
SENATE BILL 6120

State of Washington

57th Legislature

2001 Regular Session

By Senators Kline and Hochstatter

Read first time 02/23/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to persistent offenders; amending RCW
2 9.94A.030; adding a new section to chapter 9.94A RCW; prescribing
3 penalties; providing an effective date; providing an expiration
4 date; and declaring an emergency.

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

6 **Sec. 1.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
7 as follows:

8 Unless the context clearly requires otherwise, the definitions
9 in this section apply throughout this chapter.

10 (1) "Collect," or any derivative thereof, "collect and remit,"
11 or "collect and deliver," when used with reference to the
12 department, means that the department, either directly or through
13 a collection agreement authorized by RCW 9.94A.145, is responsible
14 for monitoring and enforcing the offender's sentence with regard
15 to the legal financial obligation, receiving payment thereof from
16 the offender, and, consistent with current law, delivering daily
17 the entire payment to the superior court clerk without depositing
18 it in a departmental account.

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

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

6 (4) "Community custody" means that portion of an offender's
7 sentence of confinement in lieu of earned release time or imposed
8 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
9 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in
10 the community subject to controls placed on the offender's
11 movement and activities by the department. For offenders placed on
12 community custody for crimes committed on or after July 1, 2000,
13 the department shall assess the offender's risk of reoffense and
14 may establish and modify conditions of community custody, in
15 addition to those imposed by the court, based upon the risk to
16 community safety.

17 (5) "Community custody range" means the minimum and maximum
18 period of community custody included as part of a sentence under
19 RCW 9.94A.715, as established by the commission or the legislature
20 under RCW 9.94A.040, for crimes committed on or after July 1,
21 2000.

22 (6) "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
25 the term of confinement (postrelease supervision) or at such time
26 as the offender is transferred to community custody in lieu of
27 earned release. Community placement may consist of entirely
28 community custody, entirely postrelease supervision, or a
29 combination of the two.

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

33 (8) "Community supervision" means a period of time during which
34 a convicted offender is subject to crime-related prohibitions and
35 other sentence conditions imposed by a court pursuant to this
36 chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds
37 that any offender has a chemical dependency that has contributed
38 to his or her offense, the conditions of supervision may, subject

1 to available resources, include treatment. For purposes of the
2 interstate compact for out-of-state supervision of parolees and
3 probationers, RCW 9.95.270, community supervision is the
4 functional equivalent of probation and should be considered the
5 same as probation by other states.

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

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

10 (11) "Crime-related prohibition" means an order of a court
11 prohibiting conduct that directly relates to the circumstances of
12 the crime for which the offender has been convicted, and shall not
13 be construed to mean orders directing an offender affirmatively to
14 participate in rehabilitative programs or to otherwise perform
15 affirmative conduct. However, affirmative acts necessary to monitor
16 compliance with the order of a court may be required by the
17 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
21 known, for each conviction (a) whether the defendant has been
22 placed on probation and the length and terms thereof; and (b)
23 whether the defendant has been incarcerated and the length of
24 incarceration.

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

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

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

35 (16) "Determinate sentence" means a sentence that states with
36 exactitude the number of actual years, months, or days of total
37 confinement, of partial confinement, of community supervision, the
38 number of actual hours or days of community service work, or

1 dollars or terms of a legal financial obligation. The fact that an
2 offender through earned release can reduce the actual period of
3 confinement shall not affect the classification of the sentence as
4 a determinate sentence.

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

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

22 (19) "Drug offense" means:

23 (a) Any felony violation of chapter 69.50 RCW except possession
24 of a controlled substance (RCW 69.50.401(d)) or forged
25 prescription for a controlled substance (RCW 69.50.403);

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

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

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

34 (21) "Escape" means:

35 (a) Escape in the first degree (RCW 9A.76.110), escape in the
36 second degree (RCW 9A.76.120), willful failure to return from
37 furlough (RCW 72.66.060), willful failure to return from work
38 release (RCW 72.65.070), or willful failure to be available for

1 supervision by the department while in community custody (RCW
2 72.09.310); or

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

6 (22) "Felony traffic offense" means:

7 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
8 46.61.522), eluding a police officer (RCW 46.61.024), or felony
9 hit-and-run injury-accident (RCW 46.52.020(4)); or

10 (b) 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
12 felony traffic offense under (a) of this subsection.

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

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

19 (25) "Home detention" means a program of partial confinement
20 available to offenders wherein the offender is confined in a
21 private residence subject to electronic surveillance.

22 (26) "Legal financial obligation" means a sum of money that is
23 ordered by a superior court of the state of Washington for legal
24 financial obligations which may include restitution to the victim,
25 statutorily imposed crime victims' compensation fees as assessed
26 pursuant to RCW 7.68.035, court costs, county or interlocal drug
27 funds, court-appointed attorneys' fees, and costs of defense,
28 fines, and any other financial obligation that is assessed to the
29 offender as a result of a felony conviction. Upon conviction for
30 vehicular assault while under the influence of intoxicating liquor
31 or any drug, RCW 46.61.522(1)(b), or vehicular homicide while
32 under the influence of intoxicating liquor or any drug, RCW
33 46.61.520(1)(a), legal financial obligations may also include
34 payment to a public agency of the expense of an emergency response
35 to the incident resulting in the conviction, subject to RCW
36 38.52.430.

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

1 (a) Any felony defined under any law as a class A felony or
2 criminal solicitation of or criminal conspiracy to commit a class
3 A felony;

4 (~~(b)~~) (~~Assault in the second degree;~~
5 ~~(c)~~) Assault of a child in the second degree;

6 (~~(d)~~) (c) Child molestation in the second degree;

7 (~~(e)~~) (d) Controlled substance homicide;

8 (~~(f)~~) (e) Extortion in the first degree;

9 (~~(g)~~) (f) Incest when committed against a child under age
10 fourteen;

11 (~~(h)~~) (g) Indecent liberties;

12 (~~(i)~~) (h) Kidnapping in the second degree;

13 (~~(j)~~) (i) Leading organized crime;

14 (~~(k)~~) (j) Manslaughter in the first degree;

15 (~~(l)~~) (k) Manslaughter in the second degree;

16 (~~(m)~~) (l) Promoting prostitution in the first degree;

17 (~~(n)~~) (m) Rape in the third degree;

18 (~~(o) Robbery in the second degree;~~
19 ~~(p)~~) (n) Sexual exploitation;

20 (~~(q)~~) (o) Vehicular assault;

21 (~~(r)~~) (p) Vehicular homicide, when proximately caused by the
22 driving of any vehicle by any person while under the influence of
23 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
24 the operation of any vehicle in a reckless manner;

25 (~~(s)~~) (q) Any other class B felony offense with a finding of
26 sexual motivation;

27 (~~(t)~~) (r) Any other felony with a deadly weapon verdict under
28 RCW 9.94A.125;

29 (~~(u)~~) (s) Any felony offense in effect at any time prior to
30 December 2, 1993, that is comparable to a most serious offense
31 under this subsection, or any federal or out-of-state conviction
32 for an offense that under the laws of this state would be a felony
33 classified as a most serious offense under this subsection;

34 (~~(v)~~) (t)(i) A prior conviction for indecent liberties under
35 RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st
36 ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),
37 (b), and (c) as it existed from July 1, 1979, until June 11, 1986,

1 and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11,
2 1986, until July 1, 1988;

3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1,
5 1988, if: (A) The crime was committed against a child under the age
6 of fourteen; or (B) the relationship between the victim and
7 perpetrator is included in the definition of indecent liberties
8 under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through
9 July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from
10 July 25, 1993, through July 27, 1997.

11 (28) "Nonviolent offense" means an offense which is not a
12 violent offense.

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

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

28 (31) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of
32 this subsection, been convicted as an offender on at least two
33 separate occasions, whether in this state or elsewhere, of
34 felonies that under the laws of this state would be considered
35 most serious offenses and would be included in the offender score
36 under RCW 9.94A.360; provided that of the two or more previous
37 convictions, at least one conviction must have occurred before the
38 commission of any of the other most serious offenses for which the

1 offender was previously convicted; or

2 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
3 of a child in the first degree, child molestation in the first
4 degree, rape in the second degree, rape of a child in the second
5 degree, or indecent liberties by forcible compulsion; (B) murder
6 in the first degree, murder in the second degree, homicide by
7 abuse, kidnapping in the first degree, kidnapping in the second
8 degree, assault in the first degree, assault in the second degree,
9 assault of a child in the first degree, or burglary in the first
10 degree, with a finding of sexual motivation; or (C) an attempt to
11 commit any crime listed in this subsection (31)(b)(i); and

12 (ii) Has, before the commission of the offense under (b)(i) of
13 this subsection, been convicted as an offender on at least one
14 occasion, whether in this state or elsewhere, of an offense listed
15 in (b)(i) of this subsection. A conviction for rape of a child in
16 the first degree constitutes a conviction under (b)(i) of this
17 subsection only when the offender was sixteen years of age or
18 older when the offender committed the offense. A conviction for
19 rape of a child in the second degree constitutes a conviction
20 under (b)(i) of this subsection only when the offender was
21 eighteen years of age or older when the offender committed the
22 offense.

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

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

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

38 (35) "Serious traffic offense" means:

1 (a) Driving while under the influence of intoxicating liquor or
2 any drug (RCW 46.61.502), actual physical control while under the
3 influence of intoxicating liquor or any drug (RCW 46.61.504),
4 reckless driving (RCW 46.61.500), or hit-and-run an attended
5 vehicle (RCW 46.52.020(5)); or

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

10 (36) "Serious violent offense" is a subcategory of violent
11 offense and means:

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

13 (ii) Homicide by abuse;

14 (iii) Murder in the second degree;

15 (iv) Manslaughter in the first degree;

16 (v) Assault in the first degree;

17 (vi) Kidnapping in the first degree;

18 (vii) Rape in the first degree;

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

20 (ix) An attempt, criminal solicitation, or criminal conspiracy
21 to commit one of these felonies; or

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

25 (37) "Sex offense" means:

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

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

28 (ii) RCW 9A.64.020;

29 (iii) RCW 9.68A.090; or

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

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

36 (c) A felony with a finding of sexual motivation under RCW
37 9.94A.127 or 13.40.135; or

1 (d) 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 sex
3 offense under (a) of this subsection.

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

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

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

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

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

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

27 (44) "Violent offense" means:

28 (a) Any of the following felonies:

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

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

33 (iii) Manslaughter in the first degree;

34 (iv) Manslaughter in the second degree;

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

36 (vi) Kidnapping in the second degree;

37 (vii) Arson in the second degree;

38 (viii) Assault in the second degree;

1 (ix) Assault of a child in the second degree;
2 (x) Extortion in the first degree;
3 (xi) Robbery in the second degree;
4 (xii) Drive-by shooting;
5 (xiii) Vehicular assault; and
6 (xiv) Vehicular homicide, when proximately caused by the
7 driving of any vehicle by any person while under the influence of
8 intoxicating liquor or any drug as defined by RCW 46.61.502, or by
9 the operation of any vehicle in a reckless manner;

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

13 (c) 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
15 violent offense under (a) or (b) of this subsection.

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

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

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

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A
30 RCW to read as follows:

31 In any criminal case wherein an offender has been sentenced as
32 a persistent offender prior to the effective date of this act, the
33 offender shall have a resentencing hearing if a current or past
34 conviction for robbery in the second degree or assault in the
35 second degree was used as a basis for the finding that the
36 offender was a persistent offender. The prosecuting attorney for
37 the county in which any offender was sentenced as a persistent

1 offender shall review each sentencing document. If a current or
2 past conviction for robbery in the second degree or assault in the
3 second degree was used as a basis for a finding that an offender
4 was a persistent offender, the prosecuting attorney shall, or the
5 offender may, make a motion for relief from sentence to the
6 original sentencing court.

7 The sentencing court shall grant the motion if it finds that a
8 current or past conviction for robbery in the second degree or
9 assault in the second degree was used as a basis for a finding
10 that the offender was a persistent offender and shall immediately
11 set an expedited date for resentencing. At resentencing, the court
12 shall sentence the offender as if robbery in the second degree and
13 assault in the second degree were not most serious offenses at the
14 time the original sentence was imposed.

15 This section expires July 1, 2003.

16 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of
18 the state government and its existing public institutions, and
19 takes effect July 1, 2001.

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