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SENATE BILL 5063

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State of Washington                      54th Legislature                      1995 Regular Session

By Senators Fairley, Haugen, McCaslin, Quigley, Hochstatter and Oke

Read first time 01/09/95. Referred to Committee on Law & Justice.

1            AN ACT Relating to persistent offenders; amending RCW 9.94A.030;  
2 and prescribing penalties.

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

4            **Sec. 1.** RCW 9.94A.030 and 1994 c 261 s 16 are each amended to read  
5 as follows:

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

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

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

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

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

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

12 (6) "Community service" means compulsory service, without  
13 compensation, performed for the benefit of the community by the  
14 offender.

15 (7) "Community supervision" means a period of time during which a  
16 convicted offender is subject to crime-related prohibitions and other  
17 sentence conditions imposed by a court pursuant to this chapter or RCW  
18 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
19 may include crime-related prohibitions and other conditions imposed  
20 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
21 for out-of-state supervision of parolees and probationers, RCW  
22 9.95.270, community supervision is the functional equivalent of  
23 probation and should be considered the same as probation by other  
24 states.

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

27 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
28 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
29 acceptance of a plea of guilty.

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

1 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
2 legal financial obligations may also include payment to a public agency  
3 of the expense of an emergency response to the incident resulting in  
4 the conviction, subject to the provisions in RCW 38.52.430.

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

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

17 (b) "Criminal history" shall always include juvenile convictions  
18 for sex offenses and shall also include a defendant's other prior  
19 convictions in juvenile court if: (i) The conviction was for an  
20 offense which is a felony or a serious traffic offense and is criminal  
21 history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen  
22 years of age or older at the time the offense was committed; and (iii)  
23 with respect to prior juvenile class B and C felonies or serious  
24 traffic offenses, the defendant was less than twenty-three years of age  
25 at the time the offense for which he or she is being sentenced was  
26 committed.

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

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

36 (15) "Disposable earnings" means that part of the earnings of an  
37 individual remaining after the deduction from those earnings of any  
38 amount required by law to be withheld. For the purposes of this  
39 definition, "earnings" means compensation paid or payable for personal

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

9 (16) "Drug offense" means:

10 (a) Any felony violation of chapter 69.50 RCW except possession of  
11 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
12 controlled substance (RCW 69.50.403);

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

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

19 (17) "Escape" means:

20 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
21 second degree (RCW 9A.76.120), willful failure to return from furlough  
22 (RCW 72.66.060), willful failure to return from work release (RCW  
23 72.65.070), or willful failure to be available for supervision by the  
24 department while in community custody (RCW 72.09.310); or

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

28 (18) "Felony traffic offense" means:

29 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
30 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
31 and-run injury-accident (RCW 46.52.020(4)); 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 felony  
34 traffic offense under (a) of this subsection.

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

37 (20)(a) "First-time offender" means any person who is convicted of  
38 a felony (i) not classified as a violent offense or a sex offense under  
39 this chapter, or (ii) that is not the manufacture, delivery, or

1 possession with intent to manufacture or deliver a controlled substance  
2 classified in schedule I or II that is a narcotic drug or the selling  
3 for profit of any controlled substance or counterfeit substance  
4 classified in schedule I, RCW 69.50.204, except leaves and flowering  
5 tops of marihuana, and except as provided in (b) of this subsection,  
6 who previously has never been convicted of a felony in this state,  
7 federal court, or another state, and who has never participated in a  
8 program of deferred prosecution for a felony offense.

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

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

15 (a) Any felony defined under any law as a class A felony or  
16 criminal solicitation of or criminal conspiracy to commit a class A  
17 felony;

18 (b) Assault in the second degree;

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

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

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

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

33 (q) Vehicular assault;

34 (r) Vehicular homicide, when proximately caused by the driving of  
35 any vehicle by any person while under the influence of intoxicating  
36 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
37 any vehicle in a reckless manner;

38 (s) Any other class B felony offense with a finding of sexual  
39 motivation, as "sexual motivation" is defined under this section;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.125;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection.

8 (22) "Nonviolent offense" means an offense which is not a violent  
9 offense.

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

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

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

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

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

36 (b)(i) Has been convicted in this state of a sex offense involving  
37 a victim who is a minor; and

38 (ii) Has, before the commission of the offense under (b)(i) of this  
39 subsection, been convicted as an offender on at least one occasion,

1 whether in this state or elsewhere, of a felony that under the laws of  
2 this state would be considered a sex offense involving a victim who is  
3 a minor and would be included in the offender score under RCW  
4 9.94A.360.

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

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

11 (28) "Serious traffic offense" means:

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

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

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

22 (a) Murder in the first degree, homicide by abuse, murder in the  
23 second degree, assault in the first degree, kidnapping in the first  
24 degree, or rape in the first degree, assault of a child in the first  
25 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
26 commit one of these felonies; or

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

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

32 (31) "Sex offense" means:

33 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
34 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
35 attempt, criminal solicitation, or criminal conspiracy to commit such  
36 crimes;

37 (b) A felony with a finding of sexual motivation under RCW  
38 9.94A.127; or

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

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

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

11 (34) "Transition training" means written and verbal instructions  
12 and assistance provided by the department to the offender during the  
13 two weeks prior to the offender's successful completion of the work  
14 ethic camp program. The transition training shall include instructions  
15 in the offender's requirements and obligations during the offender's  
16 period of community custody.

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

20 (36) "Violent offense" means:

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

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

36 (c) 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 violent  
38 offense under (a) or (b) of this subsection.



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

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

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

24 (40) "Home detention" means a program of partial confinement  
25 available to offenders wherein the offender is confined in a private  
26 residence subject to electronic surveillance. Home detention may not  
27 be imposed for offenders convicted of a violent offense, any sex  
28 offense, any drug offense, reckless burning in the first or second  
29 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
30 degree as defined in RCW 9A.36.031, assault of a child in the third  
31 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
32 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
33 for offenders convicted of possession of a controlled substance (RCW  
34 69.50.401(d)) or forged prescription for a controlled substance (RCW  
35 69.50.403) if the offender fulfills the participation conditions set  
36 forth in this subsection and is monitored for drug use by treatment  
37 alternatives to street crime (TASC) or a comparable court or agency-  
38 referred program.

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

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

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