
HOUSE BILL 1039

State of Washington

57th Legislature

2001 Regular Session

By Representatives Ballasiotes, O'Brien, Ahern, Morell and Woods

Read first time 01/12/2001. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.030;
2 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 an ambiguity may
5 exist regarding whether out-of-state convictions or convictions under
6 prior Washington law, for sex offenses that are comparable to current
7 Washington offenses, count when determining whether an offender is a
8 persistent offender. This act is intended to clarify the legislature's
9 intent that out-of-state convictions for comparable sex offenses and
10 prior Washington convictions for comparable sex offenses shall be used
11 to determine whether an offender meets the definition of a persistent
12 offender.

13 **Sec. 2.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
14 as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Collect," or any derivative thereof, "collect and remit," or
18 "collect and deliver," when used with reference to the department,

1 means that the department, either directly or through a collection
2 agreement authorized by RCW 9.94A.145, is responsible for monitoring
3 and enforcing the offender's sentence with regard to the legal
4 financial obligation, receiving payment thereof from the offender, and,
5 consistent with current law, delivering daily the entire payment to the
6 superior court clerk without depositing it in a departmental account.

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

8 (3) "Community corrections officer" means an employee of the
9 department who is responsible for carrying out specific duties in
10 supervision of sentenced offenders and monitoring of sentence
11 conditions.

12 (4) "Community custody" means that portion of an offender's
13 sentence of confinement in lieu of earned release time or imposed
14 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
15 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
16 community subject to controls placed on the offender's movement and
17 activities by the department. For offenders placed on community
18 custody for crimes committed on or after July 1, 2000, the department
19 shall assess the offender's risk of reoffense and may establish and
20 modify conditions of community custody, in addition to those imposed by
21 the court, based upon the risk to community safety.

22 (5) "Community custody range" means the minimum and maximum period
23 of community custody included as part of a sentence under RCW
24 9.94A.715, as established by the commission or the legislature under
25 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

33 (7) "Community service" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender.

36 (8) "Community supervision" means a period of time during which a
37 convicted offender is subject to crime-related prohibitions and other
38 sentence conditions imposed by a court pursuant to this chapter or RCW
39 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the
2 conditions of supervision may, subject to available resources, include
3 treatment. For purposes of the interstate compact for out-of-state
4 supervision of parolees and probationers, RCW 9.95.270, community
5 supervision is the functional equivalent of probation and should be
6 considered the same as probation by other states.

7 (9) "Confinement" means total or partial confinement.

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

11 (11) "Crime-related prohibition" means an order of a court
12 prohibiting conduct that directly relates to the circumstances of the
13 crime for which the offender has been convicted, and shall not be
14 construed to mean orders directing an offender affirmatively to
15 participate in rehabilitative programs or to otherwise perform
16 affirmative conduct. However, affirmative acts necessary to monitor
17 compliance with the order of a court may be required by the department.

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

24 (13) "Day fine" means a fine imposed by the sentencing court that
25 equals the difference between the offender's net daily income and the
26 reasonable obligations that the offender has for the support of the
27 offender and any dependents.

28 (14) "Day reporting" means a program of enhanced supervision
29 designed to monitor the offender's daily activities and compliance with
30 sentence conditions, and in which the offender is required to report
31 daily to a specific location designated by the department or the
32 sentencing court.

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

34 (16) "Determinate sentence" means a sentence that states with
35 exactitude the number of actual years, months, or days of total
36 confinement, of partial confinement, of community supervision, the
37 number of actual hours or days of community service work, or dollars or
38 terms of a legal financial obligation. The fact that an offender
39 through earned release can reduce the actual period of confinement

1 shall not affect the classification of the sentence as a determinate
2 sentence.

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

15 (18) "Drug offender sentencing alternative" is a sentencing option
16 available to persons convicted of a felony offense other than a violent
17 offense or a sex offense and who are eligible for the option under RCW
18 9.94A.660.

19 (19) "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 (20) "Earned release" means earned release from confinement as
30 provided in RCW 9.94A.150.

31 (21) "Escape" means:

32 (a) Escape in the first degree (RCW 9A.76.110), escape in the
33 second degree (RCW 9A.76.120), willful failure to return from furlough
34 (RCW 72.66.060), willful failure to return from work release (RCW
35 72.65.070), or willful failure to be available for supervision by the
36 department while in community custody (RCW 72.09.310); 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 an escape
39 under (a) of this subsection.

1 (22) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
4 and-run injury-accident (RCW 46.52.020(4)); or

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

8 (23) "Fine" means a specific sum of money ordered by the sentencing
9 court to be paid by the offender to the court over a specific period of
10 time.

11 (24) "First-time offender" means any person who has no prior
12 convictions for a felony and is eligible for the first-time offender
13 waiver under RCW 9.94A.650.

14 (25) "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 (26) "Legal financial obligation" means a sum of money that is
18 ordered by a superior court of the state of Washington for legal
19 financial obligations which may include restitution to the victim,
20 statutorily imposed crime victims' compensation fees as assessed
21 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
22 court-appointed attorneys' fees, and costs of defense, fines, and any
23 other financial obligation that is assessed to the offender as a result
24 of a felony conviction. Upon conviction for vehicular assault while
25 under the influence of intoxicating liquor or any drug, RCW
26 46.61.522(1)(b), or vehicular homicide while under the influence of
27 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
28 obligations may also include payment to a public agency of the expense
29 of an emergency response to the incident resulting in the conviction,
30 subject to RCW 38.52.430.

31 (27) "Most serious offense" means any of the following felonies or
32 a felony attempt to commit any of the following felonies:

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

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

1 (f) Extortion in the first degree;
2 (g) Incest when committed against a child under age fourteen;
3 (h) Indecent liberties;
4 (i) Kidnapping in the second degree;
5 (j) Leading organized crime;
6 (k) Manslaughter in the first degree;
7 (l) Manslaughter in the second degree;
8 (m) Promoting prostitution in the first degree;
9 (n) Rape in the third degree;
10 (o) Robbery in the second degree;
11 (p) Sexual exploitation;
12 (q) Vehicular assault;
13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.125;
21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
26 (v)(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 (28) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (29) "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 (30) "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
17 detention.

18 (31) "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 (31)(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: (A) An offense listed in
4 (b)(i) of this subsection; (B) any federal, out-of-state, county, or
5 municipal conviction of an offense that under the laws of this state
6 would be classified as a sex offense listed under (b)(i) of this
7 subsection; or (C) a felony offense in effect at any time prior to July
8 1, 1988, that is comparable to a sex offense classified in (b)(i)(A) of
9 this subsection.

10 A conviction for rape of a child in the first degree constitutes a
11 conviction under (b)(i) of this subsection only when the offender was
12 sixteen years of age or older when the offender committed the offense.
13 A conviction for rape of a child in the second degree constitutes a
14 conviction under (b)(i) of this subsection only when the offender was
15 eighteen years of age or older when the offender committed the offense.

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

18 (33) "Restitution" means a specific sum of money ordered by the
19 sentencing court to be paid by the offender to the court over a
20 specified period of time as payment of damages. The sum may include
21 both public and private costs.

22 (34) "Risk assessment" means the application of an objective
23 instrument supported by research and adopted by the department for the
24 purpose of assessing an offender's risk of reoffense, taking into
25 consideration the nature of the harm done by the offender, place and
26 circumstances of the offender related to risk, the offender's
27 relationship to any victim, and any information provided to the
28 department by victims. The results of a risk assessment shall not be
29 based on unconfirmed or unconfirmable allegations.

30 (35) "Serious traffic offense" means:

31 (a) Driving while under the influence of intoxicating liquor or any
32 drug (RCW 46.61.502), actual physical control while under the influence
33 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
34 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
35 or

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

1 (36) "Serious violent offense" is a subcategory of violent offense
2 and means:

3 (a)(i) Murder in the first degree;

4 (ii) Homicide by abuse;

5 (iii) Murder in the second degree;

6 (iv) Manslaughter in the first degree;

7 (v) Assault in the first degree;

8 (vi) Kidnapping in the first degree;

9 (vii) Rape in the first degree;

10 (viii) Assault of a child in the first degree; or

11 (ix) 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 (37) "Sex offense" means:

17 (a) A felony that is a violation of:

18 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

19 (ii) RCW 9A.64.020;

20 (iii) RCW 9.68A.090; or

21 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
22 criminal solicitation, or criminal conspiracy to commit such crimes;

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

26 (c) A felony with a finding of sexual motivation under RCW
27 9.94A.127 or 13.40.135; or

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

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

34 (39) "Standard sentence range" means the sentencing court's
35 discretionary range in imposing a nonappealable sentence.

36 (40) "Statutory maximum sentence" means the maximum length of time
37 for which an offender may be confined as punishment for a crime as
38 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
39 crime, or other statute defining the maximum penalty for a crime.

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

5 (42) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

11 (43) "Victim" means any person who has sustained emotional,
12 psychological, physical, or financial injury to person or property as
13 a direct result of the crime charged.

14 (44) "Violent offense" means:

15 (a) Any of the following felonies:

16 (i) Any felony defined under any law as a class A felony or an
17 attempt to commit a class A felony;

18 (ii) Criminal solicitation of or criminal conspiracy to commit a
19 class A felony;

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

22 (v) Indecent liberties if committed by forcible compulsion;

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

26 (ix) Assault of a child in the second degree;

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

30 (xiii) Vehicular assault; and

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

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

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

4 (45) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community that
6 complies with RCW 9.94A.135.

7 (46) "Work ethic camp" means an alternative incarceration program
8 as provided in RCW 9.94A.137 designed to reduce recidivism and lower
9 the cost of corrections by requiring offenders to complete a
10 comprehensive array of real-world job and vocational experiences,
11 character-building work ethics training, life management skills
12 development, substance abuse rehabilitation, counseling, literacy
13 training, and basic adult education.

14 (47) "Work release" means a program of partial confinement
15 available to offenders who are employed or engaged as a student in a
16 regular course of study at school.

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