

EHB 2070 - S AMD to S COMM AMD (JUD S-3079.1/07) 429  
By Senator Benton

ADOPTED 4/10/2007

1 On page 2, after line 26 of the amendment, insert the following:

2 "Sec. 3. RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c  
3 122 s 7, and 2006 c 73 s 5 are each reenacted and amended to read as  
4 follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

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

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

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

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

22 (5) "Community custody" means that portion of an offender's sentence  
23 of confinement in lieu of earned release time or imposed pursuant to  
24 RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700  
25 through 9.94A.715, or 9.94A.545, served in the community subject to  
26 controls placed on the offender's movement and activities by the  
27 department. For offenders placed on community custody for crimes  
28 committed on or after July 1, 2000, the department shall assess the  
29 offender's risk of reoffense and may establish and modify conditions of  
30 community custody, in addition to those imposed by the court, based  
31 upon the risk to community safety.

1 (6) "Community custody range" means the minimum and maximum period  
2 of community custody included as part of a sentence under RCW  
3 9.94A.715, as established by the commission or the legislature under  
4 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

5 (7) "Community placement" means that period during which the  
6 offender is subject to the conditions of community custody and/or  
7 postrelease supervision, which begins either upon completion of the  
8 term of confinement (postrelease supervision) or at such time as the  
9 offender is transferred to community custody in lieu of earned release.  
10 Community placement may consist of entirely community custody, entirely  
11 postrelease supervision, or a combination of the two.

12 (8) "Community protection zone" means the area within eight hundred  
13 eighty feet of the facilities and grounds of a public or private  
14 school.

15 (9) "Community restitution" means compulsory service, without  
16 compensation, performed for the benefit of the community by the  
17 offender.

18 (10) "Community supervision" means a period of time during which a  
19 convicted offender is subject to crime-related prohibitions and other  
20 sentence conditions imposed by a court pursuant to this chapter or RCW  
21 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
22 a chemical dependency that has contributed to his or her offense, the  
23 conditions of supervision may, subject to available resources, include  
24 treatment. For purposes of the interstate compact for out-of-state  
25 supervision of parolees and probationers, RCW 9.95.270, community  
26 supervision is the functional equivalent of probation and should be  
27 considered the same as probation by other states.

28 (11) "Confinement" means total or partial confinement.

29 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
30 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
31 acceptance of a plea of guilty.

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

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

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

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

12 (c) The determination of a defendant's criminal history is distinct  
13 from the determination of an offender score. A prior conviction that  
14 was not included in an offender score calculated pursuant to a former  
15 version of the sentencing reform act remains part of the defendant's  
16 criminal history.

17 (15) "Day fine" means a fine imposed by the sentencing court that  
18 equals the difference between the offender's net daily income and the  
19 reasonable obligations that the offender has for the support of the  
20 offender and any dependents.

21 (16) "Day reporting" means a program of enhanced supervision  
22 designed to monitor the offender's daily activities and compliance with  
23 sentence conditions, and in which the offender is required to report  
24 daily to a specific location designated by the department or the  
25 sentencing court.

26 (17) "Department" means the department of corrections.

27 (18) "Determinate sentence" means a sentence that states with  
28 exactitude the number of actual years, months, or days of total  
29 confinement, of partial confinement, of community supervision, the  
30 number of actual hours or days of community restitution work, or  
31 dollars or terms of a legal financial obligation. The fact that an  
32 offender through earned release can reduce the actual period of  
33 confinement shall not affect the classification of the sentence as a  
34 determinate sentence.

35 (19) "Disposable earnings" means that part of the earnings of an  
36 offender remaining after the deduction from those earnings of any  
37 amount required by law to be withheld. For the purposes of this  
38 definition, "earnings" means compensation paid or payable for personal  
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the  
2 payments exempt from garnishment, attachment, or other process to  
3 satisfy a court-ordered legal financial obligation, specifically  
4 includes periodic payments pursuant to pension or retirement programs,  
5 or insurance policies of any type, but does not include payments made  
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
7 or Title 74 RCW.

8 (20) "Drug offender sentencing alternative" is a sentencing option  
9 available to persons convicted of a felony offense other than a violent  
10 offense or a sex offense and who are eligible for the option under RCW  
11 9.94A.660.

12 (21) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of  
14 a controlled substance (RCW 69.50.4013) or forged prescription for a  
15 controlled substance (RCW 69.50.403);

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

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

22 (22) "Earned release" means earned release from confinement as  
23 provided in RCW 9.94A.728.

24 (23) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
26 first degree (RCW 9A.76.110), escape in the second degree (RCW  
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
28 willful failure to return from work release (RCW 72.65.070), or willful  
29 failure to be available for supervision by the department while in  
30 community custody (RCW 72.09.310); or

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

34 (24) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), felony  
37 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
38 under the influence of intoxicating liquor or any drug (RCW

1 46.61.502(6)), or felony physical control of a vehicle while under the  
2 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

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

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

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

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

29 (29) "Most serious offense" means any of the following felonies or a  
30 felony attempt to commit any of the following felonies:

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

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

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

- 1 (h) Indecent liberties;
- 2 (i) Kidnapping in the second degree;
- 3 (j) Leading organized crime;
- 4 (k) Manslaughter in the first degree;
- 5 (l) Manslaughter in the second degree;
- 6 (m) Promoting prostitution in the first degree;
- 7 (n) Rape in the third degree;
- 8 (o) Robbery in the second degree;
- 9 (p) Sexual exploitation;
- 10 (q) Vehicular assault, when caused by the operation or driving of  
11 a vehicle by a person while under the influence of intoxicating liquor  
12 or any drug or by the operation or driving of a vehicle in a reckless  
13 manner;
- 14 (r) Vehicular homicide, when proximately caused by the driving of  
15 any vehicle by any person while under the influence of intoxicating  
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
17 any vehicle in a reckless manner;
- 18 (s) Any other class B felony offense with a finding of sexual  
19 motivation;
- 20 (t) Any other felony with a deadly weapon verdict under RCW  
21 9.94A.602;
- 22 (u) Any felony offense in effect at any time prior to December 2,  
23 1993, that is comparable to a most serious offense under this  
24 subsection, or any federal or out-of-state conviction for an offense  
25 that under the laws of this state would be a felony classified as a  
26 most serious offense under this subsection;
- 27 (v)(i) A prior conviction for indecent liberties under RCW  
28 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
29 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
30 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
31 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 32 (ii) A prior conviction for indecent liberties under RCW  
33 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
34 if: (A) The crime was committed against a child under the age of  
35 fourteen; or (B) the relationship between the victim and perpetrator is  
36 included in the definition of indecent liberties under RCW  
37 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
38 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
39 through July 27, 1997;

1        (w) Any out-of-state conviction for a felony offense with a finding  
2 of sexual motivation if the minimum sentence imposed was ten years or  
3 more.

4        (30) "Nonviolent offense" means an offense which is not a violent  
5 offense.

6        (31) "Offender" means a person who has committed a felony  
7 established by state law and is eighteen years of age or older or is  
8 less than eighteen years of age but whose case is under superior court  
9 jurisdiction under RCW 13.04.030 or has been transferred by the  
10 appropriate juvenile court to a criminal court pursuant to RCW  
11 13.40.110. Throughout this chapter, the terms "offender" and  
12 "defendant" are used interchangeably.

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

21        (33) "Persistent offender" is an offender who:

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

24        (ii) Has, before the commission of the offense under (a) of this  
25 subsection, been convicted as an offender on at least two separate  
26 occasions, whether in this state or elsewhere, of felonies that under  
27 the laws of this state would be considered most serious offenses and  
28 would be included in the offender score under RCW 9.94A.525; provided  
29 that of the two or more previous convictions, at least one conviction  
30 must have occurred before the commission of any of the other most  
31 serious offenses for which the offender was previously convicted; or

32        (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
33 of a child in the first degree, child molestation in the first degree,  
34 rape in the second degree, rape of a child in the second degree, or  
35 indecent liberties by forcible compulsion; (B) any of the following  
36 offenses with a finding of sexual motivation: Murder in the first  
37 degree, murder in the second degree, homicide by abuse, kidnapping in  
38 the first degree, kidnapping in the second degree, assault in the first  
39 degree, assault in the second degree, assault of a child in the first

1 degree, assault of a child in the second degree, or burglary in the  
2 first degree; or (C) an attempt to commit any crime listed in this  
3 subsection (33)(b)(i); and

4 (ii) Has, before the commission of the offense under (b)(i) of this  
5 subsection, been convicted as an offender on at least one occasion,  
6 whether in this state or elsewhere, of an offense listed in (b)(i) of  
7 this subsection or any federal or out-of-state offense or offense under  
8 prior Washington law that is comparable to the offenses listed in  
9 (b)(i) of this subsection. A conviction for rape of a child in the  
10 first degree constitutes a conviction under (b)(i) of this subsection  
11 only when the offender was sixteen years of age or older when the  
12 offender committed the offense. A conviction for rape of a child in the  
13 second degree constitutes a conviction under (b)(i) of this subsection  
14 only when the offender was eighteen years of age or older when the  
15 offender committed the offense.

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

18 (35) "Predatory" means: (a) The perpetrator of the crime was a  
19 stranger to the victim, as defined in this section; (b) the perpetrator  
20 established or promoted a relationship with the victim prior to the  
21 offense and the victimization of the victim was a significant reason  
22 the perpetrator established or promoted the relationship; or (c) the  
23 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
24 in authority in any public or private school and the victim was a  
25 student of the school under his or her authority or supervision. For  
26 purposes of this subsection, "school" does not include home-based  
27 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
28 volunteer, or other person in authority in any recreational activity  
29 and the victim was a participant in the activity under his or her  
30 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
31 person in authority in any church or religious organization, and the  
32 victim was a member or participant of the organization under his or her  
33 authority.

34 (36) "Private school" means a school regulated under chapter  
35 28A.195 or 28A.205 RCW.

36 (37) "Public school" has the same meaning as in RCW 28A.150.010.

37 (38) "Restitution" means a specific sum of money ordered by the  
38 sentencing court to be paid by the offender to the court over a



1 specified period of time as payment of damages. The sum may include  
2 both public and private costs.

3 (39) "Risk assessment" means the application of an objective  
4 instrument supported by research and adopted by the department for the  
5 purpose of assessing an offender's risk of reoffense, taking into  
6 consideration the nature of the harm done by the offender, place and  
7 circumstances of the offender related to risk, the offender's  
8 relationship to any victim, and any information provided to the  
9 department by victims. The results of a risk assessment shall not be  
10 based on unconfirmed or unconfirmable allegations.

11 (40) "Serious traffic offense" means:

12 (a) Nonfelony driving while under the influence of intoxicating  
13 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
14 while under the influence of intoxicating liquor or any drug (RCW  
15 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
16 attended vehicle (RCW 46.52.020(5)); or

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

20 (41) "Serious violent offense" is a subcategory of violent offense  
21 and means:

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

23 (ii) Homicide by abuse;

24 (iii) Murder in the second degree;

25 (iv) Manslaughter in the first degree;

26 (v) Assault in the first degree;

27 (vi) Kidnapping in the first degree;

28 (vii) Rape in the first degree;

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

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

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

35 (42) "Sex offense" means:

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

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

1 (iii) A felony that is a violation of chapter 9.68A RCW other than  
2 RCW 9.68A.080; or

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

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

8 (c) A felony with a finding of sexual motivation under RCW  
9 9.94A.835 or 13.40.135; or

10 (d) 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 sex  
12 offense under (a) of this subsection.

13 (43) "Sexual motivation" means that one of the purposes for which  
14 the defendant committed the crime was for the purpose of his or her  
15 sexual gratification.

16 (44) "Standard sentence range" means the sentencing court's  
17 discretionary range in imposing a nonappealable sentence.

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

22 (46) "Stranger" means that the victim did not know the offender  
23 twenty-four hours before the offense.

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

28 (48) "Transition training" means written and verbal instructions and  
29 assistance provided by the department to the offender during the two  
30 weeks prior to the offender's successful completion of the work ethic  
31 camp program. The transition training shall include instructions in the  
32 offender's requirements and obligations during the offender's period of  
33 community custody.

34 (49) "Victim" means any person who has sustained emotional,  
35 psychological, physical, or financial injury to person or property as  
36 a direct result of the crime charged.

37 (50) "Violent offense" means:

38 (a) Any of the following felonies:

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

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

5 (iii) Manslaughter in the first degree;

6 (iv) Manslaughter in the second degree;

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

8 (vi) Kidnapping in the second degree;

9 (vii) Arson in the second degree;

10 (viii) Assault in the second degree;

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

12 (x) Extortion in the first degree;

13 (xi) Robbery in the second degree;

14 (xii) Drive-by shooting;

15 (xiii) Vehicular assault, when caused by the operation or driving  
16 of a vehicle by a person while under the influence of intoxicating  
17 liquor or any drug or by the operation or driving of a vehicle in a  
18 reckless manner; and

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

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

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

29 (51) "Work crew" means a program of partial confinement consisting  
30 of civic improvement tasks for the benefit of the community that  
31 complies with RCW 9.94A.725.

32 (52) "Work ethic camp" means an alternative incarceration program  
33 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
34 the cost of corrections by requiring offenders to complete a  
35 comprehensive array of real-world job and vocational experiences,  
36 character-building work ethics training, life management skills  
37 development, substance abuse rehabilitation, counseling, literacy  
38 training, and basic adult education.

1           (53) "Work release" means a program of partial confinement  
2 available to offenders who are employed or engaged as a student in a  
3 regular course of study at school."

4           Renumber the sections consecutively and correct any internal  
5 references accordingly.

6

7    **EHB 2070** - S AMD to S COMM AMD (JUD S-3079.1/07)  
8           By Senator Benton

9

10           On page 3, line 1 of the title amendment, after "sentences;" strike  
11 the remainder of the title amendment and insert "amending RCW  
12 9.94A.537; reenacting and amending RCW 9.94A.030; creating new  
13 sections; and declaring an emergency."

--- END ---

**EFFECT:** Amends the definition of "most serious offense" for purposes of the "Three-Strikes" law to include any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more.