

1 **ESHB 1210 - H AMD 431 NOT CONSIDERED 2-14-00**

2 By Representative Schoesler

3 On page 7, after line 16, insert the following:

4 Sec. 3 RCW 9.94A.030 and 1999 c 352 s 8 and 1999 c 197 s 1 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, either directly or through a
11 collection agreement authorized by RCW 9.94A.145, is responsible for
12 monitoring and enforcing the offender's sentence with regard to the
13 legal financial obligation, receiving payment thereof from the
14 offender, and, consistent with current law, delivering daily the entire
15 payment to the superior court clerk without depositing it in a
16 departmental account.

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

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

22 (4) "Community custody" means that portion of an offender's
23 sentence of confinement in lieu of earned release time or imposed
24 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW
25 9.94A.383, served in the community subject to controls placed on the
26 offender's movement and activities by the department of corrections.
27 For offenders placed on community custody for crimes committed on or
28 after July 1, 2000, the department shall assess the offender's risk of
29 reoffense and may establish and modify conditions of community custody,
30 in addition to those imposed by the court, based upon the risk to
31 community safety.

32 (5) "Community custody range" means the minimum and maximum period
33 of community custody included as part of a sentence under RCW
34 9.94A.120(11), as established by the sentencing guidelines commission

1 or the legislature under RCW 9.94A.040, for crimes committed on or
2 after July 1, 2000.

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

10 (7) "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender.

13 (8) "Community supervision" means a period of time during which a
14 convicted offender is subject to crime-related prohibitions and other
15 sentence conditions imposed by a court pursuant to this chapter or RCW
16 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
17 may include crime-related prohibitions and other conditions imposed
18 pursuant to RCW 9.94A.120(5). Where the court finds that any offender
19 has a chemical dependency that has contributed to his or her offense,
20 the conditions of supervision may, subject to available resources,
21 include treatment. For purposes of the interstate compact for out-of-
22 state supervision of parolees and probationers, RCW 9.95.270, community
23 supervision is the functional equivalent of probation and should be
24 considered the same as probation by other states.

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

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

30 (11) "Court-ordered legal financial obligation" means a sum of
31 money that is ordered by a superior court of the state of Washington
32 for legal financial obligations which may include restitution to the
33 victim, statutorily imposed crime victims' compensation fees as
34 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
35 drug funds, court-appointed attorneys' fees, and costs of defense,
36 fines, and any other financial obligation that is assessed to the
37 offender as a result of a felony conviction. Upon conviction for
38 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 (12) "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. However, affirmative acts necessary to monitor
12 compliance with the order of a court may be required by the department.

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

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

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

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

29 (17) "Determinate sentence" means a sentence that states with
30 exactitude the number of actual years, months, or days of total
31 confinement, of partial confinement, of community supervision, the
32 number of actual hours or days of community service work, or dollars or
33 terms of a legal financial obligation. The fact that an offender
34 through "earned release" can reduce the actual period of confinement
35 shall not affect the classification of the sentence as a determinate
36 sentence.

37 (18) "Disposable earnings" means that part of the earnings of an
38 individual remaining after the deduction from those earnings of any

1 amount required by law to be withheld. For the purposes of this
2 definition, "earnings" means compensation paid or payable for personal
3 services, whether denominated as wages, salary, commission, bonuses, or
4 otherwise, and, notwithstanding any other provision of law making the
5 payments exempt from garnishment, attachment, or other process to
6 satisfy a court-ordered legal financial obligation, specifically
7 includes periodic payments pursuant to pension or retirement programs,
8 or insurance policies of any type, but does not include payments made
9 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
10 or Title 74 RCW.

11 (19) "Drug offense" means:

12 (a) Any felony violation of chapter 69.50 RCW except possession of
13 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
14 controlled substance (RCW 69.50.403);

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

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

21 (20) "Escape" means:

22 (a) Escape in the first degree (RCW 9A.76.110), escape in the
23 second degree (RCW 9A.76.120), willful failure to return from furlough
24 (RCW 72.66.060), willful failure to return from work release (RCW
25 72.65.070), or willful failure to be available for supervision by the
26 department while in community custody (RCW 72.09.310); or

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

30 (21) "Felony traffic offense" means:

31 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
32 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
33 and-run injury-accident (RCW 46.52.020(4)); or

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

37 (22) "Fines" means the requirement that the offender pay a
38 specific sum of money over a specific period of time to the court.

1 (23) "First-time offender" means any person who is convicted of a
2 felony (a) not classified as a violent offense or a sex offense under
3 this chapter, or (b) that is not the manufacture, delivery, or
4 possession with intent to manufacture or deliver a controlled substance
5 classified in Schedule I or II that is a narcotic drug or flunitrazepam
6 classified in Schedule IV, nor the manufacture, delivery, or possession
7 with intent to deliver methamphetamine, its salts, isomers, and salts
8 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
9 profit of any controlled substance or counterfeit substance classified
10 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
11 marihuana, who previously has never been convicted of a felony in this
12 state, federal court, or another state, and who has never participated
13 in a program of deferred prosecution for a felony offense.

14 (24) "Home detention" means a program of partial confinement
15 available to offenders wherein the offender is confined in a private
16 residence subject to electronic surveillance.

17 (25) "Most serious offense" means any of the following felonies or
18 a felony attempt to commit any of the following felonies, as now
19 existing or hereafter amended:

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Manufacture or possession of ephedrine or pseudoephedrine with
35 intent to manufacture methamphetamine in or near a residence in which
36 a minor resides;

37 (n) Promoting prostitution in the first degree;

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

1 ((+o+)) (p) Robbery in the second degree;

2 ((+p+)) (q) Sexual exploitation;

3 ((+q+)) (r) Vehicular assault;

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

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

11 ((+t+)) (u) Any other felony with a deadly weapon verdict under
12 RCW 9.94A.125;

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

18 ((+v+)) (w)(i) A prior conviction for indecent liberties under
19 *RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex.
20 sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and
21 (c) as it existed from July 1, 1979, until June 11, 1986, and RCW
22 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until
23 July 1, 1988;

24 (ii) A prior conviction for indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
26 if: (A) The crime was committed against a child under the age of
27 fourteen; or (B) the relationship between the victim and perpetrator is
28 included in the definition of indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
30 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
31 through July 27, 1997.

32 (26) "Nonviolent offense" means an offense which is not a violent
33 offense.

34 (27) "Offender" means a person who has committed a felony
35 established by state law and is eighteen years of age or older or is
36 less than eighteen years of age but whose case is under superior court
37 jurisdiction under RCW 13.04.030 or has been transferred by the
38 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

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

11 (29) "Persistent offender" is an offender who:

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

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.360; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) murder in the first
26 degree, murder in the second degree, homicide by abuse, kidnapping in
27 the first degree, kidnapping in the second degree, assault in the first
28 degree, assault in the second degree, assault of a child in the first
29 degree, or burglary in the first degree, with a finding of sexual
30 motivation; or (C) an attempt to commit any crime listed in this
31 subsection (29)(b)(i); and

32 (ii) Has, before the commission of the offense under (b)(i) of
33 this subsection, been convicted as an offender on at least one
34 occasion, whether in this state or elsewhere, of an offense listed in
35 (b)(i) of this subsection. A conviction for rape of a child in the
36 first degree constitutes a conviction under subsection (29)(b)(i) only
37 when the offender was sixteen years of age or older when the offender
38 committed the offense. A conviction for rape of a child in the second

1 degree constitutes a conviction under subsection (29)(b)(i) only when
2 the offender was eighteen years of age or older when the offender
3 committed the offense.

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

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

10 (32) "Risk assessment" means the application of an objective
11 instrument supported by research and adopted by the department for the
12 purpose of assessing an offender's risk of reoffense, taking into
13 consideration the nature of the harm done by the offender, place and
14 circumstances of the offender related to risk, the offender's
15 relationship to any victim, and any information provided to the
16 department by victims. The results of a risk assessment shall not be
17 based on unconfirmed or unconfirmable allegations.

18 (33) "Serious traffic offense" means:

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

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

27 (34) "Serious violent offense" is a subcategory of violent offense
28 and means:

29 (a) Murder in the first degree, homicide by abuse, murder in the
30 second degree, manslaughter in the first degree, assault in the first
31 degree, kidnapping in the first degree, or rape in the first degree,
32 assault of a child in the first degree, or an attempt, criminal
33 solicitation, or criminal conspiracy to commit one of these felonies;
34 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 a serious
37 violent offense under (a) of this subsection.

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

3 (36) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW, other than
5 **RCW 9A.44.130(10), or RCW 9A.64.020 or 9.68A.090 or a felony that is,
6 under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or
7 criminal conspiracy to commit such crimes;

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

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.127 or 13.40.135; or

13 (d) 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 sex
15 offense under (a) of this subsection.

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

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

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

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

32 (41) "Violent offense" means:

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

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

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

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

14 (42) "Work crew" means a program of partial confinement consisting
15 of civic improvement tasks for the benefit of the community of not less
16 than thirty-five hours per week that complies with RCW 9.94A.135. The
17 civic improvement tasks shall have minimal negative impact on existing
18 private industries or the labor force in the county where the service
19 or labor is performed. The civic improvement tasks shall not affect
20 employment opportunities for people with developmental disabilities
21 contracted through sheltered workshops as defined in RCW 82.04.385.
22 Only those offenders sentenced to a facility operated or utilized under
23 contract by a county or the state, or sanctioned under RCW 9.94A.205,
24 are eligible to participate on a work crew. Offenders sentenced for a
25 sex offense as defined in subsection (36) of this section are not
26 eligible for the work crew program.

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

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

EFFECT: Makes it a strike- to manufacture or possess ephedrine or pseudoephedrine with intent to manufacture methamphetamine in or near a residence in which a minor resides.