
HOUSE BILL 1859

State of Washington

56th Legislature

1999 Regular Session

By Representatives Constantine, Koster, Hatfield, Cairnes, Dickerson, Quall, Lantz, Veloria and Dunn

Read first time 02/09/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to first-time offender status under the sentencing
2 reform act; and 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 1998 c 290 s 3 are each amended to read
5 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. However, affirmative acts necessary to monitor
12 compliance with the order of a court may be required by the department.

13 (12) "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 (13) "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 (14) "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 (15) "Department" means the department of corrections.

29 (16) "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 early release" can reduce the actual period of
35 confinement shall not affect the classification of the sentence as a
36 determinate sentence.

37 (17) "Disposable earnings" means that part of the earnings of an
38 individual remaining after the deduction from those earnings of any
39 amount required by law to be withheld. For the purposes of this

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

10 (18) "Drug offense" means:

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

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

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

20 (19) "Escape" means:

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

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

29 (20) "Felony traffic offense" means:

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

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

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

38 (22) "First-time offender" means any person who is convicted of a
39 felony (~~((a))~~) not classified as a violent offense or a sex offense

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

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

15 (a) Any felony defined under any law as a class A felony or
16 criminal solicitation of or criminal conspiracy to commit a class A
17 felony;

18 (b) Assault in the second degree;

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

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

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

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

33 (q) Vehicular assault;

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (24) "Nonviolent offense" means an offense which is not a violent
22 offense.

23 (25) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

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

38 (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) 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
12 of a child in the first degree, child molestation in the first degree,
13 rape in the second degree, rape of a child in the second degree, or
14 indecent liberties by forcible compulsion; (B) murder in the first
15 degree, murder in the second degree, homicide by abuse, kidnapping in
16 the first degree, kidnapping in the second degree, assault in the first
17 degree, assault in the second degree, assault of a child in the first
18 degree, or burglary in the first degree, with a finding of sexual
19 motivation; or (C) an attempt to commit any crime listed in this
20 subsection (27)(b)(i); and

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

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

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

37 (30) "Serious traffic offense" means:

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

1 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
2 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
3 or

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

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

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

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

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

20 (33) "Sex offense" means:

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

25 (b) A felony with a finding of sexual motivation under RCW
26 9.94A.127 or 13.40.135; or

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

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

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

37 (36) "Transition training" means written and verbal instructions
38 and assistance provided by the department to the offender during the
39 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions
2 in the offender's requirements and obligations during the offender's
3 period of community custody.

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

7 (38) "Violent offense" means:

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

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

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

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

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

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

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

--- END ---