
HOUSE BILL 1881

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By Representatives O'Brien, Lovick, Skinner, Kagi, Kenney, Darneille, Hunt and Simpson

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

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

6 **Sec. 1.** RCW 9.94A.030 and 2002 c 175 s 5 and 2002 c 107 s 2 are
7 each reenacted and amended to read as follows:

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

10 (1) "Board" means the indeterminate sentence review board created
11 under chapter 9.95 RCW.

12 (2) "Collect," or any derivative thereof, "collect and remit," or
13 "collect and deliver," when used with reference to the department,
14 means that the department, either directly or through a collection
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring
16 and enforcing the offender's sentence with regard to the legal
17 financial obligation, receiving payment thereof from the offender, and,
18 consistent with current law, delivering daily the entire payment to the
19 superior court clerk without depositing it in a departmental account.

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

2 (4) "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 (5) "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.505(2)(b), 9.94A.650 through 9.94A.670,
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
10 community subject to controls placed on the offender's movement and
11 activities by the department. For offenders placed on community
12 custody for crimes committed on or after July 1, 2000, the department
13 shall assess the offender's risk of reoffense and may establish and
14 modify conditions of community custody, in addition to those imposed by
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period
17 of community custody included as part of a sentence under RCW
18 9.94A.715, as established by the commission or the legislature under
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

20 (7) "Community placement" means that period during which the
21 offender is subject to the conditions of community custody and/or
22 postrelease supervision, which begins either upon completion of the
23 term of confinement (postrelease supervision) or at such time as the
24 offender is transferred to community custody in lieu of earned release.
25 Community placement may consist of entirely community custody, entirely
26 postrelease supervision, or a combination of the two.

27 (8) "Community restitution" means compulsory service, without
28 compensation, performed for the benefit of the community by the
29 offender.

30 (9) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. Where the court finds that any offender has
34 a chemical dependency that has contributed to his or her offense, the
35 conditions of supervision may, subject to available resources, include
36 treatment. For purposes of the interstate compact for out-of-state
37 supervision of parolees and probationers, RCW 9.95.270, community

1 supervision is the functional equivalent of probation and should be
2 considered the same as probation by other states.

3 (10) "Confinement" means total or partial confinement.

4 (11) "Conviction" means an adjudication of guilt pursuant to Titles
5 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
6 acceptance of a plea of guilty.

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

14 (13) "Criminal history" means the list of a defendant's prior
15 convictions and juvenile adjudications, whether in this state, in
16 federal court, or elsewhere.

17 (a) The history shall include, where known, for each conviction (i)
18 whether the defendant has been placed on probation and the length and
19 terms thereof; and (ii) whether the defendant has been incarcerated and
20 the length of incarceration.

21 (b) A conviction may be removed from a defendant's criminal history
22 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
23 a similar out-of-state statute, or if the conviction has been vacated
24 pursuant to a governor's pardon.

25 (c) The determination of a defendant's criminal history is distinct
26 from the determination of an offender score. A prior conviction that
27 was not included in an offender score calculated pursuant to a former
28 version of the sentencing reform act remains part of the defendant's
29 criminal history.

30 (14) "Day fine" means a fine imposed by the sentencing court that
31 equals the difference between the offender's net daily income and the
32 reasonable obligations that the offender has for the support of the
33 offender and any dependents.

34 (15) "Day reporting" means a program of enhanced supervision
35 designed to monitor the offender's daily activities and compliance with
36 sentence conditions, and in which the offender is required to report
37 daily to a specific location designated by the department or the
38 sentencing court.

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

2 (17) "Determinate sentence" means a sentence that states with
3 exactitude the number of actual years, months, or days of total
4 confinement, of partial confinement, of community supervision, the
5 number of actual hours or days of community restitution work, or
6 dollars or terms of a legal financial obligation. The fact that an
7 offender through earned release can reduce the actual period of
8 confinement shall not affect the classification of the sentence as a
9 determinate sentence.

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

22 (19) "Drug offender sentencing alternative" is a sentencing option
23 available to persons convicted of a felony offense other than a violent
24 offense or a sex offense and who are eligible for the option under RCW
25 9.94A.660.

26 (20) "Drug offense" means:

27 (a) Any felony violation of chapter 69.50 RCW except possession of
28 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
29 controlled substance (RCW 69.50.403);

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

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

36 (21) "Earned release" means earned release from confinement as
37 provided in RCW 9.94A.728.

38 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
13 and-run injury-accident (RCW 46.52.020(4)); or

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

17 (24) "Fine" means a specific sum of money ordered by the sentencing
18 court to be paid by the offender to the court over a specific period of
19 time.

20 (25) "First-time offender" means any person who has no prior
21 convictions for a felony and is eligible for the first-time offender
22 waiver under RCW 9.94A.650.

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

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

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

3 (28) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies:

5 (a) Any felony defined under any law as a class A felony or
6 criminal solicitation of or criminal conspiracy to commit a class A
7 felony;

8 (b) Assault in the second degree, except when charged and convicted
9 under RCW 9A.36.021(1) (a) or (e);

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) ~~((Robbery in the second degree;~~

23 ~~(p))~~ Sexual exploitation;

24 ~~((q))~~ (p) Vehicular assault, when caused by the operation or
25 driving of a vehicle by a person while under the influence of
26 intoxicating liquor or any drug or by the operation or driving of a
27 vehicle in a reckless manner;

28 ~~((r))~~ (q) Vehicular homicide, when proximately caused by the
29 driving of any vehicle by any person while under the influence of
30 intoxicating liquor or any drug as defined by RCW 46.61.502, or by the
31 operation of any vehicle in a reckless manner;

32 ~~((s))~~ (r) Any other class B felony offense with a finding of
33 sexual motivation;

34 ~~((t))~~ (s) Any other felony with a deadly weapon verdict under RCW
35 9.94A.602;

36 ~~((u))~~ (t) Any felony offense in effect at any time prior to
37 December 2, 1993, that is comparable to a most serious offense under

1 this subsection, or any federal or out-of-state conviction for an
2 offense that under the laws of this state would be a felony classified
3 as a most serious offense under this subsection;

4 ((~~v~~)) (i) A prior conviction for indecent liberties under RCW
5 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
6 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
7 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
8 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

9 (ii) A prior conviction for indecent liberties under RCW
10 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
11 if: (A) The crime was committed against a child under the age of
12 fourteen; or (B) the relationship between the victim and perpetrator is
13 included in the definition of indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
15 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
16 through July 27, 1997.

17 (29) "Nonviolent offense" means an offense which is not a violent
18 offense.

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

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

34 (32) "Persistent offender" is an offender who:

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

37 (ii) Has, before the commission of the offense under (a) of this
38 subsection, been convicted as an offender on at least two separate

1 occasions, whether in this state or elsewhere, of felonies that under
2 the laws of this state would be considered most serious offenses and
3 would be included in the offender score under RCW 9.94A.525; provided
4 that of the two or more previous convictions, at least one conviction
5 must have occurred before the commission of any of the other most
6 serious offenses for which the offender was previously convicted; or

7 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
8 of a child in the first degree, child molestation in the first degree,
9 rape in the second degree, rape of a child in the second degree, or
10 indecent liberties by forcible compulsion; (B) any of the following
11 offenses with a finding of sexual motivation: Murder in the first
12 degree, murder in the second degree, homicide by abuse, kidnapping in
13 the first degree, kidnapping in the second degree, assault in the first
14 degree, assault in the second degree, assault of a child in the first
15 degree, or burglary in the first degree; or (C) an attempt to commit
16 any crime listed in this subsection (32)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this
18 subsection, been convicted as an offender on at least one occasion,
19 whether in this state or elsewhere, of an offense listed in (b)(i) of
20 this subsection or any federal or out-of-state offense or offense under
21 prior Washington law that is comparable to the offenses listed in
22 (b)(i) of this subsection. A conviction for rape of a child in the
23 first degree constitutes a conviction under (b)(i) of this subsection
24 only when the offender was sixteen years of age or older when the
25 offender committed the offense. A conviction for rape of a child in
26 the second degree constitutes a conviction under (b)(i) of this
27 subsection only when the offender was eighteen years of age or older
28 when the offender committed the offense.

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

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

35 (35) "Risk assessment" means the application of an objective
36 instrument supported by research and adopted by the department for the
37 purpose of assessing an offender's risk of reoffense, taking into
38 consideration the nature of the harm done by the offender, place and

1 circumstances of the offender related to risk, the offender's
2 relationship to any victim, and any information provided to the
3 department by victims. The results of a risk assessment shall not be
4 based on unconfirmed or unconfirmable allegations.

5 (36) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any
7 drug (RCW 46.61.502), actual physical control while under the influence
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
10 or

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

14 (37) "Serious violent offense" is a subcategory of violent offense
15 and means:

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

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

24 (ix) An attempt, criminal solicitation, or criminal conspiracy to
25 commit one of these felonies; 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 a serious
28 violent offense under (a) of this subsection.

29 (38) "Sex offense" means:

30 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
31 RCW 9A.44.130(11);

32 (ii) A violation of RCW 9A.64.020;

33 (iii) A felony that is a violation of chapter 9.68A RCW other than
34 RCW 9.68A.070 or 9.68A.080; or

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

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a sex
2 offense in (a) of this subsection;

3 (c) A felony with a finding of sexual motivation under RCW
4 9.94A.835 or 13.40.135; or

5 (d) 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 sex
7 offense under (a) of this subsection.

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

11 (40) "Standard sentence range" means the sentencing court's
12 discretionary range in imposing a nonappealable sentence.

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

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

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

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

30 (45) "Violent offense" means:

31 (a) Any of the following felonies:

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

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

36 (iii) Manslaughter in the first degree;

37 (iv) Manslaughter in the second degree;

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

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

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

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

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

22 (46) "Work crew" means a program of partial confinement consisting
23 of civic improvement tasks for the benefit of the community that
24 complies with RCW 9.94A.725.

25 (47) "Work ethic camp" means an alternative incarceration program
26 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
27 the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

32 (48) "Work release" means a program of partial confinement
33 available to offenders who are employed or engaged as a student in a
34 regular course of study at school.

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

37 (1) In any criminal case wherein an offender has been sentenced as

1 a persistent offender prior to the effective date of this section, the
2 offender shall have a resentencing hearing if a current or past
3 conviction for either robbery in the second degree or assault in the
4 second degree was used as a basis for the finding that the offender was
5 a persistent offender, unless the robbery was committed within and
6 against a financial institution as defined in RCW 7.88.010 or
7 35.38.060, or the assault in the second degree was charged and
8 convicted under RCW 9A.36.021(1) (b), (c), (d), or (f). The
9 prosecuting attorney for the county in which any offender was sentenced
10 as a persistent offender shall review each sentencing document. If a
11 current or past conviction for robbery in the second degree not
12 committed within and against a financial institution as defined in RCW
13 7.88.010 or 35.38.060 or assault in the second degree charged and
14 convicted under RCW 9A.36.021(1) (a) or (e) was used as a basis for a
15 finding that an offender was a persistent offender, the prosecuting
16 attorney shall, or the offender may, make a motion for relief from
17 sentence to the original sentencing court. The sentencing court shall
18 grant the motion if it finds that a current or past conviction for
19 robbery in the second degree not committed within and against a
20 financial institution as defined in RCW 7.88.010 or 35.38.060 or
21 assault in the second degree charged and convicted under RCW 9A.36.021
22 (1) (a) or (e) was used as a basis for a finding that the offender was
23 a persistent offender and shall immediately set an expedited date for
24 resentencing. At resentencing, the court shall sentence the offender
25 as if robbery in the second degree not committed within and against a
26 financial institution as defined in RCW 7.88.010 or 35.38.060 or
27 assault in the second degree charged and convicted under RCW
28 9A.36.021(1) (a) or (e) was not a most serious offense at the time the
29 original sentence was imposed.

30 (2) This section expires July 1, 2005.

31 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of the
33 state government and its existing public institutions, and takes effect
34 July 1, 2003.

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