
SENATE BILL 5812

State of Washington

55th Legislature

1997 Regular Session

By Senator Kohl

Read first time 02/13/97. Referred to Committee on Law & Justice.

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 1996 c 289 s 1 and 1996 c 275 s 5 are
2 each reenacted and amended to read as follows:

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

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

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

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

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

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

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

32 (7) "Community supervision" means a period of time during which a
33 convicted offender is subject to crime-related prohibitions and other
34 sentence conditions imposed by a court pursuant to this chapter or RCW
35 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
36 may include crime-related prohibitions and other conditions imposed
37 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
38 for out-of-state supervision of parolees and probationers, RCW
39 9.95.270, community supervision is the functional equivalent of

1 probation and should be considered the same as probation by other
2 states.

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

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

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

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

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

34 (b) "Criminal history" shall always include juvenile convictions
35 for sex offenses and serious violent offenses and shall also include a
36 defendant's other prior convictions in juvenile court if: (i) The
37 conviction was for an offense which is a felony or a serious traffic
38 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
39 the defendant was fifteen years of age or older at the time the offense

1 was committed; and (iii) with respect to prior juvenile class B and C
2 felonies or serious traffic offenses, the defendant was less than
3 twenty-three years of age at the time the offense for which he or she
4 is being sentenced was committed.

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

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

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

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

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

35 (18) "Drug offense" means:

36 (a) Any felony violation of chapter 69.50 RCW except possession of
37 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
38 controlled substance (RCW 69.50.403);

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

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

7 (19) "Escape" means:

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

16 (20) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
19 and-run injury-accident (RCW 46.52.020(4)); 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 a felony
22 traffic offense under (a) of this subsection.

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

25 (22)(a) "First-time offender" means any person who is convicted of
26 a felony:

27 (i) Not classified as a violent offense or a sex offense under this
28 chapter((~~7~~or));

29 (ii) Other than as provided in (b) of this subsection, that is not
30 the manufacture, delivery, or possession with intent to manufacture or
31 deliver a controlled substance classified in schedule I or II that is
32 a narcotic drug, nor the manufacture, delivery, or possession with
33 intent to deliver methamphetamine, its salts, isomers, and salts of its
34 isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit
35 of any controlled substance or counterfeit substance classified in
36 schedule I, RCW 69.50.204, except leaves and flowering tops of
37 marihuana((~~7~~)) and ((~~except as provided in (b) of this subsection,~~))

38 (iii) Who previously has never been convicted of a felony in this
39 state, federal court, or another state, and who has never participated

1 in a program of deferred prosecution for a felony offense. (~~(b)~~) For
2 the purposes (~~(of (a))~~) of this subsection (22)(a), a juvenile
3 adjudication for an offense committed before the age of fifteen years
4 is not a previous felony conviction except for adjudications of sex
5 offenses and serious violent offenses.

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

7 (i) An offender who was convicted of the manufacture, delivery, or
8 possession with the intent to manufacture or deliver a controlled
9 substance classified in schedule I, RCW 69.50.204, or schedule II, RCW
10 69.50.206, or the selling for profit of any controlled substance or
11 counterfeit substance classified in schedule I, RCW 69.50.204, who the
12 court determines to be in need of treatment for drug abuse; or

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

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

23 (a) Any felony defined under any law as a class A felony or
24 criminal solicitation of or criminal conspiracy to commit a class A
25 felony;

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

39 (o) Robbery in the second degree;

1 (p) Sexual exploitation;

2 (q) Vehicular assault;

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

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

9 (t) Any other felony with a deadly weapon verdict under RCW
10 9.94A.125;

11 (u) Any felony offense in effect at any time prior to December 2,
12 1993, that is comparable to a most serious offense under this
13 subsection, or any federal or out-of-state conviction for an offense
14 that under the laws of this state would be a felony classified as a
15 most serious offense under this subsection.

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 has been transferred by
21 the appropriate juvenile court to a criminal court pursuant to RCW
22 13.40.110. Throughout this chapter, the terms "offender" and
23 "defendant" are used interchangeably.

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

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

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

35 (ii) Has, before the commission of the offense under (a) of this
36 subsection, been convicted as an offender on at least two separate
37 occasions, whether in this state or elsewhere, of felonies that under
38 the laws of this state would be considered most serious offenses and
39 would be included in the offender score under RCW 9.94A.360; provided

1 that of the two or more previous convictions, at least one conviction
2 must have occurred before the commission of any of the other most
3 serious offenses for which the offender was previously convicted; or

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

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

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

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

21 (30) "Serious traffic offense" means:

22 (a) Driving while under the influence of intoxicating liquor or any
23 drug (RCW 46.61.502), actual physical control while under the influence
24 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
25 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
26 or

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

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

32 (a) Murder in the first degree, homicide by abuse, murder in the
33 second degree, assault in the first degree, kidnapping in the first
34 degree, or rape in the first degree, assault of a child in the first
35 degree, or an attempt, criminal solicitation, or criminal conspiracy to
36 commit one of these felonies; or

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

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

3 (33) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
5 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
6 criminal attempt, criminal solicitation, or criminal conspiracy to
7 commit such crimes;

8 (b) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or

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

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

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

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

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

29 (38) "Violent offense" means:

30 (a) Any of the following felonies, as now existing or hereafter
31 amended: Any felony defined under any law as a class A felony or an
32 attempt to commit a class A felony, criminal solicitation of or
33 criminal conspiracy to commit a class A felony, manslaughter in the
34 first degree, manslaughter in the second degree, indecent liberties if
35 committed by forcible compulsion, kidnapping in the second degree,
36 arson in the second degree, assault in the second degree, assault of a
37 child in the second degree, extortion in the first degree, robbery in
38 the second degree, vehicular assault, and vehicular homicide, when
39 proximately caused by the driving of any vehicle by any person while

1 under the influence of intoxicating liquor or any drug as defined by
2 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

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

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

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

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

37 Offenders who are in prison who were sentenced for a drug offense
38 since July 1, 1988, and who would have been eligible for the first-time

1 offender option under RCW 9.94A.030 had it been in effect at the time
2 of sentencing, may request review by the sentencing court and
3 resentencing to a first-time offender option to include a drug
4 treatment program acceptable to the court. The request for review must
5 include a presentation of an appropriate proposed course of treatment.

--- END ---