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**SUBSTITUTE SENATE BILL 5019**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Fairley, Winsley, Oke and Spanel)

Read first time 02/19/97.

1 AN ACT Relating to persistent sex offenders; and reenacting and  
2 amending RCW 9.94A.030.

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

4 **Sec. 1.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are  
5 each reenacted and amended to read as follows:

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

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

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

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

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

6 (5) "Community placement" means that period during which the  
7 offender is subject to the conditions of community custody and/or  
8 postrelease supervision, which begins either upon completion of the  
9 term of confinement (postrelease supervision) or at such time as the  
10 offender is transferred to community custody in lieu of earned early  
11 release. Community placement may consist of entirely community  
12 custody, entirely postrelease supervision, or a combination of the two.

13 (6) "Community service" means compulsory service, without  
14 compensation, performed for the benefit of the community by the  
15 offender.

16 (7) "Community supervision" means a period of time during which a  
17 convicted offender is subject to crime-related prohibitions and other  
18 sentence conditions imposed by a court pursuant to this chapter or RCW  
19 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
20 may include crime-related prohibitions and other conditions imposed  
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
22 for out-of-state supervision of parolees and probationers, RCW  
23 9.95.270, community supervision is the functional equivalent of  
24 probation and should be considered the same as probation by other  
25 states.

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

28 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
30 acceptance of a plea of guilty.

31 (10) "Court-ordered legal financial obligation" means a sum of  
32 money that is ordered by a superior court of the state of Washington  
33 for legal financial obligations which may include restitution to the  
34 victim, statutorily imposed crime victims' compensation fees as  
35 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
36 drug funds, court-appointed attorneys' fees, and costs of defense,  
37 fines, and any other financial obligation that is assessed to the  
38 offender as a result of a felony conviction. Upon conviction for  
39 vehicular assault while under the influence of intoxicating liquor or

1 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
2 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
3 legal financial obligations may also include payment to a public agency  
4 of the expense of an emergency response to the incident resulting in  
5 the conviction, subject to the provisions in RCW 38.52.430.

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

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

18 (b) "Criminal history" shall always include juvenile convictions  
19 for sex offenses and serious violent offenses and shall also include a  
20 defendant's other prior convictions in juvenile court if: (i) The  
21 conviction was for an offense which is a felony or a serious traffic  
22 offense and is criminal history as defined in RCW 13.40.020(9); (ii)  
23 the defendant was fifteen years of age or older at the time the offense  
24 was committed; and (iii) with respect to prior juvenile class B and C  
25 felonies or serious traffic offenses, the defendant was less than  
26 twenty-three years of age at the time the offense for which he or she  
27 is being sentenced was committed.

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

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

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

38 (16) "Determinate sentence" means a sentence that states with  
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the  
2 number of actual hours or days of community service work, or dollars or  
3 terms of a legal financial obligation. The fact that an offender  
4 through "earned early release" can reduce the actual period of  
5 confinement shall not affect the classification of the sentence as a  
6 determinate sentence.

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

19 (18) "Drug offense" means:

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

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

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

29 (19) "Escape" means:

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

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

38 (20) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
3 and-run injury-accident (RCW 46.52.020(4)); 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 a felony  
6 traffic offense under (a) of this subsection.

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

9 (22)(a) "First-time offender" means any person who is convicted of  
10 a felony (i) not classified as a violent offense or a sex offense under  
11 this chapter, or (ii) that is not the manufacture, delivery, or  
12 possession with intent to manufacture or deliver a controlled substance  
13 classified in schedule I or II that is a narcotic drug, nor the  
14 manufacture, delivery, or possession with intent to deliver  
15 methamphetamine, its salts, isomers, and salts of its isomers as  
16 defined in RCW 69.50.206(d)(2), nor the selling for profit of any  
17 controlled substance or counterfeit substance classified in schedule I,  
18 RCW 69.50.204, except leaves and flowering tops of marihuana, and  
19 except as provided in (b) of this subsection, who previously has never  
20 been convicted of a felony in this state, federal court, or another  
21 state, and who has never participated in a program of deferred  
22 prosecution for a felony offense.

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

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

30 (a) Any felony defined under any law as a class A felony or  
31 criminal solicitation of or criminal conspiracy to commit a class A  
32 felony;

33 (b) Assault in the second degree;

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

35 (d) Child molestation in the second degree;

36 (e) Controlled substance homicide;

37 (f) Extortion in the first degree;

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

39 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault;
- 10 (r) Vehicular homicide, when proximately caused by the driving of  
11 any vehicle by any person while under the influence of intoxicating  
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
13 any vehicle in a reckless manner;
- 14 (s) Any other class B felony offense with a finding of sexual  
15 motivation, as "sexual motivation" is defined under this section;
- 16 (t) Any other felony with a deadly weapon verdict under RCW  
17 9.94A.125;
- 18 (u) Any felony offense in effect at any time prior to December 2,  
19 1993, that is comparable to a most serious offense under this  
20 subsection, or any federal or out-of-state conviction for an offense  
21 that under the laws of this state would be a felony classified as a  
22 most serious offense under this subsection.
- 23 (24) "Nonviolent offense" means an offense which is not a violent  
24 offense.
- 25 (25) "Offender" means a person who has committed a felony  
26 established by state law and is eighteen years of age or older or is  
27 less than eighteen years of age but whose case has been transferred by  
28 the appropriate juvenile court to a criminal court pursuant to RCW  
29 13.40.110. Throughout this chapter, the terms "offender" and  
30 "defendant" are used interchangeably.
- 31 (26) "Partial confinement" means confinement for no more than one  
32 year in a facility or institution operated or utilized under contract  
33 by the state or any other unit of government, or, if home detention or  
34 work crew has been ordered by the court, in an approved residence, for  
35 a substantial portion of each day with the balance of the day spent in  
36 the community. Partial confinement includes work release, home  
37 detention, work crew, and a combination of work crew and home detention  
38 as defined in this section.
- 39 (27) "Persistent offender" is an offender who:

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

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

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

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

22 (c)(i) Has been convicted in this state of a most serious offense  
23 that is a sex offense involving a victim who is a minor; and

24 (ii) Has, before the commission of the offense under (c)(i) of this  
25 subsection, been convicted as an offender on at least one occasion,  
26 whether in this state or elsewhere, of a felony that under the laws of  
27 this state would be considered a most serious offense that is a sex  
28 offense involving a victim who is a minor and would be included in the  
29 offender score under RCW 9.94A.360.

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

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

36 (30) "Serious traffic offense" means:

37 (a) Driving while under the influence of intoxicating liquor or any  
38 drug (RCW 46.61.502), actual physical control while under the influence  
39 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
2 or

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

6 (31) "Serious violent offense" is a subcategory of violent offense  
7 and means:

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

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

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

18 (33) "Sex offense" means:

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

23 (b) A felony with a finding of sexual motivation under RCW  
24 9.94A.127 or 13.40.135; or

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

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

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

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



1 in the offender's requirements and obligations during the offender's  
2 period of community custody.

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

6 (38) "Violent offense" means:

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

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

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

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

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

1 and vocational experiences, character-building work ethics training,  
2 life management skills development, substance abuse rehabilitation,  
3 counseling, literacy training, and basic adult education.

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

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

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