

2 **HB 1924** - S AMD - 308

3 By Senators Rossi, Hargrove, Fairley and Roach

4 ADOPTED 4/17/97

5 On page 21, after line 31, insert the following:

6 "Sec. 3. RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are
7 each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

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

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

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

22 (4) "Community custody" means that portion of an inmate's sentence
23 of confinement in lieu of earned early release time or imposed pursuant
24 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
25 controls placed on the inmate's movement and activities by the
26 department of corrections.

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

34 (6) "Community service" means compulsory service, without
35 compensation, performed for the benefit of the community by the
36 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter or RCW
4 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
5 may include crime-related prohibitions and other conditions imposed
6 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
7 for out-of-state supervision of parolees and probationers, RCW
8 9.95.270, community supervision is the functional equivalent of
9 probation and should be considered the same as probation by other
10 states.

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

13 (9) "Conviction" means an adjudication of guilt pursuant to Titles
14 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
15 acceptance of a plea of guilty.

16 (10) "Court-ordered legal financial obligation" means a sum of
17 money that is ordered by a superior court of the state of Washington
18 for legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims' compensation fees as
20 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
21 drug funds, court-appointed attorneys' fees, and costs of defense,
22 fines, and any other financial obligation that is assessed to the
23 offender as a result of a felony conviction. Upon conviction for
24 vehicular assault while under the influence of intoxicating liquor or
25 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
26 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
27 legal financial obligations may also include payment to a public agency
28 of the expense of an emergency response to the incident resulting in
29 the conviction, subject to the provisions in RCW 38.52.430.

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

36 (12)(a) "Criminal history" means the list of a defendant's prior
37 convictions, whether in this state, in federal court, or elsewhere.
38 The history shall include, where known, for each conviction (i) whether
39 the defendant has been placed on probation and the length and terms

1 thereof; and (ii) whether the defendant has been incarcerated and the
2 length of incarceration.

3 (b) "Criminal history" shall always include juvenile convictions
4 for sex offenses and serious violent offenses and shall also include a
5 defendant's other prior convictions in juvenile court if: (i) The
6 conviction was for an offense which is a felony or a serious traffic
7 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
8 the defendant was fifteen years of age or older at the time the offense
9 was committed; and (iii) with respect to prior juvenile class B and C
10 felonies or serious traffic offenses, the defendant was less than
11 twenty-three years of age at the time the offense for which he or she
12 is being sentenced was committed.

13 (13) "Day fine" means a fine imposed by the sentencing judge that
14 equals the difference between the offender's net daily income and the
15 reasonable obligations that the offender has for the support of the
16 offender and any dependents.

17 (14) "Day reporting" means a program of enhanced supervision
18 designed to monitor the defendant's daily activities and compliance
19 with sentence conditions, and in which the defendant is required to
20 report daily to a specific location designated by the department or the
21 sentencing judge.

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

23 (16) "Determinate sentence" means a sentence that states with
24 exactitude the number of actual years, months, or days of total
25 confinement, of partial confinement, of community supervision, the
26 number of actual hours or days of community service work, or dollars or
27 terms of a legal financial obligation. The fact that an offender
28 through "earned early release" can reduce the actual period of
29 confinement shall not affect the classification of the sentence as a
30 determinate sentence.

31 (17) "Disposable earnings" means that part of the earnings of an
32 individual remaining after the deduction from those earnings of any
33 amount required by law to be withheld. For the purposes of this
34 definition, "earnings" means compensation paid or payable for personal
35 services, whether denominated as wages, salary, commission, bonuses, or
36 otherwise, and, notwithstanding any other provision of law making the
37 payments exempt from garnishment, attachment, or other process to
38 satisfy a court-ordered legal financial obligation, specifically
39 includes periodic payments pursuant to pension or retirement programs,

1 or insurance policies of any type, but does not include payments made
2 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
3 or Title 74 RCW.

4 (18) "Drug offense" means:

5 (a) Any felony violation of chapter 69.50 RCW except possession of
6 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
7 controlled substance (RCW 69.50.403);

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

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

14 (19) "Escape" means:

15 (a) Escape in the first degree (RCW 9A.76.110), escape in the
16 second degree (RCW 9A.76.120), willful failure to return from furlough
17 (RCW 72.66.060), willful failure to return from work release (RCW
18 72.65.070), or willful failure to be available for supervision by the
19 department while in community custody (RCW 72.09.310); or

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

23 (20) "Felony traffic offense" means:

24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
25 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
26 and-run injury-accident (RCW 46.52.020(4)); or

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

30 (21) "Fines" means the requirement that the offender pay a specific
31 sum of money over a specific period of time to the court.

32 (22)(a) "First-time offender" means any person who is convicted of
33 a felony (i) not classified as a violent offense or a sex offense under
34 this chapter, or (ii) that is not the manufacture, delivery, or
35 possession with intent to manufacture or deliver a controlled substance
36 classified in schedule I or II that is a narcotic drug, nor the
37 manufacture, delivery, or possession with intent to deliver
38 methamphetamine, its salts, isomers, and salts of its isomers as
39 defined in RCW 69.50.206(d)(2), nor the selling for profit of any

1 controlled substance or counterfeit substance classified in schedule I,
2 RCW 69.50.204, except leaves and flowering tops of marihuana, and
3 except as provided in (b) of this subsection, who previously has never
4 been convicted of a felony in this state, federal court, or another
5 state, and who has never participated in a program of deferred
6 prosecution for a felony offense.

7 (b) For purposes of (a) of this subsection, a juvenile adjudication
8 for an offense committed before the age of fifteen years is not a
9 previous felony conviction except for adjudications of sex offenses and
10 serious violent offenses.

11 (23) "Most serious offense" means any of the following felonies or
12 a felony attempt to commit any of the following felonies, as now
13 existing or hereafter amended:

14 (a) Any felony defined under any law as a class A felony or
15 criminal solicitation of or criminal conspiracy to commit a class A
16 felony;

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Promoting prostitution in the first degree;

29 (n) Rape in the third degree;

30 (o) Robbery in the second degree;

31 (p) Sexual exploitation;

32 (q) Vehicular assault;

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

37 (s) Any other class B felony offense with a finding of sexual
38 motivation, as "sexual motivation" is defined under this section;

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125;

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

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

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

21 (24) "Nonviolent offense" means an offense which is not a violent
22 offense.

23 (25) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case has been transferred by
26 the appropriate juvenile court to a criminal court pursuant to RCW
27 13.40.110. Throughout this chapter, the terms "offender" and
28 "defendant" are used interchangeably.

29 (26) "Partial confinement" means confinement for no more than one
30 year in a facility or institution operated or utilized under contract
31 by the state or any other unit of government, or, if home detention or
32 work crew has been ordered by the court, in an approved residence, for
33 a substantial portion of each day with the balance of the day spent in
34 the community. Partial confinement includes work release, home
35 detention, work crew, and a combination of work crew and home detention
36 as defined in this section.

37 (27) "Persistent offender" is an offender who:

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

1 (ii) 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; or

9 (b)(i) Has been convicted of (A) rape in the first degree, rape in
10 the second degree, or indecent liberties by forcible compulsion; (B)
11 murder in the first degree, murder in the second degree, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, or burglary in the first degree,
14 with a finding of sexual motivation; or (C) an attempt to commit any
15 crime listed in this subsection (27)(b)(i); and

16 (ii) Has, before the commission of the offense under (b)(i) of this
17 subsection, been convicted as an offender on at least one occasion,
18 whether in this state or elsewhere, of an offense listed in (b)(i) of
19 this subsection.

20 (28) "Postrelease supervision" is that portion of an offender's
21 community placement that is not community custody.

22 (29) "Restitution" means the requirement that the offender pay a
23 specific sum of money over a specific period of time to the court as
24 payment of damages. The sum may include both public and private costs.
25 The imposition of a restitution order does not preclude civil redress.

26 (30) "Serious traffic offense" means:

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

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

35 (31) "Serious violent offense" is a subcategory of violent offense
36 and means:

37 (a) Murder in the first degree, homicide by abuse, murder in the
38 second degree, assault in the first degree, kidnapping in the first
39 degree, or rape in the first degree, assault of a child in the first

1 degree, or an attempt, criminal solicitation, or criminal conspiracy to
2 commit one of these felonies; or

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

6 (32) "Sentence range" means the sentencing court's discretionary
7 range in imposing a nonappealable sentence.

8 (33) "Sex offense" means:

9 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
10 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
11 criminal attempt, criminal solicitation, or criminal conspiracy to
12 commit such crimes;

13 (b) A felony with a finding of sexual motivation under RCW
14 9.94A.127 or 13.40.135; or

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

18 (34) "Sexual motivation" means that one of the purposes for which
19 the defendant committed the crime was for the purpose of his or her
20 sexual gratification.

21 (35) "Total confinement" means confinement inside the physical
22 boundaries of a facility or institution operated or utilized under
23 contract by the state or any other unit of government for twenty-four
24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

25 (36) "Transition training" means written and verbal instructions
26 and assistance provided by the department to the offender during the
27 two weeks prior to the offender's successful completion of the work
28 ethic camp program. The transition training shall include instructions
29 in the offender's requirements and obligations during the offender's
30 period of community custody.

31 (37) "Victim" means any person who has sustained emotional,
32 psychological, physical, or financial injury to person or property as
33 a direct result of the crime charged.

34 (38) "Violent offense" means:

35 (a) Any of the following felonies, as now existing or hereafter
36 amended: Any felony defined under any law as a class A felony or an
37 attempt to commit a class A felony, criminal solicitation of or
38 criminal conspiracy to commit a class A felony, manslaughter in the
39 first degree, manslaughter in the second degree, indecent liberties if

1 committed by forcible compulsion, kidnapping in the second degree,
2 arson in the second degree, assault in the second degree, assault of a
3 child in the second degree, extortion in the first degree, robbery in
4 the second degree, vehicular assault, and vehicular homicide, when
5 proximately caused by the driving of any vehicle by any person while
6 under the influence of intoxicating liquor or any drug as defined by
7 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

14 (39) "Work crew" means a program of partial confinement consisting
15 of civic improvement tasks for the benefit of the community of not less
16 than thirty-five hours per week that complies with RCW 9.94A.135. The
17 civic improvement tasks shall have minimal negative impact on existing
18 private industries or the labor force in the county where the service
19 or labor is performed. The civic improvement tasks shall not affect
20 employment opportunities for people with developmental disabilities
21 contracted through sheltered workshops as defined in RCW 82.04.385.
22 Only those offenders sentenced to a facility operated or utilized under
23 contract by a county or the state are eligible to participate on a work
24 crew. Offenders sentenced for a sex offense as defined in subsection
25 (33) of this section are not eligible for the work crew program.

26 (40) "Work ethic camp" means an alternative incarceration program
27 designed to reduce recidivism and lower the cost of corrections by
28 requiring offenders to complete a comprehensive array of real-world job
29 and vocational experiences, character-building work ethics training,
30 life management skills development, substance abuse rehabilitation,
31 counseling, literacy training, and basic adult education.

32 (41) "Work release" means a program of partial confinement
33 available to offenders who are employed or engaged as a student in a
34 regular course of study at school. Participation in work release shall
35 be conditioned upon the offender attending work or school at regularly
36 defined hours and abiding by the rules of the work release facility.

37 (42) "Home detention" means a program of partial confinement
38 available to offenders wherein the offender is confined in a private
39 residence subject to electronic surveillance."

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2 By Senators Rossi, Hargrove, Fairley and Roach

3 ADOPTED 4/17/97

4 On page 1, line 2 of the title, after "9.94A.320" strike "and
5 9.94A.120" and insert ", 9.94A.120, and 9.94A.030"

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