

2 EHB 2791 - S COMM AMD
3 By Committee on Law & Justice

4 ADOPTED AS AMENDED 3/4/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
8 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
9 reenacted and amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

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

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

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

1 (6) "Community service" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

4 (7) "Community supervision" means a period of time during which a
5 convicted offender is subject to crime-related prohibitions and other
6 sentence conditions imposed by a court pursuant to this chapter or RCW
7 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
8 may include crime-related prohibitions and other conditions imposed
9 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
10 for out-of-state supervision of parolees and probationers, RCW
11 9.95.270, community supervision is the functional equivalent of
12 probation and should be considered the same as probation by other
13 states.

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

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

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

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

1 (12) "Criminal history" means the list of a defendant's prior
2 convictions and juvenile adjudications, whether in this state, in
3 federal court, or elsewhere. The history shall include, where known,
4 for each conviction (a) whether the defendant has been placed on
5 probation and the length and terms thereof; and (b) whether the
6 defendant has been incarcerated and the length of incarceration.

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

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

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

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

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

37 (18) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (19) "Escape" means:

11 (a) Escape in the first degree (RCW 9A.76.110), escape in the
12 second degree (RCW 9A.76.120), willful failure to return from furlough
13 (RCW 72.66.060), willful failure to return from work release (RCW
14 72.65.070), or willful failure to be available for supervision by the
15 department while in community custody (RCW 72.09.310); or

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

19 (20) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
22 and-run injury-accident (RCW 46.52.020(4)); or

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

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

28 (22) "First-time offender" means any person who is convicted of a
29 felony (a) not classified as a violent offense or a sex offense under
30 this chapter, or (b) that is not the manufacture, delivery, or
31 possession with intent to manufacture or deliver a controlled substance
32 classified in schedule I or II that is a narcotic drug, nor the
33 manufacture, delivery, or possession with intent to deliver
34 methamphetamine, its salts, isomers, and salts of its isomers as
35 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
36 controlled substance or counterfeit substance classified in schedule I,
37 RCW 69.50.204, except leaves and flowering tops of marijuana, who
38 previously has never been convicted of a felony in this state, federal

1 court, or another state, and who has never participated in a program of
2 deferred prosecution for a felony offense.

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

6 (a) Any felony defined under any law as a class A felony or
7 criminal solicitation of or criminal conspiracy to commit a class A
8 felony;

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Manufacture or possession of ephedrine or pseudoephedrine with
21 intent to manufacture methamphetamine in or near a residence in which
22 a minor or a pregnant woman resides;

23 (n) Promoting prostitution in the first degree;

24 (~~(n)~~) (o) Rape in the third degree;

25 (~~(o)~~) (p) Robbery in the second degree;

26 (~~(p)~~) (q) Sexual exploitation;

27 (~~(q)~~) (r) Vehicular assault;

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

32 (~~(s)~~) (t) Any other class B felony offense with a finding of
33 sexual motivation, as "sexual motivation" is defined under this
34 section;

35 (~~(t)~~) (u) Any other felony with a deadly weapon verdict under RCW
36 9.94A.125;

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

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

3 ((~~v~~)) w(i) A prior conviction for indecent liberties under RCW
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

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

16 (24) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (25) "Offender" means a person who has committed a felony
19 established by state law and is eighteen years of age or older or is
20 less than eighteen years of age but whose case is under superior court
21 jurisdiction under RCW 13.04.030 or has been transferred by the
22 appropriate juvenile court to a criminal court pursuant to RCW
23 13.40.110. Throughout this chapter, the terms "offender" and
24 "defendant" are used interchangeably.

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

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

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

36 (ii) Has, before the commission of the offense under (a) of this
37 subsection, been convicted as an offender on at least two separate
38 occasions, whether in this state or elsewhere, of felonies that under
39 the laws of this state would be considered most serious offenses and

1 would be included in the offender score under RCW 9.94A.360; provided
2 that of the two or more previous convictions, at least one conviction
3 must have occurred before the commission of any of the other most
4 serious offenses for which the offender was previously convicted; or

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

15 (ii) Has, before the commission of the offense under (b)(i) of this
16 subsection, been convicted as an offender on at least one occasion,
17 whether in this state or elsewhere, of an offense listed in (b)(i) of
18 this subsection. A conviction for rape of a child in the first degree
19 constitutes a conviction under subsection (27)(b)(i) only when the
20 offender was sixteen years of age or older when the offender committed
21 the offense. A conviction for rape of a child in the second degree
22 constitutes a conviction under subsection (27)(b)(i) only when the
23 offender was eighteen years of age or older when the offender committed
24 the offense.

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

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

31 (30) "Serious traffic offense" means:

32 (a) Driving while under the influence of intoxicating liquor or any
33 drug (RCW 46.61.502), actual physical control while under the influence
34 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
35 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
36 or

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

1 (31) "Serious violent offense" is a subcategory of violent offense
2 and means:

3 (a) Murder in the first degree, homicide by abuse, murder in the
4 second degree, manslaughter in the first degree, assault in the first
5 degree, kidnapping in the first degree, or rape in the first degree,
6 assault of a child in the first degree, or an attempt, criminal
7 solicitation, or criminal conspiracy to commit one of these felonies;
8 or

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

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

14 (33) "Sex offense" means:

15 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
16 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
17 criminal attempt, criminal solicitation, or criminal conspiracy to
18 commit such crimes;

19 (b) A felony with a finding of sexual motivation under RCW
20 9.94A.127 or 13.40.135; or

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

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

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

31 (36) "Transition training" means written and verbal instructions
32 and assistance provided by the department to the offender during the
33 two weeks prior to the offender's successful completion of the work
34 ethic camp program. The transition training shall include instructions
35 in the offender's requirements and obligations during the offender's
36 period of community custody.

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

1 (38) "Violent offense" means:

2 (a) Any of the following felonies, as now existing or hereafter
3 amended: Any felony defined under any law as a class A felony or an
4 attempt to commit a class A felony, criminal solicitation of or
5 criminal conspiracy to commit a class A felony, manslaughter in the
6 first degree, manslaughter in the second degree, indecent liberties if
7 committed by forcible compulsion, kidnapping in the second degree,
8 arson in the second degree, assault in the second degree, assault of a
9 child in the second degree, extortion in the first degree, robbery in
10 the second degree, drive-by shooting, vehicular assault, and vehicular
11 homicide, when proximately caused by the driving of any vehicle by any
12 person while under the influence of intoxicating liquor or any drug as
13 defined by RCW 46.61.502, or by the operation of any vehicle in a
14 reckless manner;

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

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

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

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

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

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

9 **Sec. 2.** RCW 70.105D.070 and 1997 c 406 s 5 are each amended to
10 read as follows:

11 (1) The state toxics control account and the local toxics control
12 account are hereby created in the state treasury.

13 (2) The following moneys shall be deposited into the state toxics
14 control account: (a) Those revenues which are raised by the tax
15 imposed under RCW 82.21.030 and which are attributable to that portion
16 of the rate equal to thirty-three one-hundredths of one percent; (b)
17 the costs of remedial actions recovered under this chapter or chapter
18 70.105A RCW; (c) penalties collected or recovered under this chapter;
19 and (d) any other money appropriated or transferred to the account by
20 the legislature. Moneys in the account may be used only to carry out
21 the purposes of this chapter, including but not limited to the
22 following activities:

23 (i) The state's responsibility for hazardous waste planning,
24 management, regulation, enforcement, technical assistance, and public
25 education required under chapter 70.105 RCW;

26 (ii) The state's responsibility for solid waste planning,
27 management, regulation, enforcement, technical assistance, and public
28 education required under chapter 70.95 RCW;

29 (iii) The hazardous waste cleanup program required under this
30 chapter;

31 (iv) State matching funds required under the federal cleanup law;

32 (v) Financial assistance for local programs in accordance with
33 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

34 (vi) State government programs for the safe reduction, recycling,
35 or disposal of hazardous wastes from households, small businesses, and
36 agriculture;

37 (vii) Hazardous materials emergency response training;

1 (viii) Water and environmental health protection and monitoring
2 programs;

3 (ix) Programs authorized under chapter 70.146 RCW;

4 (x) A public participation program, including regional citizen
5 advisory committees;

6 (xi) Public funding to assist potentially liable persons to pay for
7 the costs of remedial action in compliance with cleanup standards under
8 RCW 70.105D.030(2)(e) but only when the amount and terms of such
9 funding are established under a settlement agreement under RCW
10 70.105D.040(4) and when the director has found that the funding will
11 achieve both (A) a substantially more expeditious or enhanced cleanup
12 than would otherwise occur, and (B) the prevention or mitigation of
13 unfair economic hardship; and

14 (xii) Development and demonstration of alternative management
15 technologies designed to carry out the top two hazardous waste
16 management priorities of RCW 70.105.150.

17 (3) The following moneys shall be deposited into the local toxics
18 control account: Those revenues which are raised by the tax imposed
19 under RCW 82.21.030 and which are attributable to that portion of the
20 rate equal to thirty-seven one-hundredths of one percent.

21 (a) Moneys deposited in the local toxics control account shall be
22 used by the department for grants or loans to local governments for the
23 following purposes in descending order of priority: (i) Remedial
24 actions; (ii) hazardous waste plans and programs under chapter 70.105
25 RCW; ~~((and))~~ (iii) solid waste plans and programs under chapters 70.95,
26 70.95C, 70.95I, and 70.105 RCW; and (iv) funds for a program to assist
27 in the assessment and cleanup of sites of methamphetamine production,
28 but not to be used for the initial containment of such sites,
29 consistent with the responsibilities and intent of RCW 69.50.511.
30 Funds for plans and programs shall be allocated consistent with the
31 priorities and matching requirements established in chapters 70.105,
32 70.95C, 70.95I, and 70.95 RCW.

33 (b) Funds may also be appropriated to the department of health to
34 implement programs to reduce testing requirements under the federal
35 safe drinking water act for public water systems. The department of
36 health shall reimburse the account from fees assessed under RCW
37 70.119A.115 by June 30, 1995.

1 (4) Except for unanticipated receipts under RCW 43.79.260 through
2 43.79.282, moneys in the state and local toxics control accounts may be
3 spent only after appropriation by statute.

4 (5) One percent of the moneys deposited into the state and local
5 toxics control accounts shall be allocated only for public
6 participation grants to persons who may be adversely affected by a
7 release or threatened release of a hazardous substance and to not-for-
8 profit public interest organizations. The primary purpose of these
9 grants is to facilitate the participation by persons and organizations
10 in the investigation and remedying of releases or threatened releases
11 of hazardous substances and to implement the state's solid and
12 hazardous waste management priorities. No grant may exceed sixty
13 thousand dollars. Grants may be renewed annually. Moneys appropriated
14 for public participation from either account which are not expended at
15 the close of any biennium shall revert to the state toxics control
16 account.

17 (6) No moneys deposited into either the state or local toxics
18 control account may be used for solid waste incinerator feasibility
19 studies, construction, maintenance, or operation.

20 (7) The department shall adopt rules for grant or loan issuance and
21 performance.

22 NEW SECTION. **Sec. 3.** If this act mandates an increased level of
23 service by local governments, the local government may, under RCW
24 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the
25 legislature. The claims shall be subject to verification by the office
26 of financial management."

27 **EHB 2791** - S COMM AMD
28 By Committee on Law & Justice

29 ADOPTED AS AMENDED 3/4/98

30 In line 1 of the title, after "methamphetamine;" strike the
31 remainder of the title and insert "amending RCW 70.105D.070; and
32 reenacting and amending RCW 9.94A.030; and creating a new section."

--- END ---