
SUBSTITUTE HOUSE BILL 1021

State of Washington

54th Legislature

1995 Regular Session

By House Committee on Corrections (originally sponsored by Representatives Delvin, Hickel, Robertson, Smith, Padden, Sherstad, Dyer, Skinner, Kremen, Hargrove, Horn, Schoesler, Buck, Johnson, Thompson, Beeksma, Goldsmith, Radcliff, Chandler, Backlund, Crouse, Cairnes, Elliot, Reams, Pennington, Mastin, Carrell, K. Schmidt, Chappell, Basich, Grant, Sehlin, Honeyford, Van Luven, Ballasiotes, Pelesky, Blanton, Hankins, Lambert, D. Schmidt, Mulliken, McMorris, Clements, Campbell, L. Thomas, Huff, Mielke, Talcott, McMahan, Stevens and Casada)

Read first time 02/09/95.

1 AN ACT Relating to juveniles; amending RCW 13.04.030, 13.40.110,
2 and 9.94A.030; reenacting and amending RCW 13.40.020; and creating a
3 new section.

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

5 **Sec. 1.** RCW 13.04.030 and 1994 sp.s. c 7 s 519 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (2) of this section, the
8 juvenile courts in the several counties of this state, shall have
9 exclusive original jurisdiction over all proceedings:

10 (a) Under the interstate compact on placement of children as
11 provided in chapter 26.34 RCW;

12 (b) Relating to children alleged or found to be dependent as
13 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

14 (c) Relating to the termination of a parent and child relationship
15 as provided in RCW 13.34.180 through 13.34.210;

16 (d) To approve or disapprove alternative residential placement as
17 provided in RCW 13.32A.170;

1 (e) Relating to juveniles alleged or found to have committed
2 offenses, traffic infractions, or violations as provided in RCW
3 13.40.020 through 13.40.230, unless:

4 (i) The juvenile court transfers jurisdiction of a particular
5 juvenile to adult criminal court pursuant to RCW 13.40.110; or

6 (ii) The statute of limitations applicable to adult prosecution for
7 the offense, traffic infraction, or violation has expired; or

8 (iii) The alleged offense or infraction is a traffic, fish,
9 boating, or game offense or traffic infraction committed by a juvenile
10 sixteen years of age or older and would, if committed by an adult, be
11 tried or heard in a court of limited jurisdiction, in which instance
12 the appropriate court of limited jurisdiction shall have jurisdiction
13 over the alleged offense or infraction: PROVIDED, That if such an
14 alleged offense or infraction and an alleged offense or infraction
15 subject to juvenile court jurisdiction arise out of the same event or
16 incident, the juvenile court may have jurisdiction of both matters:
17 PROVIDED FURTHER, That the jurisdiction under this subsection does not
18 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
19 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited
20 jurisdiction which confine juveniles for an alleged offense or
21 infraction may place juveniles in juvenile detention facilities under
22 an agreement with the officials responsible for the administration of
23 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

24 (iv) (A) The juvenile is sixteen or seventeen years old, the
25 alleged offense is a violent offense as defined in RCW 9.94A.030, and
26 the offender was armed with a firearm and discharged, aimed, or
27 displayed the firearm during the commission of the offense; or

28 (B) The juvenile is sixteen or seventeen years old and the alleged
29 offense is: ((+A+)) (I) A serious violent offense as defined in RCW
30 9.94A.030 committed on or after June 13, 1994; or ((+B+)) (II) a
31 violent offense as defined in RCW 9.94A.030 committed on or after June
32 13, 1994, and the juvenile has a criminal history consisting of:
33 ((+I+)) One or more prior serious violent offenses; ((+II+)) two or
34 more prior violent offenses; or ((+III+)) three or more of any
35 combination of the following offenses: Any class A felony, any class
36 B felony, vehicular assault, or manslaughter in the second degree, all
37 of which must have been committed after the juvenile's thirteenth
38 birthday and prosecuted separately. ((In such a case the adult
39 criminal court shall have exclusive original jurisdiction.))

1 If the juvenile challenges the state's determination of the
2 juvenile's criminal history, the state may establish the offender's
3 criminal history by a preponderance of the evidence. If the criminal
4 history consists of adjudications entered upon a plea of guilty, the
5 state shall not bear a burden of establishing the knowing and
6 voluntariness of the plea.

7 The adult criminal court shall have exclusive original jurisdiction
8 over offenses covered by subsection (1)(e)(iv)(A) and (B) of this
9 section. The adult criminal court shall also have exclusive original
10 jurisdiction over any charges arising out of the same incident as an
11 offense covered by subsection (1)(e)(iv)(A) and (B) of this section.
12 Any juvenile who becomes subject to adult criminal court jurisdiction
13 under subsection (1)(e)(iv) (A) and (B) of this section shall remain
14 under adult criminal court jurisdiction for all future offenses;

15 (f) Under the interstate compact on juveniles as provided in
16 chapter 13.24 RCW;

17 (g) Relating to termination of a diversion agreement under RCW
18 13.40.080, including a proceeding in which the divertee has attained
19 eighteen years of age; and

20 (h) Relating to court validation of a voluntary consent to foster
21 care placement under chapter 13.34 RCW, by the parent or Indian
22 custodian of an Indian child, except if the parent or Indian custodian
23 and child are residents of or domiciled within the boundaries of a
24 federally recognized Indian reservation over which the tribe exercises
25 exclusive jurisdiction.

26 (2) The family court shall have concurrent original jurisdiction
27 with the juvenile court over all proceedings under this section if the
28 superior court judges of a county authorize concurrent jurisdiction as
29 provided in RCW 26.12.010.

30 (3) A juvenile subject to adult superior court jurisdiction under
31 subsection (1)(e) (i) through (iv) of this section, who is detained
32 pending trial, may be detained in a county detention facility as
33 defined in RCW 13.40.020 pending sentencing or a dismissal.

34 **Sec. 2.** RCW 13.40.110 and 1990 c 3 s 303 are each amended to read
35 as follows:

36 (1) The prosecutor, respondent, or the court on its own motion may,
37 before a hearing on the information on its merits, file a motion
38 requesting the court to transfer the respondent for adult criminal

1 prosecution and the matter shall be set for a hearing on the question
2 of declining jurisdiction. Unless waived by the court, the parties,
3 and their counsel, a decline hearing shall be held where:

4 (a) The respondent is fifteen, sixteen, or seventeen years of age
5 and the information alleges a class A felony or an attempt,
6 solicitation, or conspiracy to commit a class A felony; or

7 (b) The respondent is seventeen years of age and the information
8 alleges assault in the second degree, extortion in the first degree,
9 indecent liberties, child molestation in the second degree, kidnapping
10 in the second degree, or robbery in the second degree; or

11 (c) The respondent is fourteen or fifteen years of age and the
12 information alleges that the offender committed a violent offense as
13 defined in RCW 9.94A.030 while armed with a firearm and the offender
14 discharged, aimed, or displayed the firearm during the commission of
15 the offense.

16 (2) The court after a decline hearing may order the case
17 transferred for adult criminal prosecution upon a finding that the
18 declination would be in the best interest of the juvenile or the
19 public. The court shall consider the relevant reports, facts,
20 opinions, and arguments presented by the parties and their counsel.

21 (3) When the respondent is transferred for criminal prosecution or
22 retained for prosecution in juvenile court, the court shall set forth
23 in writing its finding which shall be supported by relevant facts and
24 opinions produced at the hearing.

25 **Sec. 3.** RCW 13.40.020 and 1994 sp.s. c 7 s 520, 1994 c 271 s 803,
26 and 1994 c 261 s 18 are each reenacted and amended to read as follows:

27 For the purposes of this chapter:

28 (1) "Serious offender" means a person fifteen years of age or older
29 who has committed an offense which if committed by an adult would be:

30 (a) A class A felony, or an attempt to commit a class A felony;

31 (b) Manslaughter in the first degree; or

32 (c) Assault in the second degree, extortion in the first degree,
33 child molestation in the second degree, kidnapping in the second
34 degree, robbery in the second degree, residential burglary, or burglary
35 in the second degree, where such offenses include the infliction of
36 bodily harm upon another or where during the commission of or immediate
37 withdrawal from such an offense the perpetrator is armed with a deadly
38 weapon;

1 (2) "Community service" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender as punishment for committing an offense. Community service
4 may be performed through public or private organizations or through
5 work crews;

6 (3) "Community supervision" means an order of disposition by the
7 court of an adjudicated youth not committed to the department or an
8 order granting a deferred adjudication pursuant to RCW 13.40.125. A
9 community supervision order for a single offense may be for a period of
10 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
11 one year for other offenses. As a mandatory condition of any term of
12 community supervision, the court shall order the juvenile to refrain
13 from committing new offenses. As a mandatory condition of community
14 supervision, the court shall order the juvenile to comply with the
15 mandatory school attendance provisions of chapter 28A.225 RCW and to
16 inform the school of the existence of this requirement. Community
17 supervision is an individualized program comprised of one or more of
18 the following:

19 (a) Community-based sanctions;

20 (b) Community-based rehabilitation;

21 (c) Monitoring and reporting requirements;

22 (4) Community-based sanctions may include one or more of the
23 following:

24 (a) A fine, not to exceed one hundred dollars;

25 (b) Community service not to exceed one hundred fifty hours of
26 service;

27 (5) "Community-based rehabilitation" means one or more of the
28 following: Attendance of information classes; counseling, outpatient
29 substance abuse treatment programs, outpatient mental health programs,
30 anger management classes, education or outpatient treatment programs to
31 prevent animal cruelty, or other services; or attendance at school or
32 other educational programs appropriate for the juvenile as determined
33 by the school district. Placement in community-based rehabilitation
34 programs is subject to available funds;

35 (6) "Monitoring and reporting requirements" means one or more of
36 the following: Curfews; requirements to remain at home, school, work,
37 or court-ordered treatment programs during specified hours;
38 restrictions from leaving or entering specified geographical areas;
39 requirements to report to the probation officer as directed and to

1 remain under the probation officer's supervision; and other conditions
2 or limitations as the court may require which may not include
3 confinement;

4 (7) "Confinement" means physical custody by the department of
5 social and health services in a facility operated by or pursuant to a
6 contract with the state, or physical custody in a detention facility
7 operated by or pursuant to a contract with any county. The county may
8 operate or contract with vendors to operate county detention
9 facilities. The department may operate or contract to operate
10 detention facilities for juveniles committed to the department.
11 Pretrial confinement or confinement of less than thirty-one days
12 imposed as part of a disposition or modification order may be served
13 consecutively or intermittently, in the discretion of the court;

14 (8) "Court", when used without further qualification, means the
15 juvenile court judge(s) or commissioner(s);

16 (9) "Criminal history" includes all criminal complaints against the
17 respondent for which, prior to the commission of a current offense:

18 (a) The allegations were found correct by a court. If a respondent
19 is convicted of two or more charges arising out of the same course of
20 conduct, only the highest charge from among these shall count as an
21 offense for the purposes of this chapter; or

22 (b) The criminal complaint was diverted by a prosecutor pursuant to
23 the provisions of this chapter on agreement of the respondent and after
24 an advisement to the respondent that the criminal complaint would be
25 considered as part of the respondent's criminal history. A
26 successfully completed deferred adjudication shall not be considered
27 part of the respondent's criminal history;

28 (10) "Department" means the department of social and health
29 services;

30 (11) "Detention facility" means a county facility, paid for by the
31 county, for the physical confinement of a juvenile alleged to have
32 committed an offense or an adjudicated offender subject to a
33 disposition or modification order. "Detention facility" includes
34 county group homes, inpatient substance abuse programs, juvenile basic
35 training camps, and electronic monitoring;

36 (12) "Diversion unit" means any probation counselor who enters into
37 a diversion agreement with an alleged youthful offender, or any other
38 person, community accountability board, or other entity except a law
39 enforcement official or entity, with whom the juvenile court

1 administrator has contracted to arrange and supervise such agreements
2 pursuant to RCW 13.40.080, or any person, community accountability
3 board, or other entity specially funded by the legislature to arrange
4 and supervise diversion agreements in accordance with the requirements
5 of this chapter. For purposes of this subsection, "community
6 accountability board" means a board comprised of members of the local
7 community in which the juvenile offender resides. The superior court
8 shall appoint the members. The boards shall consist of at least three
9 and not more than seven members. If possible, the board should include
10 a variety of representatives from the community, such as a law
11 enforcement officer, teacher or school administrator, high school
12 student, parent, and business owner, and should represent the cultural
13 diversity of the local community;

14 (13) "Institution" means a juvenile facility established pursuant
15 to chapters 72.05 and 72.16 through 72.20 RCW;

16 (14) "Juvenile," "youth," and "child" mean any individual who is
17 under the chronological age of eighteen years and who has ~~((not))~~
18 neither been previously transferred to adult court pursuant to RCW
19 13.40.110 ~~((or who is otherwise under))~~ nor ever been subject to adult
20 criminal court jurisdiction pursuant to RCW 13.04.030(1)(e)(iv);

21 (15) "Juvenile offender" means any juvenile who has been found by
22 the juvenile court to have committed an offense, including a person
23 eighteen years of age or older over whom jurisdiction has been extended
24 under RCW 13.40.300;

25 (16) "Manifest injustice" means a disposition that would either
26 impose an excessive penalty on the juvenile or would impose a serious,
27 and clear danger to society in light of the purposes of this chapter;

28 (17) "Middle offender" means a person who has committed an offense
29 and who is neither a minor or first offender nor a serious offender;

30 (18) "Minor or first offender" means a person whose current
31 offense(s) and criminal history fall entirely within one of the
32 following categories:

33 (a) Four misdemeanors;

34 (b) Two misdemeanors and one gross misdemeanor;

35 (c) One misdemeanor and two gross misdemeanors; and

36 (d) Three gross misdemeanors.

37 For purposes of this definition, current violations shall be
38 counted as misdemeanors;

1 (19) "Offense" means an act designated a violation or a crime if
2 committed by an adult under the law of this state, under any ordinance
3 of any city or county of this state, under any federal law, or under
4 the law of another state if the act occurred in that state;

5 (20) "Respondent" means a juvenile who is alleged or proven to have
6 committed an offense;

7 (21) "Restitution" means financial reimbursement by the offender to
8 the victim, and shall be limited to easily ascertainable damages for
9 injury to or loss of property, actual expenses incurred for medical
10 treatment for physical injury to persons, lost wages resulting from
11 physical injury, and costs of the victim's counseling reasonably
12 related to the offense if the offense is a sex offense. Restitution
13 shall not include reimbursement for damages for mental anguish, pain
14 and suffering, or other intangible losses. Nothing in this chapter
15 shall limit or replace civil remedies or defenses available to the
16 victim or offender;

17 (22) "Secretary" means the secretary of the department of social
18 and health services. "Assistant secretary" means the assistant
19 secretary for juvenile rehabilitation for the department;

20 (23) "Services" mean services which provide alternatives to
21 incarceration for those juveniles who have pleaded or been adjudicated
22 guilty of an offense or have signed a diversion agreement pursuant to
23 this chapter;

24 (24) "Sex offense" means an offense defined as a sex offense in RCW
25 9.94A.030;

26 (25) "Sexual motivation" means that one of the purposes for which
27 the respondent committed the offense was for the purpose of his or her
28 sexual gratification;

29 (26) "Foster care" means temporary physical care in a foster family
30 home or group care facility as defined in RCW 74.15.020 and licensed by
31 the department, or other legally authorized care;

32 (27) "Violation" means an act or omission, which if committed by an
33 adult, must be proven beyond a reasonable doubt, and is punishable by
34 sanctions which do not include incarceration;

35 (28) "Violent offense" means a violent offense as defined in RCW
36 9.94A.030.

37 **Sec. 4.** RCW 9.94A.030 and 1994 c 261 s 16 are each amended to read
38 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

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

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

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

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

29 (7) "Community supervision" means a period of time during which a
30 convicted offender is subject to crime-related prohibitions and other
31 sentence conditions imposed by a court pursuant to this chapter or RCW
32 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
33 may include crime-related prohibitions and other conditions imposed
34 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
35 for out-of-state supervision of parolees and probationers, RCW
36 9.95.270, community supervision is the functional equivalent of
37 probation and should be considered the same as probation by other
38 states.

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

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

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

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

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

32 (b) "Criminal history" shall always include juvenile convictions
33 for sex offenses and shall also include a defendant's other prior
34 convictions in juvenile court if: (i) The conviction was for an
35 offense which is a felony or a serious traffic offense and is criminal
36 history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen
37 years of age or older at the time the offense was committed; and (iii)
38 with respect to prior juvenile class B and C felonies or serious
39 traffic offenses, the defendant was less than twenty-three years of age

1 at the time the offense for which he or she is being sentenced was
2 committed.

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

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

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

24 (16) "Drug offense" means:

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

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

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

34 (17) "Escape" means:

35 (a) Escape in the first degree (RCW 9A.76.110), escape in the
36 second degree (RCW 9A.76.120), willful failure to return from furlough
37 (RCW 72.66.060), willful failure to return from work release (RCW
38 72.65.070), or willful failure to be available for supervision by the
39 department while in community custody (RCW 72.09.310); or

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

4 (18) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

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

11 (19) "Fines" means the requirement that the offender pay a specific
12 sum of money over a specific period of time to the court.

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

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

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

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

33 (b) Assault in the second degree;

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

35 (d) Child molestation in the second degree;

36 (e) Controlled substance homicide;

37 (f) Extortion in the first degree;

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

39 (h) Indecent liberties;

1 (i) Kidnapping in the second degree;
2 (j) Leading organized crime;
3 (k) Manslaughter in the first degree;
4 (l) Manslaughter in the second degree;
5 (m) Promoting prostitution in the first degree;
6 (n) Rape in the third degree;
7 (o) Robbery in the second degree;
8 (p) Sexual exploitation;
9 (q) Vehicular assault;
10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
14 (s) Any other class B felony offense with a finding of sexual
15 motivation, as "sexual motivation" is defined under this section;
16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.125;
18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection.
23 (22) "Nonviolent offense" means an offense which is not a violent
24 offense.
25 (23) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older ~~((or))~~.
27 "Offender" also means a person who is less than eighteen years of age
28 ((but)) whose case has been transferred by the appropriate juvenile
29 court to a criminal court pursuant to RCW 13.40.110 or who is under
30 adult criminal court jurisdiction pursuant to RCW 13.04.030(1)(e)(iv).
31 Throughout this chapter, the terms "offender" and "defendant" are used
32 interchangeably.
33 (24) "Partial confinement" means confinement for no more than one
34 year in a facility or institution operated or utilized under contract
35 by the state or any other unit of government, or, if home detention or
36 work crew has been ordered by the court, in an approved residence, for
37 a substantial portion of each day with the balance of the day spent in
38 the community. Partial confinement includes work release, home

1 detention, work crew, and a combination of work crew and home detention
2 as defined in this section.

3 (25) "Persistent offender" is an offender who:

4 (a) Has been convicted in this state of any felony considered a
5 most serious offense; and

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

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

16 (27) "Restitution" means the requirement that the offender pay a
17 specific sum of money over a specific period of time to the court as
18 payment of damages. The sum may include both public and private costs.
19 The imposition of a restitution order does not preclude civil redress.

20 (28) "Serious traffic offense" means:

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

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

29 (29) "Serious violent offense" is a subcategory of violent offense
30 and means:

31 (a) Murder in the first degree, homicide by abuse, murder in the
32 second degree, assault in the first degree, kidnapping in the first
33 degree, or rape in the first degree, assault of a child in the first
34 degree, or an attempt, criminal solicitation, or criminal conspiracy to
35 commit one of these felonies; or

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

1 (30) "Sentence range" means the sentencing court's discretionary
2 range in imposing a nonappealable sentence.

3 (31) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
5 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
6 attempt, criminal solicitation, or criminal conspiracy to commit such
7 crimes;

8 (b) A felony with a finding of sexual motivation under RCW
9 9.94A.127; or

10 (c) 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 (32) "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 (33) "Total confinement" means confinement inside the physical
17 boundaries of a facility or institution operated or utilized under
18 contract by the state or any other unit of government for twenty-four
19 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

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

29 (36) "Violent offense" means:

30 (a) Any of the following felonies, as now existing or hereafter
31 amended: Any felony defined under any law as a class A felony or an
32 attempt to commit a class A felony, criminal solicitation of or
33 criminal conspiracy to commit a class A felony, manslaughter in the
34 first degree, manslaughter in the second degree, indecent liberties if
35 committed by forcible compulsion, kidnapping in the second degree,
36 arson in the second degree, assault in the second degree, assault of a
37 child in the second degree, extortion in the first degree, robbery in
38 the second degree, vehicular assault, and vehicular homicide, when
39 proximately caused by the driving of any vehicle by any person while

1 under the influence of intoxicating liquor or any drug as defined by
2 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

9 (37) "Work crew" means a program of partial confinement consisting
10 of civic improvement tasks for the benefit of the community of not less
11 than thirty-five hours per week that complies with RCW 9.94A.135. The
12 civic improvement tasks shall have minimal negative impact on existing
13 private industries or the labor force in the county where the service
14 or labor is performed. The civic improvement tasks shall not affect
15 employment opportunities for people with developmental disabilities
16 contracted through sheltered workshops as defined in RCW 82.04.385.
17 Only those offenders sentenced to a facility operated or utilized under
18 contract by a county or the state are eligible to participate on a work
19 crew. Offenders sentenced for a sex offense as defined in subsection
20 (31) of this section are not eligible for the work crew program.

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

27 (39) "Work release" means a program of partial confinement
28 available to offenders who are employed or engaged as a student in a
29 regular course of study at school. Participation in work release shall
30 be conditioned upon the offender attending work or school at regularly
31 defined hours and abiding by the rules of the work release facility.

32 (40) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance. Home detention may not
35 be imposed for offenders convicted of a violent offense, any sex
36 offense, any drug offense, reckless burning in the first or second
37 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
38 degree as defined in RCW 9A.36.031, assault of a child in the third
39 degree, unlawful imprisonment as defined in RCW 9A.40.040, or

1 harassment as defined in RCW 9A.46.020. Home detention may be imposed
2 for offenders convicted of possession of a controlled substance (RCW
3 69.50.401(d)) or forged prescription for a controlled substance (RCW
4 69.50.403) if the offender fulfills the participation conditions set
5 forth in this subsection and is monitored for drug use by treatment
6 alternatives to street crime (TASC) or a comparable court or agency-
7 referred program.

8 (a) Home detention may be imposed for offenders convicted of
9 burglary in the second degree as defined in RCW 9A.52.030 or
10 residential burglary conditioned upon the offender: (i) Successfully
11 completing twenty-one days in a work release program, (ii) having no
12 convictions for burglary in the second degree or residential burglary
13 during the preceding two years and not more than two prior convictions
14 for burglary or residential burglary, (iii) having no convictions for
15 a violent felony offense during the preceding two years and not more
16 than two prior convictions for a violent felony offense, (iv) having no
17 prior charges of escape, and (v) fulfilling the other conditions of the
18 home detention program.

19 (b) Participation in a home detention program shall be conditioned
20 upon: (i) The offender obtaining or maintaining current employment or
21 attending a regular course of school study at regularly defined hours,
22 or the offender performing parental duties to offspring or minors
23 normally in the custody of the offender, (ii) abiding by the rules of
24 the home detention program, and (iii) compliance with court-ordered
25 legal financial obligations. The home detention program may also be
26 made available to offenders whose charges and convictions do not
27 otherwise disqualify them if medical or health-related conditions,
28 concerns or treatment would be better addressed under the home
29 detention program, or where the health and welfare of the offender,
30 other inmates, or staff would be jeopardized by the offender's
31 incarceration. Participation in the home detention program for medical
32 or health-related reasons is conditioned on the offender abiding by the
33 rules of the home detention program and complying with court-ordered
34 restitution.

35 NEW SECTION. **Sec. 5.** This act shall apply to offenses committed
36 on or after the effective date of this act.

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