
HOUSE BILL 2918

State of Washington

55th Legislature

1998 Regular Session

By Representatives Dickerson, O'Brien, Tokuda, Constantine, Quall, Kenney and Mason

Read first time 01/22/98. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to first-time offenders; reenacting and amending
2 RCW 9.94A.030; adding a new section to chapter 9.94A RCW; and creating
3 a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that there is strong
6 public support for use of first offender waiver programs for those
7 charged with nonviolent offenses. The legislature finds that the first
8 offender waiver program results in significant savings of public funds.
9 The legislature also finds that there is evidence that when the first
10 offender waiver is used for drug offenses, the rates of conviction for
11 a subsequent felony are considerably lower for those drug offenders who
12 receive the first offender waiver when compared with those who are
13 eligible but do not receive it. The legislature further finds that
14 there is strong public support for saving public funds by reinstating
15 the first offender waiver for drug offenses.

16 It is the intent of the legislature to reduce prison overcrowding,
17 reduce recidivism, and save public funds by reinstating the first
18 offender waiver for those charged with drug offenses.

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

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

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

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

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

18 (4) "Community custody" means that portion of an inmate's sentence
19 of confinement in lieu of earned early release time or imposed pursuant
20 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
21 controls placed on the inmate's movement and activities by the
22 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 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
37 may include crime-related prohibitions and other conditions imposed
38 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
39 for out-of-state supervision of parolees and probationers, RCW

1 9.95.270, community supervision is the functional equivalent of
2 probation and should be considered the same as probation by other
3 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. Upon conviction for
17 vehicular assault while under the influence of intoxicating liquor or
18 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
19 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
20 legal financial obligations may also include payment to a public agency
21 of the expense of an emergency response to the incident resulting in
22 the conviction, subject to the provisions in RCW 38.52.430.

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

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

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

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

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

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

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

27 (18) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession of
29 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
30 controlled substance (RCW 69.50.403);

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

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

37 (19) "Escape" means:

38 (a) Escape in the first degree (RCW 9A.76.110), escape in the
39 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW
2 72.65.070), or willful failure to be available for supervision by the
3 department while in community custody (RCW 72.09.310); or

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

7 (20) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
10 and-run injury-accident (RCW 46.52.020(4)); or

11 (b) 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 felony
13 traffic offense under (a) of this subsection.

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

16 (22)(a) "First-time offender" means any person who is convicted of
17 a felony (~~((a))~~):

18 (i) Not classified as a violent offense or a sex offense under this
19 chapter(~~(, or (b))~~);

20 (ii) Other than as provided in (b) of this subsection, that is not
21 the manufacture, delivery, or possession with intent to manufacture or
22 deliver a controlled substance classified in schedule I or II that is
23 a narcotic drug, nor the manufacture, delivery, or possession with
24 intent to deliver methamphetamine, its salts, isomers, and salts of its
25 isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit
26 of any controlled substance or counterfeit substance classified in
27 schedule I, RCW 69.50.204, except leaves and flowering tops of
28 marihuana(~~(, or (b))~~); and

29 (iii) Who previously has never been convicted of a felony in this
30 state, federal court, or another state, and who has never participated
31 in a program of deferred prosecution for a felony offense.

32 (b) "First-time offender" also includes:

33 (i) An offender who was convicted of the manufacture, delivery, or
34 possession with the intent to manufacture or deliver a controlled
35 substance classified in schedule I, RCW 69.50.204, or schedule II, RCW
36 69.50.206, or the selling for profit of any controlled substance or
37 counterfeit substance classified in schedule I, RCW 69.50.204, who the
38 court determines to be in need of treatment for drug abuse; or

1 (ii) An offender determined by the court not to be in need of
2 treatment for drug abuse, and who is otherwise eligible for the
3 first-time offender option under this section, and the court determines
4 that the offender had a minimal role in the offense or acted under
5 duress not constituting a defense or that there are other strong
6 mitigating circumstances, then the court may order a sentence employing
7 the first-time offender option under this section.

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

11 (a) Any felony defined under any law as a class A felony or
12 criminal solicitation of or criminal conspiracy to commit a class A
13 felony;

14 (b) Assault in the second degree;

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

16 (d) Child molestation in the second degree;

17 (e) Controlled substance homicide;

18 (f) Extortion in the first degree;

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

20 (h) Indecent liberties;

21 (i) Kidnapping in the second degree;

22 (j) Leading organized crime;

23 (k) Manslaughter in the first degree;

24 (l) Manslaughter in the second degree;

25 (m) Promoting prostitution in the first degree;

26 (n) Rape in the third degree;

27 (o) Robbery in the second degree;

28 (p) Sexual exploitation;

29 (q) Vehicular assault;

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

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

36 (t) Any other felony with a deadly weapon verdict under RCW
37 9.94A.125;

38 (u) Any felony offense in effect at any time prior to December 2,
39 1993, that is comparable to a most serious offense under this

1 subsection, or any federal or out-of-state conviction for an offense
2 that under the laws of this state would be a felony classified as a
3 most serious offense under this subsection;

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

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

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

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

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

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

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

37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate
39 occasions, whether in this state or elsewhere, of felonies that under

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

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) murder in the first
10 degree, murder in the second degree, homicide by abuse, kidnapping in
11 the first degree, kidnapping in the second degree, assault in the first
12 degree, assault in the second degree, assault of a child in the first
13 degree, or burglary in the first degree, with a finding of sexual
14 motivation; or (C) an attempt to commit any crime listed in this
15 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. A conviction for rape of a child in the first degree
20 constitutes a conviction under subsection (27)(b)(i) only when the
21 offender was sixteen years of age or older when the offender committed
22 the offense. A conviction for rape of a child in the second degree
23 constitutes a conviction under subsection (27)(b)(i) only when the
24 offender was eighteen years of age or older when the offender committed
25 the offense.

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

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

32 (30) "Serious traffic offense" means:

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

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

4 (31) "Serious violent offense" is a subcategory of violent offense
5 and means:

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

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

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

17 (33) "Sex offense" means:

18 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
19 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
20 criminal attempt, criminal solicitation, or criminal conspiracy to
21 commit such crimes;

22 (b) A felony with a finding of sexual motivation under RCW
23 9.94A.127 or 13.40.135; or

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

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

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

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

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

4 (38) "Violent offense" means:

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

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

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 violent
23 offense under (a) or (b) of this subsection.

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

36 (40) "Work ethic camp" means an alternative incarceration program
37 designed to reduce recidivism and lower the cost of corrections by
38 requiring offenders to complete a comprehensive array of real-world job
39 and vocational experiences, character-building work ethics training,

1 life management skills development, substance abuse rehabilitation,
2 counseling, literacy training, and basic adult education.

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

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

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

13 Offenders who are in prison who were sentenced for a drug offense
14 since July 1, 1988, and who would have been eligible for the first-time
15 offender option under RCW 9.94A.030 had it been in effect at the time
16 of sentencing, may request review by the sentencing court and
17 resentencing to a first-time offender option to include a drug
18 treatment program acceptable to the court. The request for review must
19 include a presentation of an appropriate proposed course of treatment.

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