

INITIATIVE 593
to the People

Chapter 1, Laws of 1994

Persistent offenders--Life sentence on third conviction

Approved by the
People of the State of Washington
in the General Election on
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ORIGINALLY FILED

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**Secretary of State
State of Washington**

1 AN ACT Relating to persistent offenders; reenacting and amending
2 RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing
3 penalties.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The people of the
6 state of Washington find and declare that:

7 (a) Community protection from persistent offenders is a priority
8 for any civilized society.

9 (b) Nearly fifty percent of the criminals convicted in Washington
10 state have active prior criminal histories.

11 (c) Punishments for criminal offenses should be proportionate to
12 both the seriousness of the crime and the prior criminal history.

13 (d) The public has the right and the responsibility to determine
14 when to impose a life sentence.

15 (2) By sentencing three-time, most serious offenders to prison for
16 life without the possibility of parole, the people intend to:

17 (a) Improve public safety by placing the most dangerous criminals
18 in prison.

1 (b) Reduce the number of serious, repeat offenders by tougher
2 sentencing.

3 (c) Set proper and simplified sentencing practices that both the
4 victims and persistent offenders can understand.

5 (d) Restore public trust in our criminal justice system by directly
6 involving the people in the process.

7 **Sec. 2.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992
8 c 45 s 5 are each reenacted and amended to read as follows:

9 ENFORCEMENT OF MANDATORY MINIMUM SENTENCES. When a person is
10 convicted of a felony, the court shall impose punishment as provided in
11 this section.

12 (1) Except as authorized in subsections (2), ~~(4)~~, (5), and (7) of
13 this section, the court shall impose a sentence within the sentence
14 range for the offense.

15 (2) The court may impose a sentence outside the standard sentence
16 range for that offense if it finds, considering the purpose of this
17 chapter, that there are substantial and compelling reasons justifying
18 an exceptional sentence.

19 (3) Whenever a sentence outside the standard range is imposed, the
20 court shall set forth the reasons for its decision in written findings
21 of fact and conclusions of law. A sentence outside the standard range
22 shall be a determinate sentence.

23 (4) A persistent offender shall be sentenced to a term of total
24 confinement for life without the possibility of parole or, when
25 authorized by RCW 10.95.030 for the crime of aggravated murder in the
26 first degree, sentenced to death, notwithstanding the maximum sentence
27 under any other law. An offender convicted of the crime of murder in
28 the first degree shall be sentenced to a term of total confinement not
29 less than twenty years. An offender convicted of the crime of assault
30 in the first degree or assault of a child in the first degree where the
31 offender used force or means likely to result in death or intended to
32 kill the victim shall be sentenced to a term of total confinement not
33 less than five years. An offender convicted of the crime of rape in
34 the first degree shall be sentenced to a term of total confinement not
35 less than five years(~~(, and shall not be eligible for furlough, work~~
36 ~~release or other authorized leave of absence from the correctional~~
37 ~~facility during such minimum five year term except for the purpose of~~
38 ~~commitment to an inpatient treatment facility)). The foregoing minimum~~

1 terms of total confinement are mandatory and shall not be varied or
2 modified as provided in subsection (2) of this section. In addition,
3 all offenders subject to the provisions of this subsection shall not be
4 eligible for community custody, earned early release time, furlough,
5 home detention, partial confinement, work crew, work release, or any
6 other form of early release as defined under RCW 9.94A.150 (1), (2),
7 (3), (5), (7), or (8), or any other form of authorized leave of absence
8 from the correctional facility while not in the direct custody of a
9 corrections officer or officers during such minimum terms of total
10 confinement except in the case of an offender in need of emergency
11 medical treatment or for the purpose of commitment to an inpatient
12 treatment facility in the case of an offender convicted of the crime of
13 rape in the first degree.

14 (5) In sentencing a first-time offender the court may waive the
15 imposition of a sentence within the sentence range and impose a
16 sentence which may include up to ninety days of confinement in a
17 facility operated or utilized under contract by the county and a
18 requirement that the offender refrain from committing new offenses.
19 The sentence may also include up to two years of community supervision,
20 which, in addition to crime-related prohibitions, may include
21 requirements that the offender perform any one or more of the
22 following:

23 (a) Devote time to a specific employment or occupation;

24 (b) Undergo available outpatient treatment for up to two years, or
25 inpatient treatment not to exceed the standard range of confinement for
26 that offense;

27 (c) Pursue a prescribed, secular course of study or vocational
28 training;

29 (d) Remain within prescribed geographical boundaries and notify the
30 court or the community corrections officer prior to any change in the
31 offender's address or employment;

32 (e) Report as directed to the court and a community corrections
33 officer; or

34 (f) Pay all court-ordered legal financial obligations as provided
35 in RCW 9.94A.030 and/or perform community service work.

36 (6) If a sentence range has not been established for the
37 defendant's crime, the court shall impose a determinate sentence which
38 may include not more than one year of confinement, community service
39 work, a term of community supervision not to exceed one year, and/or

1 other legal financial obligations. The court may impose a sentence
2 which provides more than one year of confinement if the court finds,
3 considering the purpose of this chapter, that there are substantial and
4 compelling reasons justifying an exceptional sentence.

5 (7)(a)(i) When an offender is convicted of a sex offense other than
6 a violation of RCW 9A.44.050 or a sex offense that is also a serious
7 violent offense and has no prior convictions for a sex offense or any
8 other felony sex offenses in this or any other state, the sentencing
9 court, on its own motion or the motion of the state or the defendant,
10 may order an examination to determine whether the defendant is amenable
11 to treatment.

12 The report of the examination shall include at a minimum the
13 following: The defendant's version of the facts and the official
14 version of the facts, the defendant's offense history, an assessment of
15 problems in addition to alleged deviant behaviors, the offender's
16 social and employment situation, and other evaluation measures used.
17 The report shall set forth the sources of the evaluator's information.

18 The examiner shall assess and report regarding the defendant's
19 amenability to treatment and relative risk to the community. A
20 proposed treatment plan shall be provided and shall include, at a
21 minimum:

22 (A) Frequency and type of contact between offender and therapist;

23 (B) Specific issues to be addressed in the treatment and
24 description of planned treatment modalities;

25 (C) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (D) Anticipated length of treatment; and

29 (E) Recommended crime-related prohibitions.

30 The court on its own motion may order, or on a motion by the state
31 shall order, a second examination regarding the offender's amenability
32 to treatment. The evaluator shall be selected by the party making the
33 motion. The defendant shall pay the cost of any second examination
34 ordered unless the court finds the defendant to be indigent in which
35 case the state shall pay the cost.

36 (ii) After receipt of the reports, the court shall consider whether
37 the offender and the community will benefit from use of this special
38 sexual offender sentencing alternative and consider the victim's
39 opinion whether the offender should receive a treatment disposition

1 under this subsection. If the court determines that this special sex
2 offender sentencing alternative is appropriate, the court shall then
3 impose a sentence within the sentence range. If this sentence is less
4 than eight years of confinement, the court may suspend the execution of
5 the sentence and impose the following conditions of suspension:

6 (A) The court shall place the defendant on community supervision
7 for the length of the suspended sentence or three years, whichever is
8 greater; and

9 (B) The court shall order treatment for any period up to three
10 years in duration. The court in its discretion shall order outpatient
11 sex offender treatment or inpatient sex offender treatment, if
12 available. A community mental health center may not be used for such
13 treatment unless it has an appropriate program designed for sex
14 offender treatment. The offender shall not change sex offender
15 treatment providers or treatment conditions without first notifying the
16 prosecutor, the community corrections officer, and the court, and shall
17 not change providers without court approval after a hearing if the
18 prosecutor or community corrections officer object to the change. In
19 addition, as conditions of the suspended sentence, the court may impose
20 other sentence conditions including up to six months of confinement,
21 not to exceed the sentence range of confinement for that offense,
22 crime-related prohibitions, and requirements that the offender perform
23 any one or more of the following:

24 (I) Devote time to a specific employment or occupation;

25 (II) Remain within prescribed geographical boundaries and notify
26 the court or the community corrections officer prior to any change in
27 the offender's address or employment;

28 (III) Report as directed to the court and a community corrections
29 officer;

30 (IV) Pay all court-ordered legal financial obligations as provided
31 in RCW 9.94A.030, perform community service work, or any combination
32 thereof; or

33 (V) Make recoupment to the victim for the cost of any counseling
34 required as a result of the offender's crime.

35 (iii) The sex offender therapist shall submit quarterly reports on
36 the defendant's progress in treatment to the court and the parties.
37 The report shall reference the treatment plan and include at a minimum
38 the following: Dates of attendance, defendant's compliance with
39 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at
2 sentencing.

3 (iv) At the time of sentencing, the court shall set a treatment
4 termination hearing for three months prior to the anticipated date for
5 completion of treatment. Prior to the treatment termination hearing,
6 the treatment professional and community corrections officer shall
7 submit written reports to the court and parties regarding the
8 defendant's compliance with treatment and monitoring requirements, and
9 recommendations regarding termination from treatment, including
10 proposed community supervision conditions. Either party may request
11 and the court may order another evaluation regarding the advisability
12 of termination from treatment. The defendant shall pay the cost of any
13 additional evaluation ordered unless the court finds the defendant to
14 be indigent in which case the state shall pay the cost. At the
15 treatment termination hearing the court may: (A) Modify conditions of
16 community supervision, and either (B) terminate treatment, or (C)
17 extend treatment for up to the remaining period of community
18 supervision.

19 (v) The court may revoke the suspended sentence at any time during
20 the period of community supervision and order execution of the sentence
21 if: (A) The defendant violates the conditions of the suspended
22 sentence, or (B) the court finds that the defendant is failing to make
23 satisfactory progress in treatment. All confinement time served during
24 the period of community supervision shall be credited to the offender
25 if the suspended sentence is revoked.

26 (vi) Except as provided in (a)(vii) of this subsection, after July
27 1, 1991, examinations and treatment ordered pursuant to this subsection
28 shall only be conducted by sex offender treatment providers certified
29 by the department of health pursuant to chapter 18.155 RCW.

30 (vii) A sex offender therapist who examines or treats a sex
31 offender pursuant to this subsection (7) does not have to be certified
32 by the department of health pursuant to chapter 18.155 RCW if the court
33 finds that: (A) The offender has already moved to another state or
34 plans to move to another state for reasons other than circumventing the
35 certification requirements; (B) no certified providers are available
36 for treatment within a reasonable geographical distance of the
37 offender's home; and (C) the evaluation and treatment plan comply with
38 this subsection (7) and the rules adopted by the department of health.

1 For purposes of this subsection, "victim" means any person who has
2 sustained emotional, psychological, physical, or financial injury to
3 person or property as a result of the crime charged. "Victim" also
4 means a parent or guardian of a victim who is a minor child unless the
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense
7 committed before July 1, 1987, and is sentenced to a term of
8 confinement of more than one year but less than six years, the
9 sentencing court may, on its own motion or on the motion of the
10 offender or the state, order the offender committed for up to thirty
11 days to the custody of the secretary of social and health services for
12 evaluation and report to the court on the offender's amenability to
13 treatment at these facilities. If the secretary of social and health
14 services cannot begin the evaluation within thirty days of the court's
15 order of commitment, the offender shall be transferred to the state for
16 confinement pending an opportunity to be evaluated at the appropriate
17 facility. The court shall review the reports and may order that the
18 term of confinement imposed be served in the sexual offender treatment
19 program at the location determined by the secretary of social and
20 health services or the secretary's designee, only if the report
21 indicates that the offender is amenable to the treatment program
22 provided at these facilities. The offender shall be transferred to the
23 state pending placement in the treatment program. Any offender who has
24 escaped from the treatment program shall be referred back to the
25 sentencing court.

26 If the offender does not comply with the conditions of the
27 treatment program, the secretary of social and health services may
28 refer the matter to the sentencing court. The sentencing court shall
29 commit the offender to the department of corrections to serve the
30 balance of the term of confinement.

31 If the offender successfully completes the treatment program before
32 the expiration of the term of confinement, the court may convert the
33 balance of confinement to community supervision and may place
34 conditions on the offender including crime-related prohibitions and
35 requirements that the offender perform any one or more of the
36 following:

37 (i) Devote time to a specific employment or occupation;

1 (ii) Remain within prescribed geographical boundaries and notify
2 the court or the community corrections officer prior to any change in
3 the offender's address or employment;

4 (iii) Report as directed to the court and a community corrections
5 officer;

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,
8 the court may order the offender to serve out the balance of the
9 community supervision term in confinement in the custody of the
10 department of corrections.

11 After June 30, 1993, this subsection (b) shall cease to have
12 effect.

13 (c) When an offender commits any felony sex offense on or after
14 July 1, 1987, and is sentenced to a term of confinement of more than
15 one year but less than six years, the sentencing court may, on its own
16 motion or on the motion of the offender or the state, request the
17 department of corrections to evaluate whether the offender is amenable
18 to treatment and the department may place the offender in a treatment
19 program within a correctional facility operated by the department.

20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his or her term of confinement, the department
23 of corrections may request the court to convert the balance of
24 confinement to community supervision and to place conditions on the
25 offender including crime-related prohibitions and requirements that the
26 offender perform any one or more of the following:

27 (i) Devote time to a specific employment or occupation;

28 (ii) Remain within prescribed geographical boundaries and notify
29 the court or the community corrections officer prior to any change in
30 the offender's address or employment;

31 (iii) Report as directed to the court and a community corrections
32 officer;

33 (iv) Undergo available outpatient treatment.

34 If the offender violates any of the terms of his or her community
35 supervision, the court may order the offender to serve out the balance
36 of his or her community supervision term in confinement in the custody
37 of the department of corrections.

38 Nothing in (c) of this subsection shall confer eligibility for such
39 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (c) does not apply to
2 any crime committed after July 1, 1990.

3 (d) Offenders convicted and sentenced for a sex offense committed
4 prior to July 1, 1987, may, subject to available funds, request an
5 evaluation by the department of corrections to determine whether they
6 are amenable to treatment. If the offender is determined to be
7 amenable to treatment, the offender may request placement in a
8 treatment program within a correctional facility operated by the
9 department. Placement in such treatment program is subject to
10 available funds.

11 (8)(a) When a court sentences a person to a term of total
12 confinement to the custody of the department of corrections for an
13 offense categorized as a sex offense or a serious violent offense
14 committed after July 1, 1988, but before July 1, 1990, assault in the
15 second degree, assault of a child in the second degree, any crime
16 against a person where it is determined in accordance with RCW
17 9.94A.125 that the defendant or an accomplice was armed with a deadly
18 weapon at the time of commission, or any felony offense under chapter
19 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
20 in addition to the other terms of the sentence, sentence the offender
21 to a one-year term of community placement beginning either upon
22 completion of the term of confinement or at such time as the offender
23 is transferred to community custody in lieu of earned early release in
24 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
25 offender under this subsection to the statutory maximum period of
26 confinement then the community placement portion of the sentence shall
27 consist entirely of such community custody to which the offender may
28 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
29 period of community custody actually served shall be credited against
30 the community placement portion of the sentence.

31 (b) When a court sentences a person to a term of total confinement
32 to the custody of the department of corrections for an offense
33 categorized as a sex offense or serious violent offense committed on or
34 after July 1, 1990, the court shall in addition to other terms of the
35 sentence, sentence the offender to community placement for two years or
36 up to the period of earned early release awarded pursuant to RCW
37 9.94A.150 (1) and (2), whichever is longer. The community placement
38 shall begin either upon completion of the term of confinement or at
39 such time as the offender is transferred to community custody in lieu

1 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
2 When the court sentences an offender under this subsection to the
3 statutory maximum period of confinement then the community placement
4 portion of the sentence shall consist entirely of the community custody
5 to which the offender may become eligible, in accordance with RCW
6 9.94A.150 (1) and (2). Any period of community custody actually served
7 shall be credited against the community placement portion of the
8 sentence. Unless a condition is waived by the court, the terms of
9 community placement for offenders sentenced pursuant to this section
10 shall include the following conditions:

11 (i) The offender shall report to and be available for contact with
12 the assigned community corrections officer as directed;

13 (ii) The offender shall work at department of corrections-approved
14 education, employment, and/or community service;

15 (iii) The offender shall not consume controlled substances except
16 pursuant to lawfully issued prescriptions;

17 (iv) An offender in community custody shall not unlawfully possess
18 controlled substances;

19 (v) The offender shall pay supervision fees as determined by the
20 department of corrections; and

21 (vi) The residence location and living arrangements are subject to
22 the prior approval of the department of corrections during the period
23 of community placement.

24 (c) The court may also order any of the following special
25 conditions:

26 (i) The offender shall remain within, or outside of, a specified
27 geographical boundary;

28 (ii) The offender shall not have direct or indirect contact with
29 the victim of the crime or a specified class of individuals;

30 (iii) The offender shall participate in crime-related treatment or
31 counseling services;

32 (iv) The offender shall not consume alcohol; or

33 (v) The offender shall comply with any crime-related prohibitions.

34 (d) Prior to transfer to, or during, community placement, any
35 conditions of community placement may be removed or modified so as not
36 to be more restrictive by the sentencing court, upon recommendation of
37 the department of corrections.

38 (9) If the court imposes a sentence requiring confinement of thirty
39 days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

5 (10) If a sentence imposed includes payment of a legal financial
6 obligation, the sentence shall specify the total amount of the legal
7 financial obligation owed, and shall require the offender to pay a
8 specified monthly sum toward that legal financial obligation.
9 Restitution to victims shall be paid prior to any other payments of
10 monetary obligations. Any legal financial obligation that is imposed
11 by the court may be collected by the department, which shall deliver
12 the amount paid to the county clerk for credit. The offender's
13 compliance with payment of legal financial obligations shall be
14 supervised by the department. All monetary payments ordered shall be
15 paid no later than ten years after the last date of release from
16 confinement pursuant to a felony conviction or the date the sentence
17 was entered. Independent of the department, the party or entity to
18 whom the legal financial obligation is owed shall have the authority to
19 utilize any other remedies available to the party or entity to collect
20 the legal financial obligation. Nothing in this section makes the
21 department, the state, or any of its employees, agents, or other
22 persons acting on their behalf liable under any circumstances for the
23 payment of these legal financial obligations. If an order includes
24 restitution as one of the monetary assessments, the county clerk shall
25 make disbursements to victims named in the order.

26 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
27 court may not impose a sentence providing for a term of confinement or
28 community supervision or community placement which exceeds the
29 statutory maximum for the crime as provided in chapter 9A.20 RCW.

30 (12) All offenders sentenced to terms involving community
31 supervision, community service, community placement, or legal financial
32 obligation shall be under the supervision of the secretary of the
33 department of corrections or such person as the secretary may designate
34 and shall follow explicitly the instructions of the secretary including
35 reporting as directed to a community corrections officer, remaining
36 within prescribed geographical boundaries, notifying the community
37 corrections officer of any change in the offender's address or
38 employment, and paying the supervision fee assessment.

1 (13) All offenders sentenced to terms involving community
2 supervision, community service, or community placement under the
3 supervision of the department of corrections shall not own, use, or
4 possess firearms or ammunition. Offenders who own, use, or are found
5 to be in actual or constructive possession of firearms or ammunition
6 shall be subject to the appropriate violation process and sanctions.
7 "Constructive possession" as used in this subsection means the power
8 and intent to control the firearm or ammunition. "Firearm" as used in
9 this subsection means a weapon or device from which a projectile may be
10 fired by an explosive such as gunpowder.

11 (14) The sentencing court shall give the offender credit for all
12 confinement time served before the sentencing if that confinement was
13 solely in regard to the offense for which the offender is being
14 sentenced.

15 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)
16 governing whether sentences are to be served consecutively or
17 concurrently is an exceptional sentence subject to the limitations in
18 subsections (2) and (3) of this section, and may be appealed by the
19 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

20 (16) The court shall order restitution whenever the offender is
21 convicted of a felony that results in injury to any person or damage to
22 or loss of property, whether the offender is sentenced to confinement
23 or placed under community supervision, unless extraordinary
24 circumstances exist that make restitution inappropriate in the court's
25 judgment. The court shall set forth the extraordinary circumstances in
26 the record if it does not order restitution.

27 (17) As a part of any sentence, the court may impose and enforce an
28 order that relates directly to the circumstances of the crime for which
29 the offender has been convicted, prohibiting the offender from having
30 any contact with other specified individuals or a specific class of
31 individuals for a period not to exceed the maximum allowable sentence
32 for the crime, regardless of the expiration of the offender's term of
33 community supervision or community placement.

34 (18) In any sentence of partial confinement, the court may require
35 the defendant to serve the partial confinement in work release, in a
36 program of home detention, on work crew, or in a combined program of
37 work crew and home detention.

38 (19) All court-ordered legal financial obligations collected by the
39 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any
2 other payments of monetary obligations.

3 **Sec. 3.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
4 each reenacted and amended to read as follows:

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

7 (1) "Collect," or any derivative thereof, "collect and remit," or
8 "collect and deliver," when used with reference to the department of
9 corrections, means that the department is responsible for monitoring
10 and enforcing the offender's sentence with regard to the legal
11 financial obligation, receiving payment thereof from the offender, and,
12 consistent with current law, delivering daily the entire payment to the
13 superior court clerk without depositing it in a departmental account.

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

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

19 (4) "Community custody" means that portion of an inmate's sentence
20 of confinement in lieu of earned early release time served in the
21 community subject to controls placed on the inmate's movement and
22 activities by the department of corrections.

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

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

33 (7) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 46.61.524. For first-time offenders, the supervision may include
37 crime-related prohibitions and other conditions imposed pursuant to RCW
38 9.94A.120(5). For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

4 (8) "Confinement" means total or partial confinement as defined in
5 this section.

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

9 (10) "Court-ordered legal financial obligation" means a sum of
10 money that is ordered by a superior court of the state of Washington
11 for legal financial obligations which may include restitution to the
12 victim, statutorily imposed crime victims' compensation fees as
13 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
14 drug funds, court-appointed attorneys' fees, and costs of defense,
15 fines, and any other financial obligation that is assessed to the
16 offender as a result of a felony conviction.

17 (11) "Crime-related prohibition" means an order of a court
18 prohibiting conduct that directly relates to the circumstances of the
19 crime for which the offender has been convicted, and shall not be
20 construed to mean orders directing an offender affirmatively to
21 participate in rehabilitative programs or to otherwise perform
22 affirmative conduct.

23 (12)(a) "Criminal history" means the list of a defendant's prior
24 convictions, whether in this state, in federal court, or elsewhere.
25 The history shall include, where known, for each conviction (i) whether
26 the defendant has been placed on probation and the length and terms
27 thereof; and (ii) whether the defendant has been incarcerated and the
28 length of incarceration.

29 (b) "Criminal history" shall always include juvenile convictions
30 for sex offenses and shall also include a defendant's other prior
31 convictions in juvenile court if: (i) The conviction was for an
32 offense which is a felony or a serious traffic offense and is criminal
33 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
34 fifteen years of age or older at the time the offense was committed;
35 and (iii) with respect to prior juvenile class B and C felonies or
36 serious traffic offenses, the defendant was less than twenty-three
37 years of age at the time the offense for which he or she is being
38 sentenced was committed.

39 (13) "Department" means the department of corrections.

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

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

21 (16) "Drug offense" means:

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

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

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

31 (17) "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 (18) "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 (19) "Fines" means the requirement that the offender pay a specific
9 sum of money over a specific period of time to the court.

10 (20)(a) "First-time offender" means any person who is convicted of
11 a felony (i) not classified as a violent offense or a sex offense under
12 this chapter, or (ii) that is not the manufacture, delivery, or
13 possession with intent to manufacture or deliver a controlled substance
14 classified in schedule I or II that is a narcotic drug or the selling
15 for profit ((toef)) of any controlled substance or counterfeit
16 substance classified in schedule I, RCW 69.50.204, except leaves and
17 flowering tops of marihuana, and except as provided in (b) of this
18 subsection, who previously has never been convicted of a felony in this
19 state, federal court, or another state, and who has never participated
20 in a program of deferred prosecution for a felony offense.

21 (b) For purposes of (a) of this subsection, a juvenile adjudication
22 for an offense committed before the age of fifteen years is not a
23 previous felony conviction except for adjudications of sex offenses.

24 (21) "Most serious offense" means any of the following felonies or
25 a felony attempt to commit any of the following felonies, as now
26 existing or hereafter amended:

27 (a) Any felony defined under any law as a class A felony or
28 criminal solicitation of or criminal conspiracy to commit a class A
29 felony;

30 (b) Assault in the second degree;

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

32 (d) Child molestation in the second degree;

33 (e) Controlled substance homicide;

34 (f) Extortion in the first degree;

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

36 (h) Indecent liberties;

37 (i) Kidnapping in the second degree;

38 (j) Leading organized crime;

39 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) Robbery in the second degree;
5 (p) Sexual exploitation;
6 (q) Vehicular assault;
7 (r) Vehicular homicide, when proximately caused by the driving of
8 any vehicle by any person while under the influence of intoxicating
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
10 any vehicle in a reckless manner;
11 (s) Any other class B felony offense with a finding of sexual
12 motivation, as "sexual motivation" is defined under this section;
13 (t) Any other felony with a deadly weapon verdict under RCW
14 9.94A.125;
15 (u) Any felony offense in effect at any time prior to the effective
16 date of this section, that is comparable to a most serious offense
17 under this subsection, or any federal or out-of-state conviction for an
18 offense that under the laws of this state would be a felony classified
19 as a most serious offense under this subsection.
20 (22) "Nonviolent offense" means an offense which is not a violent
21 offense.
22 (~~(22)~~) (23) "Offender" means a person who has committed a felony
23 established by state law and is eighteen years of age or older or is
24 less than eighteen years of age but whose case has been transferred by
25 the appropriate juvenile court to a criminal court pursuant to RCW
26 13.40.110. Throughout this chapter, the terms "offender" and
27 "defendant" are used interchangeably.
28 (~~(23)~~) (24) "Partial confinement" means confinement for no more
29 than one year in a facility or institution operated or utilized under
30 contract by the state or any other unit of government, or, if home
31 detention or work crew has been ordered by the court, in an approved
32 residence, for a substantial portion of each day with the balance of
33 the day spent in the community. Partial confinement includes work
34 release, home detention, work crew, and a combination of work crew and
35 home detention as defined in this section.
36 (~~(24)~~) (25) "Persistent offender" is an offender who:
37 (a) Has been convicted in this state of any felony considered a
38 most serious offense; and

1 (b) Has, before the commission of the offense under (a) of this
2 subsection, been convicted as an offender on at least two separate
3 occasions, whether in this state or elsewhere, of felonies that under
4 the laws of this state would be considered most serious offenses and
5 would be included in the offender score under RCW 9.94A.360; provided
6 that of the two or more previous convictions, at least one conviction
7 must have occurred before the commission of any of the other most
8 serious offenses for which the offender was previously convicted.

9 (26) "Postrelease supervision" is that portion of an offender's
10 community placement that is not community custody.

11 ~~((25))~~ (27) "Restitution" means the requirement that the offender
12 pay a specific sum of money over a specific period of time to the court
13 as payment of damages. The sum may include both public and private
14 costs. The imposition of a restitution order does not preclude civil
15 redress.

16 ~~((26))~~ (28) "Serious traffic offense" means:

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

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

25 ~~((27))~~ (29) "Serious violent offense" is a subcategory of violent
26 offense and means:

27 (a) Murder in the first degree, homicide by abuse, murder in the
28 second degree, assault in the first degree, kidnapping in the first
29 degree, or rape in the first degree, assault of a child in the first
30 degree, or 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 ~~((28))~~ (30) "Sentence range" means the sentencing court's
36 discretionary range in imposing a nonappealable sentence.

37 ~~((29))~~ (31) "Sex offense" means:

38 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
39 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal

1 attempt, criminal solicitation, or criminal conspiracy to commit such
2 crimes;

3 (b) A felony with a finding of sexual motivation under RCW
4 9.94A.127; or

5 (c) 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 (~~(30)~~) (32) "Sexual motivation" means that one of the purposes
9 for which the defendant committed the crime was for the purpose of his
10 or her sexual gratification.

11 (~~(31)~~) (33) "Total confinement" means confinement inside the
12 physical boundaries of a facility or institution operated or utilized
13 under contract by the state or any other unit of government for twenty-
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (~~(32)~~) (34) "Victim" means any person who has sustained
16 emotional, psychological, physical, or financial injury to person or
17 property as a direct result of the crime charged.

18 (~~(33)~~) (35) "Violent offense" means:

19 (a) Any of the following felonies, as now existing or hereafter
20 amended: Any felony defined under any law as a class A felony or an
21 attempt to commit a class A felony, criminal solicitation of or
22 criminal conspiracy to commit a class A felony, manslaughter in the
23 first degree, manslaughter in the second degree, indecent liberties if
24 committed by forcible compulsion, kidnapping in the second degree,
25 arson in the second degree, assault in the second degree, assault of a
26 child in the second degree, extortion in the first degree, robbery in
27 the second degree, vehicular assault, and vehicular homicide, when
28 proximately caused by the driving of any vehicle by any person while
29 under the influence of intoxicating liquor or any drug as defined by
30 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

37 (~~(34)~~) (36) "Work crew" means a program of partial confinement
38 consisting of civic improvement tasks for the benefit of the community
39 of not less than thirty-five hours per week that complies with RCW

1 9.94A.135. The civic improvement tasks shall be performed on public
2 property or on private property owned or operated by nonprofit
3 entities, except that, for emergency purposes only, work crews may
4 perform snow removal on any private property. The civic improvement
5 tasks shall have minimal negative impact on existing private industries
6 or the labor force in the county where the service or labor is
7 performed. The civic improvement tasks shall not affect employment
8 opportunities for people with developmental disabilities contracted
9 through sheltered workshops as defined in RCW 82.04.385. Only those
10 offenders sentenced to a facility operated or utilized under contract
11 by a county are eligible to participate on a work crew. Offenders
12 sentenced for a sex offense as defined in subsection (~~((29))~~) (31) of
13 this section are not eligible for the work crew program.

14 (~~((35))~~) (37) "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. Participation in work release shall
17 be conditioned upon the offender attending work or school at regularly
18 defined hours and abiding by the rules of the work release facility.

19 (~~((36))~~) (38) "Home detention" means a program of partial
20 confinement available to offenders wherein the offender is confined in
21 a private residence subject to electronic surveillance. Home detention
22 may not be imposed for offenders convicted of a violent offense, any
23 sex offense, any drug offense, reckless burning in the first or second
24 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
25 degree as defined in RCW 9A.36.031, assault of a child in the third
26 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
27 harassment as defined in RCW 9A.46.020. Home detention may be imposed
28 for offenders convicted of possession of a controlled substance (RCW
29 69.50.401(d)) or forged prescription for a controlled substance (RCW
30 69.50.403) if the offender fulfills the participation conditions set
31 forth in this subsection and is monitored for drug use by treatment
32 alternatives to street crime (TASC) or a comparable court or agency-
33 referred program.

34 (a) Home detention may be imposed for offenders convicted of
35 burglary in the second degree as defined in RCW 9A.52.030 or
36 residential burglary conditioned upon the offender: (i) Successfully
37 completing twenty-one days in a work release program, (ii) having no
38 convictions for burglary in the second degree or residential burglary
39 during the preceding two years and not more than two prior convictions

1 for burglary or residential burglary, (iii) having no convictions for
2 a violent felony offense during the preceding two years and not more
3 than two prior convictions for a violent felony offense, (iv) having no
4 prior charges of escape, and (v) fulfilling the other conditions of the
5 home detention program.

6 (b) Participation in a home detention program shall be conditioned
7 upon: (i) The offender obtaining or maintaining current employment or
8 attending a regular course of school study at regularly defined hours,
9 or the offender performing parental duties to offspring or minors
10 normally in the custody of the offender, (ii) abiding by the rules of
11 the home detention program, and (iii) compliance with court-ordered
12 legal financial obligations. The home detention program may also be
13 made available to offenders whose charges and convictions do not
14 otherwise disqualify them if medical or health-related conditions,
15 concerns or treatment would be better addressed under the home
16 detention program, or where the health and welfare of the offender,
17 other inmates, or staff would be jeopardized by the offender's
18 incarceration. Participation in the home detention program for medical
19 or health-related reasons is conditioned on the offender abiding by the
20 rules of the home detention program and complying with court-ordered
21 restitution.

22 NEW SECTION. **Sec. 4.** OFFENDER NOTIFICATION AND WARNING. A
23 sentencing judge, law enforcement agency, or state or local
24 correctional facility may, but is not required to, give offenders who
25 have been convicted of an offense that is a most serious offense as
26 defined in RCW 9.94A.030 either written or oral notice, or both, of the
27 sanctions imposed upon persistent offenders. General notice of these
28 sanctions and the conditions under which they may be imposed may, but
29 need not, be given in correctional facilities maintained by state or
30 local agencies. This section is enacted to provide authority, but not
31 requirement, for the giving of such notice in every conceivable way
32 without incurring liability to offenders or third parties.

33 NEW SECTION. **Sec. 5.** GOVERNOR'S POWERS. (1) Nothing in this act
34 shall ever be interpreted or construed as to reduce or eliminate the
35 power of the governor to grant a pardon or clemency to any offender on
36 an individual case-by-case basis. However, the people recommend that
37 any offender subject to total confinement for life without the

1 possibility of parole not be considered for release until the offender
2 has reached the age of at least sixty years old and has been judged to
3 be no longer a threat to society. The people further recommend that
4 sex offenders be held to the utmost scrutiny under this subsection
5 regardless of age.

6 (2) Nothing in this section shall ever be interpreted or construed
7 to grant any release for the purpose of reducing prison overcrowding.
8 Furthermore, the governor shall provide twice yearly reports on the
9 activities and progress of offenders subject to total confinement for
10 life without the possibility of parole who are released through
11 executive action during his or her tenure. These reports shall
12 continue for not less than ten years after the release of the offender
13 or upon the death of the released offender.

14 NEW SECTION. **Sec. 6.** SEVERABILITY. If any provision of this act
15 or its application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 7.** SHORT TITLE. This act shall be known and
19 may be cited as the persistent offender accountability act.

20 NEW SECTION. **Sec. 8.** CAPTIONS. Captions as used in this act do
21 not constitute any part of the law.

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