order, or on a motion by the state  
30 shall order, a second examination regarding the offender's amenability  
31 to treatment. The evaluator shall be selected by the party making the  
32 motion. The defendant shall pay the cost of any second examination  
33 ordered unless the court finds the defendant to be indigent in which  
34 case the state shall pay the cost.

35 (ii) After receipt of the reports, the court shall consider whether  
36 the offender and the community will benefit from use of this special  
37 sexual offender sentencing alternative and consider the victim's  
38 opinion whether the offender should receive a treatment disposition  
39 under this subsection. If the court determines that this special sex

1 offender sentencing alternative is appropriate, the court shall then  
2 impose a sentence within the sentence range. If this sentence is less  
3 than eight years of confinement, the court may suspend the execution of  
4 the sentence and impose the following conditions of suspension:

5 (A) The court shall place the defendant on community supervision  
6 for the length of the suspended sentence or three years, whichever is  
7 greater; and

8 (B) The court shall order treatment for any period up to three  
9 years in duration. The court in its discretion shall order outpatient  
10 sex offender treatment or inpatient sex offender treatment, if  
11 available. A community mental health center may not be used for such  
12 treatment unless it has an appropriate program designed for sex  
13 offender treatment. The offender shall not change sex offender  
14 treatment providers or treatment conditions without first notifying the  
15 prosecutor, the community corrections officer, and the court, and shall  
16 not change providers without court approval after a hearing if the  
17 prosecutor or community corrections officer object to the change. In  
18 addition, as conditions of the suspended sentence, the court may impose  
19 other sentence conditions including up to six months of confinement,  
20 not to exceed the sentence range of confinement for that offense,  
21 crime-related prohibitions, and requirements that the offender perform  
22 any one or more of the following:

23 (I) Devote time to a specific employment or occupation;

24 (II) Remain within prescribed geographical boundaries and notify  
25 the court or the community corrections officer prior to any change in  
26 the offender's address or employment;

27 (III) Report as directed to the court and a community corrections  
28 officer;

29 (IV) Pay all court-ordered legal financial obligations as provided  
30 in RCW 9.94A.030, perform community service work, or any combination  
31 thereof; or

32 (V) Make recoupment to the victim for the cost of any counseling  
33 required as a result of the offender's crime.

34 (iii) The sex offender therapist shall submit quarterly reports on  
35 the defendant's progress in treatment to the court and the parties.  
36 The report shall reference the treatment plan and include at a minimum  
37 the following: Dates of attendance, defendant's compliance with  
38 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at  
2 sentencing.

3 (iv) At the time of sentencing, the court shall set a treatment  
4 termination hearing for three months prior to the anticipated date for  
5 completion of treatment. Prior to the treatment termination hearing,  
6 the treatment professional and community corrections officer shall  
7 submit written reports to the court and parties regarding the  
8 defendant's compliance with treatment and monitoring requirements, and  
9 recommendations regarding termination from treatment, including  
10 proposed community supervision conditions. Either party may request  
11 and the court may order another evaluation regarding the advisability  
12 of termination from treatment. The defendant shall pay the cost of any  
13 additional evaluation ordered unless the court finds the defendant to  
14 be indigent in which case the state shall pay the cost. At the  
15 treatment termination hearing the court may: (A) Modify conditions of  
16 community supervision, and either (B) terminate treatment, or (C)  
17 extend treatment for up to the remaining period of community  
18 supervision.

19 (v) The court may revoke the suspended sentence at any time during  
20 the period of community supervision and order execution of the sentence  
21 if: (A) The defendant violates the conditions of the suspended  
22 sentence, or (B) the court finds that the defendant is failing to make  
23 satisfactory progress in treatment. All confinement time served during  
24 the period of community supervision shall be credited to the offender  
25 if the suspended sentence is revoked.

26 (vi) Except as provided in (a)(vii) of this subsection, after July  
27 1, 1991, examinations and treatment ordered pursuant to this subsection  
28 shall only be conducted by sex offender treatment providers certified  
29 by the department of health pursuant to chapter 18.155 RCW.

30 (vii) A sex offender therapist who examines or treats a sex  
31 offender pursuant to this subsection (7) does not have to be certified  
32 by the department of health pursuant to chapter 18.155 RCW if the court  
33 finds that: (A) The offender has already moved to another state or  
34 plans to move to another state for reasons other than circumventing the  
35 certification requirements; (B) no certified providers are available  
36 for treatment within a reasonable geographical distance of the  
37 offender's home; and (C) the evaluation and treatment plan comply with  
38 this subsection (7) and the rules adopted by the department of health.

1 For purposes of this subsection, "victim" means any person who has  
2 sustained emotional, psychological, physical, or financial injury to  
3 person or property as a result of the crime charged. "Victim" also  
4 means a parent or guardian of a victim who is a minor child unless the  
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense  
7 committed before July 1, 1987, and is sentenced to a term of  
8 confinement of more than one year but less than six years, the  
9 sentencing court may, on its own motion or on the motion of the  
10 offender or the state, order the offender committed for up to thirty  
11 days to the custody of the secretary of social and health services for  
12 evaluation and report to the court on the offender's amenability to  
13 treatment at these facilities. If the secretary of social and health  
14 services cannot begin the evaluation within thirty days of the court's  
15 order of commitment, the offender shall be transferred to the state for  
16 confinement pending an opportunity to be evaluated at the appropriate  
17 facility. The court shall review the reports and may order that the  
18 term of confinement imposed be served in the sexual offender treatment  
19 program at the location determined by the secretary of social and  
20 health services or the secretary's designee, only if the report  
21 indicates that the offender is amenable to the treatment program  
22 provided at these facilities. The offender shall be transferred to the  
23 state pending placement in the treatment program. Any offender who has  
24 escaped from the treatment program shall be referred back to the  
25 sentencing court.

26 If the offender does not comply with the conditions of the  
27 treatment program, the secretary of social and health services may  
28 refer the matter to the sentencing court. The sentencing court shall  
29 commit the offender to the department of corrections to serve the  
30 balance of the term of confinement.

31 If the offender successfully completes the treatment program before  
32 the expiration of the term of confinement, the court may convert the  
33 balance of confinement to community supervision and may place  
34 conditions on the offender including crime-related prohibitions and  
35 requirements that the offender perform any one or more of the  
36 following:

37 (i) Devote time to a specific employment or occupation;

1 (ii) Remain within prescribed geographical boundaries and notify  
2 the court or the community corrections officer prior to any change in  
3 the offender's address or employment;

4 (iii) Report as directed to the court and a community corrections  
5 officer;

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,  
8 the court may order the offender to serve out the balance of the  
9 community supervision term in confinement in the custody of the  
10 department of corrections.

11 After June 30, 1993, this subsection (b) shall cease to have  
12 effect.

13 (c) When an offender commits any felony sex offense on or after  
14 July 1, 1987, and is sentenced to a term of confinement of more than  
15 one year but less than six years, the sentencing court may, on its own  
16 motion or on the motion of the offender or the state, request the  
17 department of corrections to evaluate whether the offender is amenable  
18 to treatment and the department may place the offender in a treatment  
19 program within a correctional facility operated by the department.

20 Except for an offender who has been convicted of a violation of RCW  
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
22 before the expiration of his or her term of confinement, the department  
23 of corrections may request the court to convert the balance of  
24 confinement to community supervision and to place conditions on the  
25 offender including crime-related prohibitions and requirements that the  
26 offender perform any one or more of the following:

27 (i) Devote time to a specific employment or occupation;

28 (ii) Remain within prescribed geographical boundaries and notify  
29 the court or the community corrections officer prior to any change in  
30 the offender's address or employment;

31 (iii) Report as directed to the court and a community corrections  
32 officer;

33 (iv) Undergo available outpatient treatment.

34 If the offender violates any of the terms of his or her community  
35 supervision, the court may order the offender to serve out the balance  
36 of his or her community supervision term in confinement in the custody  
37 of the department of corrections.

38 Nothing in (c) of this subsection shall confer eligibility for such  
39 programs for offenders convicted and sentenced for a sex offense



1 committed prior to July 1, 1987. This subsection (c) does not apply to  
2 any crime committed after July 1, 1990.

3 (d) Offenders convicted and sentenced for a sex offense committed  
4 prior to July 1, 1987, may, subject to available funds, request an  
5 evaluation by the department of corrections to determine whether they  
6 are amenable to treatment. If the offender is determined to be  
7 amenable to treatment, the offender may request placement in a  
8 treatment program within a correctional facility operated by the  
9 department. Placement in such treatment program is subject to  
10 available funds.

11 (8)(a) When a court sentences a person to a term of total  
12 confinement to the custody of the department of corrections for an  
13 offense categorized as a sex offense or a serious violent offense  
14 committed after July 1, 1988, but before July 1, 1990, assault in the  
15 second degree, assault of a child in the second degree, any crime  
16 against a person where it is determined in accordance with RCW  
17 9.94A.125 that the defendant or an accomplice was armed with a deadly  
18 weapon at the time of commission, or any felony offense under chapter  
19 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
20 in addition to the other terms of the sentence, sentence the offender  
21 to a one-year term of community placement beginning either upon  
22 completion of the term of confinement or at such time as the offender  
23 is transferred to community custody in lieu of earned early release in  
24 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
25 offender under this subsection to the statutory maximum period of  
26 confinement then the community placement portion of the sentence shall  
27 consist entirely of such community custody to which the offender may  
28 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
29 period of community custody actually served shall be credited against  
30 the community placement portion of the sentence.

31 (b) When a court sentences a person to a term of total confinement  
32 to the custody of the department of corrections for an offense  
33 categorized as a sex offense or serious violent offense committed on or  
34 after July 1, 1990, the court shall in addition to other terms of the  
35 sentence, sentence the offender to community placement for two years or  
36 up to the period of earned early release awarded pursuant to RCW  
37 9.94A.150 (1) and (2), whichever is longer. The community placement  
38 shall begin either upon completion of the term of confinement or at  
39 such time as the offender is transferred to community custody in lieu

1 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
2 When the court sentences an offender under this subsection to the  
3 statutory maximum period of confinement then the community placement  
4 portion of the sentence shall consist entirely of the community custody  
5 to which the offender may become eligible, in accordance with RCW  
6 9.94A.150 (1) and (2). Any period of community custody actually served  
7 shall be credited against the community placement portion of the  
8 sentence. Unless a condition is waived by the court, the terms of  
9 community placement for offenders sentenced pursuant to this section  
10 shall include the following conditions:

11 (i) The offender shall report to and be available for contact with  
12 the assigned community corrections officer as directed;

13 (ii) The offender shall work at department of corrections-approved  
14 education, employment, and/or community service;

15 (iii) The offender shall not consume controlled substances except  
16 pursuant to lawfully issued prescriptions;

17 (iv) An offender in community custody shall not unlawfully possess  
18 controlled substances;

19 (v) The offender shall pay supervision fees as determined by the  
20 department of corrections; and

21 (vi) The residence location and living arrangements are subject to  
22 the prior approval of the department of corrections during the period  
23 of community placement.

24 (c) The court may also order any of the following special  
25 conditions:

26 (i) The offender shall remain within, or outside of, a specified  
27 geographical boundary;

28 (ii) The offender shall not have direct or indirect contact with  
29 the victim of the crime or a specified class of individuals;

30 (iii) The offender shall participate in crime-related treatment or  
31 counseling services;

32 (iv) The offender shall not consume alcohol; or

33 (v) The offender shall comply with any crime-related prohibitions.

34 (d) Prior to transfer to, or during, community placement, any  
35 conditions of community placement may be removed or modified so as not  
36 to be more restrictive by the sentencing court, upon recommendation of  
37 the department of corrections.

38 (9) If the court imposes a sentence requiring confinement of thirty  
39 days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence  
2 requiring more than thirty days of confinement shall be served on  
3 consecutive days. Local jail administrators may schedule court-ordered  
4 intermittent sentences as space permits.

5 (10) If a sentence imposed includes payment of a legal financial  
6 obligation, the sentence shall specify the total amount of the legal  
7 financial obligation owed, and shall require the offender to pay a  
8 specified monthly sum toward that legal financial obligation.  
9 Restitution to victims shall be paid prior to any other payments of  
10 monetary obligations. Any legal financial obligation that is imposed  
11 by the court may be collected by the department, which shall deliver  
12 the amount paid to the county clerk for credit. The offender's  
13 compliance with payment of legal financial obligations shall be  
14 supervised by the department. All monetary payments ordered shall be  
15 paid no later than ten years after the last date of release from  
16 confinement pursuant to a felony conviction or the date the sentence  
17 was entered. Independent of the department, the party or entity to  
18 whom the legal financial obligation is owed shall have the authority to  
19 utilize any other remedies available to the party or entity to collect  
20 the legal financial obligation. Nothing in this section makes the  
21 department, the state, or any of its employees, agents, or other  
22 persons acting on their behalf liable under any circumstances for the  
23 payment of these legal financial obligations. If an order includes  
24 restitution as one of the monetary assessments, the county clerk shall  
25 make disbursements to victims named in the order.

26 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a  
27 court may not impose a sentence providing for a term of confinement or  
28 community supervision or community placement which exceeds the  
29 statutory maximum for the crime as provided in chapter 9A.20 RCW.

30 (12) All offenders sentenced to terms involving community  
31 supervision, community service, community placement, or legal financial  
32 obligation shall be under the supervision of the secretary of the  
33 department of corrections or such person as the secretary may designate  
34 and shall follow explicitly the instructions of the secretary including  
35 reporting as directed to a community corrections officer, remaining  
36 within prescribed geographical boundaries, notifying the community  
37 corrections officer of any change in the offender's address or  
38 employment, and paying the supervision fee assessment.

1 (13) All offenders sentenced to terms involving community  
2 supervision, community service, or community placement under the  
3 supervision of the department of corrections shall not own, use, or  
4 possess firearms or ammunition. Offenders who own, use, or are found  
5 to be in actual or constructive possession of firearms or ammunition  
6 shall be subject to the appropriate violation process and sanctions.  
7 "Constructive possession" as used in this subsection means the power  
8 and intent to control the firearm or ammunition. "Firearm" as used in  
9 this subsection means a weapon or device from which a projectile may be  
10 fired by an explosive such as gunpowder.

11 (14) The sentencing court shall give the offender credit for all  
12 confinement time served before the sentencing if that confinement was  
13 solely in regard to the offense for which the offender is being  
14 sentenced.

15 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)  
16 governing whether sentences are to be served consecutively or  
17 concurrently is an exceptional sentence subject to the limitations in  
18 subsections (2) and (3) of this section, and may be appealed by the  
19 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

20 (16) The court shall order restitution whenever the offender is  
21 convicted of a felony that results in injury to any person or damage to  
22 or loss of property, whether the offender is sentenced to confinement  
23 or placed under community supervision, unless extraordinary  
24 circumstances exist that make restitution inappropriate in the court's  
25 judgment. The court shall set forth the extraordinary circumstances in  
26 the record if it does not order restitution.

27 (17) As a part of any sentence, the court may impose and enforce an  
28 order that relates directly to the circumstances of the crime for which  
29 the offender has been convicted, prohibiting the offender from having  
30 any contact with other specified individuals or a specific class of  
31 individuals for a period not to exceed the maximum allowable sentence  
32 for the crime, regardless of the expiration of the offender's term of  
33 community supervision or community placement.

34 (18) In any sentence of partial confinement, the court may require  
35 the defendant to serve the partial confinement in work release, in a  
36 program of home detention, on work crew, or in a combined program of  
37 work crew and home detention.

38 (19) All court-ordered legal financial obligations collected by the  
39 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any  
2 other payments of monetary obligations.

3 **Sec. 3.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are  
4 each reenacted and amended to read as follows:

5 DEFINITIONS. Unless the context clearly requires otherwise, the  
6 definitions in this section apply throughout this chapter.

7 (1) "Collect," or any derivative thereof, "collect and remit," or  
8 "collect and deliver," when used with reference to the department of  
9 corrections, means that the department is responsible for monitoring  
10 and enforcing the offender's sentence with regard to the legal  
11 financial obligation, receiving payment thereof from the offender, and,  
12 consistent with current law, delivering daily the entire payment to the  
13 superior court clerk without depositing it in a departmental account.

14 (2) "Commission" means the sentencing guidelines commission.

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

19 (4) "Community custody" means that portion of an inmate's sentence  
20 of confinement in lieu of earned early release time served in the  
21 community subject to controls placed on the inmate's movement and  
22 activities by the department of corrections.

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

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

33 (7) "Community supervision" means a period of time during which a  
34 convicted offender is subject to crime-related prohibitions and other  
35 sentence conditions imposed by a court pursuant to this chapter or RCW  
36 46.61.524. For first-time offenders, the supervision may include  
37 crime-related prohibitions and other conditions imposed pursuant to RCW  
38 9.94A.120(5). For purposes of the interstate compact for out-of-state

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

4 (8) "Confinement" means total or partial confinement as defined in  
5 this section.

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

9 (10) "Court-ordered legal financial obligation" means a sum of  
10 money that is ordered by a superior court of the state of Washington  
11 for legal financial obligations which may include restitution to the  
12 victim, statutorily imposed crime victims' compensation fees as  
13 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
14 drug funds, court-appointed attorneys' fees, and costs of defense,  
15 fines, and any other financial obligation that is assessed to the  
16 offender as a result of a felony conviction.

17 (11) "Crime-related prohibition" means an order of a court  
18 prohibiting conduct that directly relates to the circumstances of the  
19 crime for which the offender has been convicted, and shall not be  
20 construed to mean orders directing an offender affirmatively to  
21 participate in rehabilitative programs or to otherwise perform  
22 affirmative conduct.

23 (12)(a) "Criminal history" means the list of a defendant's prior  
24 convictions, whether in this state, in federal court, or elsewhere.  
25 The history shall include, where known, for each conviction (i) whether  
26 the defendant has been placed on probation and the length and terms  
27 thereof; and (ii) whether the defendant has been incarcerated and the  
28 length of incarceration.

29 (b) "Criminal history" shall always include juvenile convictions  
30 for sex offenses and shall also include a defendant's other prior  
31 convictions in juvenile court if: (i) The conviction was for an  
32 offense which is a felony or a serious traffic offense and is criminal  
33 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was  
34 fifteen years of age or older at the time the offense was committed;  
35 and (iii) with respect to prior juvenile class B and C felonies or  
36 serious traffic offenses, the defendant was less than twenty-three  
37 years of age at the time the offense for which he or she is being  
38 sentenced was committed.

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

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

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

21 (16) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of  
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
24 controlled substance (RCW 69.50.403);

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

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

31 (17) "Escape" means:

32 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
33 second degree (RCW 9A.76.120), willful failure to return from furlough  
34 (RCW 72.66.060), willful failure to return from work release (RCW  
35 72.65.070), or willful failure to be available for supervision by the  
36 department while in community custody (RCW 72.09.310); or

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

1 (18) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
4 and-run injury-accident (RCW 46.52.020(4)); or

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

8 (19) "Fines" means the requirement that the offender pay a specific  
9 sum of money over a specific period of time to the court.

10 (20)(a) "First-time offender" means any person who is convicted of  
11 a felony (i) not classified as a violent offense or a sex offense under  
12 this chapter, or (ii) that is not the manufacture, delivery, or  
13 possession with intent to manufacture or deliver a controlled substance  
14 classified in schedule I or II that is a narcotic drug or the selling  
15 for profit (~~{of}~~) of any controlled substance or counterfeit  
16 substance classified in schedule I, RCW 69.50.204, except leaves and  
17 flowering tops of marihuana, and except as provided in (b) of this  
18 subsection, who previously has never been convicted of a felony in this  
19 state, federal court, or another state, and who has never participated  
20 in a program of deferred prosecution for a felony offense.

21 (b) For purposes of (a) of this subsection, a juvenile adjudication  
22 for an offense committed before the age of fifteen years is not a  
23 previous felony conviction except for adjudications of sex offenses.

24 (21) "Most serious offense" means any of the following felonies or  
25 a felony attempt to commit any of the following felonies, as now  
26 existing or hereafter amended:

27 (a) Any felony defined under any law as a class A felony or  
28 criminal solicitation of or criminal conspiracy to commit a class A  
29 felony;

30 (b) Assault in the second degree;

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

32 (d) Child molestation in the second degree;

33 (e) Controlled substance homicide;

34 (f) Extortion in the first degree;

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

36 (h) Indecent liberties;

37 (i) Kidnapping in the second degree;

38 (j) Leading organized crime;

39 (k) Manslaughter in the first degree;



1       (l) Manslaughter in the second degree;  
2       (m) Promoting prostitution in the first degree;  
3       (n) Rape in the third degree;  
4       (o) Robbery in the second degree;  
5       (p) Sexual exploitation;  
6       (q) Vehicular assault;  
7       (r) Vehicular homicide, when proximately caused by the driving of  
8 any vehicle by any person while under the influence of intoxicating  
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
10 any vehicle in a reckless manner;  
11       (s) Any other class B felony offense with a finding of sexual  
12 motivation, as "sexual motivation" is defined under this section;  
13       (t) Any other felony with a deadly weapon verdict under RCW  
14 9.94A.125;  
15       (u) Any felony offense in effect at any time prior to the effective  
16 date of this section, that is comparable to a most serious offense  
17 under this subsection, or any federal or out-of-state conviction for an  
18 offense that under the laws of this state would be a felony classified  
19 as a most serious offense under this subsection.  
20       (22) "Nonviolent offense" means an offense which is not a violent  
21 offense.  
22       (~~(22)~~) (23) "Offender" means a person who has committed a felony  
23 established by state law and is eighteen years of age or older or is  
24 less than eighteen years of age but whose case has been transferred by  
25 the appropriate juvenile court to a criminal court pursuant to RCW  
26 13.40.110. Throughout this chapter, the terms "offender" and  
27 "defendant" are used interchangeably.  
28       (~~(23)~~) (24) "Partial confinement" means confinement for no more  
29 than one year in a facility or institution operated or utilized under  
30 contract by the state or any other unit of government, or, if home  
31 detention or work crew has been ordered by the court, in an approved  
32 residence, for a substantial portion of each day with the balance of  
33 the day spent in the community. Partial confinement includes work  
34 release, home detention, work crew, and a combination of work crew and  
35 home detention as defined in this section.  
36       (~~(24)~~) (25) "Persistent offender" is an offender who:  
37       (a) Has been convicted in this state of any felony considered a  
38 most serious offense; and

1 (b) Has, before the commission of the offense under (a) of this  
2 subsection, been convicted as an offender on at least two separate  
3 occasions, whether in this state or elsewhere, of felonies that under  
4 the laws of this state would be considered most serious offenses and  
5 would be included in the offender score under RCW 9.94A.360; provided  
6 that of the two or more previous convictions, at least one conviction  
7 must have occurred before the commission of any of the other most  
8 serious offenses for which the offender was previously convicted.

9 (26) "Postrelease supervision" is that portion of an offender's  
10 community placement that is not community custody.

11 ~~((25))~~ (27) "Restitution" means the requirement that the offender  
12 pay a specific sum of money over a specific period of time to the court  
13 as payment of damages. The sum may include both public and private  
14 costs. The imposition of a restitution order does not preclude civil  
15 redress.

16 ~~((26))~~ (28) "Serious traffic offense" means:

17 (a) Driving while under the influence of intoxicating liquor or any  
18 drug (RCW 46.61.502), actual physical control while under the influence  
19 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
20 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
21 or

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

25 ~~((27))~~ (29) "Serious violent offense" is a subcategory of violent  
26 offense and means:

27 (a) Murder in the first degree, homicide by abuse, murder in the  
28 second degree, assault in the first degree, kidnapping in the first  
29 degree, or rape in the first degree, assault of a child in the first  
30 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
31 commit one of these felonies; 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 a serious  
34 violent offense under (a) of this subsection.

35 ~~((28))~~ (30) "Sentence range" means the sentencing court's  
36 discretionary range in imposing a nonappealable sentence.

37 ~~((29))~~ (31) "Sex offense" means:

38 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
39 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal

1 attempt, criminal solicitation, or criminal conspiracy to commit such  
2 crimes;

3 (b) A felony with a finding of sexual motivation under RCW  
4 9.94A.127; or

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

8 (~~(30)~~) (32) "Sexual motivation" means that one of the purposes  
9 for which the defendant committed the crime was for the purpose of his  
10 or her sexual gratification.

11 (~~(31)~~) (33) "Total confinement" means confinement inside the  
12 physical boundaries of a facility or institution operated or utilized  
13 under contract by the state or any other unit of government for twenty-  
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (~~(32)~~) (34) "Victim" means any person who has sustained  
16 emotional, psychological, physical, or financial injury to person or  
17 property as a direct result of the crime charged.

18 (~~(33)~~) (35) "Violent offense" means:

19 (a) Any of the following felonies, as now existing or hereafter  
20 amended: Any felony defined under any law as a class A felony or an  
21 attempt to commit a class A felony, criminal solicitation of or  
22 criminal conspiracy to commit a class A felony, manslaughter in the  
23 first degree, manslaughter in the second degree, indecent liberties if  
24 committed by forcible compulsion, kidnapping in the second degree,  
25 arson in the second degree, assault in the second degree, assault of a  
26 child in the second degree, extortion in the first degree, robbery in  
27 the second degree, vehicular assault, and vehicular homicide, when  
28 proximately caused by the driving of any vehicle by any person while  
29 under the influence of intoxicating liquor or any drug as defined by  
30 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

37 (~~(34)~~) (36) "Work crew" means a program of partial confinement  
38 consisting of civic improvement tasks for the benefit of the community  
39 of not less than thirty-five hours per week that complies with RCW

1 9.94A.135. The civic improvement tasks shall be performed on public  
2 property or on private property owned or operated by nonprofit  
3 entities, except that, for emergency purposes only, work crews may  
4 perform snow removal on any private property. The civic improvement  
5 tasks shall have minimal negative impact on existing private industries  
6 or the labor force in the county where the service or labor is  
7 performed. The civic improvement tasks shall not affect employment  
8 opportunities for people with developmental disabilities contracted  
9 through sheltered workshops as defined in RCW 82.04.385. Only those  
10 offenders sentenced to a facility operated or utilized under contract  
11 by a county are eligible to participate on a work crew. Offenders  
12 sentenced for a sex offense as defined in subsection (~~((29))~~) (31) of  
13 this section are not eligible for the work crew program.

14 (~~((35))~~) (37) "Work release" means a program of partial confinement  
15 available to offenders who are employed or engaged as a student in a  
16 regular course of study at school. Participation in work release shall  
17 be conditioned upon the offender attending work or school at regularly  
18 defined hours and abiding by the rules of the work release facility.

19 (~~((36))~~) (38) "Home detention" means a program of partial  
20 confinement available to offenders wherein the offender is confined in  
21 a private residence subject to electronic surveillance. Home detention  
22 may not be imposed for offenders convicted of a violent offense, any  
23 sex offense, any drug offense, reckless burning in the first or second  
24 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
25 degree as defined in RCW 9A.36.031, assault of a child in the third  
26 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
27 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
28 for offenders convicted of possession of a controlled substance (RCW  
29 69.50.401(d)) or forged prescription for a controlled substance (RCW  
30 69.50.403) if the offender fulfills the participation conditions set  
31 forth in this subsection and is monitored for drug use by treatment  
32 alternatives to street crime (TASC) or a comparable court or agency-  
33 referred program.

34 (a) Home detention may be imposed for offenders convicted of  
35 burglary in the second degree as defined in RCW 9A.52.030 or  
36 residential burglary conditioned upon the offender: (i) Successfully  
37 completing twenty-one days in a work release program, (ii) having no  
38 convictions for burglary in the second degree or residential burglary  
39 during the preceding two years and not more than two prior convictions

1 for burglary or residential burglary, (iii) having no convictions for  
2 a violent felony offense during the preceding two years and not more  
3 than two prior convictions for a violent felony offense, (iv) having no  
4 prior charges of escape, and (v) fulfilling the other conditions of the  
5 home detention program.

6 (b) Participation in a home detention program shall be conditioned  
7 upon: (i) The offender obtaining or maintaining current employment or  
8 attending a regular course of school study at regularly defined hours,  
9 or the offender performing parental duties to offspring or minors  
10 normally in the custody of the offender, (ii) abiding by the rules of  
11 the home detention program, and (iii) compliance with court-ordered  
12 legal financial obligations. The home detention program may also be  
13 made available to offenders whose charges and convictions do not  
14 otherwise disqualify them if medical or health-related conditions,  
15 concerns or treatment would be better addressed under the home  
16 detention program, or where the health and welfare of the offender,  
17 other inmates, or staff would be jeopardized by the offender's  
18 incarceration. Participation in the home detention program for medical  
19 or health-related reasons is conditioned on the offender abiding by the  
20 rules of the home detention program and complying with court-ordered  
21 restitution.

22 NEW SECTION. **Sec. 4.** OFFENDER NOTIFICATION AND WARNING. A  
23 sentencing judge, law enforcement agency, or state or local  
24 correctional facility may, but is not required to, give offenders who  
25 have been convicted of an offense that is a most serious offense as  
26 defined in RCW 9.94A.030 either written or oral notice, or both, of the  
27 sanctions imposed upon persistent offenders. General notice of these  
28 sanctions and the conditions under which they may be imposed may, but  
29 need not, be given in correctional facilities maintained by state or  
30 local agencies. This section is enacted to provide authority, but not  
31 requirement, for the giving of such notice in every conceivable way  
32 without incurring liability to offenders or third parties.

33 NEW SECTION. **Sec. 5.** GOVERNOR'S POWERS. (1) Nothing in this act  
34 shall ever be interpreted or construed as to reduce or eliminate the  
35 power of the governor to grant a pardon or clemency to any offender on  
36 an individual case-by-case basis. However, the legislature recommends  
37 that any offender subject to total confinement for life without the

1 possibility of parole not be considered for release until the offender  
2 has reached the age of at least sixty years old and has been judged to  
3 be no longer a threat to society. The legislature further recommends  
4 that sex offenders be held to the utmost scrutiny under this subsection  
5 regardless of age.

6 (2) Nothing in this section shall ever be interpreted or construed  
7 to grant any release for the purpose of reducing prison overcrowding.  
8 Furthermore, the governor shall provide twice yearly reports on the  
9 activities and progress of offenders subject to total confinement for  
10 life without the possibility of parole who are released through  
11 executive action during his or her tenure. These reports shall  
12 continue for not less than ten years after the release of the offender  
13 or upon the death of the released offender.

14 NEW SECTION. **Sec. 6.** SEVERABILITY. If any provision of this act  
15 or its application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 7.** SHORT TITLE. This act shall be known and  
19 may be cited as the persistent offender accountability act.

20 NEW SECTION. **Sec. 8.** CAPTIONS. Captions as used in this act do  
21 not constitute any part of the law.

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