
HOUSE BILL 1860

State of Washington 56th Legislature 1999 Regular Session

By Representatives Koster, Constantine, Cairnes, Hurst, Hatfield, Lovick, Barlean, Dickerson, Lantz, Quall, Veloria, Wood, Kagi and Thomas

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

1 AN ACT Relating to removing robbery 2 from the "three strikes"
2 list; amending RCW 9.94A.030; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the "three
5 strikes" law was designed to target the most serious, violent, and
6 dangerous offenders in Washington state. In practice, however, the law
7 sweeps up a large number of less serious offenders. Twenty-one percent
8 of all "three strikes" offenders get life after a nonaggravated robbery
9 in which no weapon is used and no one is physically injured. The
10 legislature finds that Washington taxpayers will end up paying the
11 lifetime costs of incarcerating these less violent offenders which can
12 cost as much as thirty thousand dollars a year to imprison an inmate in
13 a medium to maximum security facility.

14 It is the legislature's intent to take nonaggravated robberies off
15 the "strike" list which allows the law to concentrate on more dangerous
16 and violent offenders while promoting more frugal use of the state's
17 money.

1 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
2 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. However, affirmative acts necessary to monitor
28 compliance with the order of a court may be required by the department.

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

35 (13) "Day fine" means a fine imposed by the sentencing judge that
36 equals the difference between the offender's net daily income and the
37 reasonable obligations that the offender has for the support of the
38 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) "First-time offender" means any person who is convicted of a
17 felony (a) not classified as a violent offense or a sex offense under
18 this chapter, or (b) that is not the manufacture, delivery, or
19 possession with intent to manufacture or deliver a controlled substance
20 classified in Schedule I or II that is a narcotic drug or flunitrazepam
21 classified in Schedule IV, nor the manufacture, delivery, or possession
22 with intent to deliver methamphetamine, its salts, isomers, and salts
23 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
24 profit of any controlled substance or counterfeit substance classified
25 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
26 marihuana, who previously has never been convicted of a felony in this
27 state, federal court, or another state, and who has never participated
28 in a program of deferred prosecution for a felony offense.

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

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

35 (b) Assault in the second degree;

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

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

39 (f) Extortion in the first degree;

1 (g) Incest when committed against a child under age fourteen;
2 (h) Indecent liberties;
3 (i) Kidnapping in the second degree;
4 (j) Leading organized crime;
5 (k) Manslaughter in the first degree;
6 (l) Manslaughter in the second degree;
7 (m) Promoting prostitution in the first degree;
8 (n) Rape in the third degree;
9 (o) ~~((Robbery in the second degree;~~
10 ~~(p))~~ Sexual exploitation;
11 ~~((q))~~ (p) Vehicular assault;
12 ~~((r))~~ (q) Vehicular homicide, when proximately caused by the
13 driving of any vehicle by any person while under the influence of
14 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
15 operation of any vehicle in a reckless manner;
16 ~~((s))~~ (r) Any other class B felony offense with a finding of
17 sexual motivation, as "sexual motivation" is defined under this
18 section;
19 ~~((t))~~ (s) Any other felony with a deadly weapon verdict under RCW
20 9.94A.125;
21 ~~((u))~~ (t) Any felony offense in effect at any time prior to
22 December 2, 1993, that is comparable to a most serious offense under
23 this subsection, or any federal or out-of-state conviction for an
24 offense that under the laws of this state would be a felony classified
25 as a most serious offense under this subsection;
26 ~~((v))~~ (u)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
31 (ii) A prior conviction for indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
33 if: (A) The crime was committed against a child under the age of
34 fourteen; or (B) the relationship between the victim and perpetrator is
35 included in the definition of indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997.

1 (24) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (25) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. Throughout this chapter, the terms "offender" and
9 "defendant" are used interchangeably.

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

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

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

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

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

1 (ii) Has, before the commission of the offense under (b)(i) of this
2 subsection, been convicted as an offender on at least one occasion,
3 whether in this state or elsewhere, of an offense listed in (b)(i) of
4 this subsection. A conviction for rape of a child in the first degree
5 constitutes a conviction under subsection (27)(b)(i) only when the
6 offender was sixteen years of age or older when the offender committed
7 the offense. A conviction for rape of a child in the second degree
8 constitutes a conviction under subsection (27)(b)(i) only when the
9 offender was eighteen years of age or older when the offender committed
10 the offense.

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

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

17 (30) "Serious traffic offense" means:

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

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

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

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

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

39 (33) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
2 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
3 criminal attempt, criminal solicitation, or criminal conspiracy to
4 commit such crimes;

5 (b) A felony with a finding of sexual motivation under RCW
6 9.94A.127 or 13.40.135; or

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

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

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

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

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

26 (38) "Violent offense" means:

27 (a) Any of the following felonies, as now existing or hereafter
28 amended: Any felony defined under any law as a class A felony or an
29 attempt to commit a class A felony, criminal solicitation of or
30 criminal conspiracy to commit a class A felony, manslaughter in the
31 first degree, manslaughter in the second degree, indecent liberties if
32 committed by forcible compulsion, kidnapping in the second degree,
33 arson in the second degree, assault in the second degree, assault of a
34 child in the second degree, extortion in the first degree, robbery in
35 the second degree, drive-by shooting, vehicular assault, and vehicular
36 homicide, when proximately caused by the driving of any vehicle by any
37 person while under the influence of intoxicating liquor or any drug as
38 defined by RCW 46.61.502, or by the operation of any vehicle in a
39 reckless manner;

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

4 (c) 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 violent
6 offense under (a) or (b) of this subsection.

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

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

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

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

--- END ---