

2 2SSB 5419 - S AMD to S AMD (S2675.3)

3 By Senator Benton

4 NOT ADOPTED 04/12/01

5 On page 10, after line 10, insert the following:

6 "NEW SECTION. **Sec. 3.** RCW 9.94A.030 and 2000 c. 28 s. 2 are  
7 amended to read as follows:

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

10 (1) "Collect," or any derivative thereof, "collect and remit," or  
11 "collect and deliver," when used with reference to the department,  
12 means that the department, either directly or through a collection  
13 agreement authorized by RCW 9.94A.145, is responsible for monitoring  
14 and enforcing the offender's sentence with regard to the legal  
15 financial obligation, receiving payment thereof from the offender,  
16 and, consistent with current law, delivering daily the entire payment  
17 to the superior court clerk without depositing it in a departmental  
18 account.

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

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

24 (4) "Community custody" means that portion of an offender's  
25 sentence of confinement in lieu of earned release time or imposed  
26 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,  
27 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the  
28 community subject to controls placed on the offender's movement and  
29 activities by the department. For offenders placed on community  
30 custody for crimes committed on or after July 1, 2000, the department  
31 shall assess the offender's risk of reoffense and may establish and  
32 modify conditions of community custody, in addition to those imposed  
33 by the court, based upon the risk to community safety.

34 (5) "Community custody range" means the minimum and maximum  
35 period of community custody included as part of a sentence under RCW

1 9.94A.715, as established by the commission or the legislature under  
2 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

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

14 (8) "Community supervision" means a period of time during which a  
15 convicted offender is subject to crime-related prohibitions and other  
16 sentence conditions imposed by a court pursuant to this chapter or  
17 RCW 16.52.200(6) or 46.61.524. Where the court finds that any  
18 offender has a chemical dependency that has contributed to his or her  
19 offense, the conditions of supervision may, subject to available  
20 resources, include treatment. 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 (9) "Confinement" means total or partial confinement.

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

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

37 (12) "Criminal history" means the list of a defendant's prior  
38 convictions and juvenile adjudications, whether in this state, in  
39 federal court, or elsewhere. The history shall include, where known,

1 for each conviction (a) whether the defendant has been placed on  
2 probation and the length and terms thereof; and (b) whether the  
3 defendant has been incarcerated and the length of incarceration.

4 (13) "Day fine" means a fine imposed by the sentencing court that  
5 equals the difference between the offender's net daily income and the  
6 reasonable obligations that the offender has for the support of the  
7 offender and any dependents.

8 (14) "Day reporting" means a program of enhanced supervision  
9 designed to monitor the offender's daily activities and compliance  
10 with sentence conditions, and in which the offender is required to  
11 report daily to a specific location designated by the department or  
12 the sentencing court.

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

14 (16) "Determinate sentence" means a sentence that states with  
15 exactitude the number of actual years, months, or days of total  
16 confinement, of partial confinement, of community supervision, the  
17 number of actual hours or days of community service work, or dollars  
18 or terms of a legal financial obligation. The fact that an offender  
19 through earned release can reduce the actual period of confinement  
20 shall not affect the classification of the sentence as a determinate  
21 sentence.

22 (17) "Disposable earnings" means that part of the earnings of an  
23 offender remaining after the deduction from those earnings of any  
24 amount required by law to be withheld. For the purposes of this  
25 definition, "earnings" means compensation paid or payable for  
26 personal services, whether denominated as wages, salary, commission,  
27 bonuses, or otherwise, and, notwithstanding any other provision of  
28 law making the payments exempt from garnishment, attachment, or other  
29 process to satisfy a court-ordered legal financial obligation,  
30 specifically includes periodic payments pursuant to pension or  
31 retirement programs, or insurance policies of any type, but does not  
32 include payments made under Title 50 RCW, except as provided in RCW  
33 50.40.020 and 50.40.050, or Title 74 RCW.

34 (18) "Drug offender sentencing alternative" is a sentencing  
35 option available to persons convicted of a felony offense other than  
36 a violent offense or a sex offense and who are eligible for the  
37 option under RCW 9.94A.660.

38 (19) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession  
2 of a controlled substance (RCW 69.50.401(d)) or forged prescription  
3 for a controlled substance (RCW 69.50.403);

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

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

10 (20) "Earned release" means earned release from confinement as  
11 provided in RCW 9.94A.150.

12 (21) "Escape" means:

13 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
14 second degree (RCW 9A.76.120), willful failure to return from  
15 furlough (RCW 72.66.060), willful failure to return from work release  
16 (RCW 72.65.070), or willful failure to be available for supervision  
17 by the department while in community custody (RCW 72.09.310); or

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

21 (22) "Felony traffic offense" means:

22 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
23 46.61.522), eluding a police officer (RCW 46.61.024), or felony  
24 hit-and-run injury-accident (RCW 46.52.020(4)); 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 a felony  
27 traffic offense under (a) of this subsection.

28 (23) "Fine" means a specific sum of money ordered by the  
29 sentencing court to be paid by the offender to the court over a  
30 specific period of time.

31 (24) "First-time offender" means any person who has no prior  
32 convictions for a felony and is eligible for the first-time offender  
33 waiver under RCW 9.94A.650.

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

37 (26) "Legal financial obligation" means a sum of money that is  
38 ordered by a superior court of the state of Washington for legal  
39 financial obligations which may include restitution to the victim,

1 statutorily imposed crime victims' compensation fees as assessed  
2 pursuant to RCW 7.68.035, court costs, county or interlocal drug  
3 funds, court-appointed attorneys' fees, and costs of defense, fines,  
4 and any other financial obligation that is assessed to the offender  
5 as a result of a felony conviction. Upon conviction for vehicular  
6 assault while under the influence of intoxicating liquor or any drug,  
7 RCW 46.61.522(1)(b), or vehicular homicide while under the influence  
8 of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal  
9 financial obligations may also include payment to a public agency of  
10 the expense of an emergency response to the incident resulting in the  
11 conviction, subject to RCW 38.52.430.

12 (27) "Most serious offense" means any of the following felonies  
13 or a felony attempt to commit any of the following felonies:

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

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Manufacture, delivery, or possession with intent to deliver  
29 heroin, cocaine, or methamphetamine;

30 ~~((m))~~ (n) Promoting prostitution in the first degree;

31 ~~((n))~~ (o) Rape in the third degree;

32 ~~((o))~~ (p) Robbery in the second degree;

33 ~~((p))~~ (q) Sexual exploitation;

34 ~~((q))~~ (r) Vehicular assault;

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

1           (~~(s)~~)(t) Any other class B felony offense with a finding of  
2 sexual motivation;

3           (~~(t)~~)(u) Any other felony with a deadly weapon verdict under  
4 RCW 9.94A.125;

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

10           (~~(v)~~)(w)(i) A prior conviction for indecent liberties under  
11 \*RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st  
12 ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a),  
13 (b), and (c) as it existed from July 1, 1979, until June 11, 1986,  
14 and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11,  
15 1986, until July 1, 1988;

16           (ii) A prior conviction for indecent liberties under RCW  
17 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
18 if: (A) The crime was committed against a child under the age of  
19 fourteen; or (B) the relationship between the victim and perpetrator  
20 is included in the definition of indecent liberties under RCW  
21 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27,  
22 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25,  
23 1993, through July 27, 1997.

24           (28) "Nonviolent offense" means an offense which is not a violent  
25 offense.

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

33           (30) "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  
36 or work crew has been ordered by the court, in an approved residence,  
37 for a substantial portion of each day with the balance of the day  
38 spent in the community. Partial confinement includes work release,

1 home detention, work crew, and a combination of work crew and home  
2 detention.

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

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

6 (ii) 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; or

14 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
15 of a child in the first degree, child molestation in the first  
16 degree, rape in the second degree, rape of a child in the second  
17 degree, or indecent liberties by forcible compulsion; (B) murder in  
18 the first degree, murder in the second degree, homicide by abuse,  
19 kidnapping in the first degree, kidnapping in the second degree,  
20 assault in the first degree, assault in the second degree, assault of  
21 a child in the first degree, or burglary in the first degree, with a  
22 finding of sexual motivation; or (C) an attempt to commit any crime  
23 listed in this subsection (31)(b)(i); and

24 (ii) Has, before the commission of the offense under (b)(i) of  
25 this subsection, been convicted as an offender on at least one  
26 occasion, whether in this state or elsewhere, of an offense listed in  
27 (b)(i) of this subsection. A conviction for rape of a child in the  
28 first degree constitutes a conviction under (b)(i) of this subsection  
29 only when the offender was sixteen years of age or older when the  
30 offender committed the offense. A conviction for rape of a child in  
31 the second degree constitutes a conviction under (b)(i) of this  
32 subsection only when the offender was eighteen years of age or older  
33 when the offender committed the offense.

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

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

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

9 (35) "Serious traffic offense" means:

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

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

18 (36) "Serious violent offense" is a subcategory of violent  
19 offense and means:

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

21 (ii) Homicide by abuse;

22 (iii) Murder in the second degree;

23 (iv) Manslaughter in the first degree;

24 (v) Assault in the first degree;

25 (vi) Kidnapping in the first degree;

26 (vii) Rape in the first degree;

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

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

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

33 (37) "Sex offense" means:

34 (a) A felony that is a violation of:

35 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

36 (ii) RCW 9A.64.020;

37 (iii) RCW 9.68A.090; or



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

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

7 (c) A felony with a finding of sexual motivation under RCW  
8 9.94A.127 or 13.40.135; or

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

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

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

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

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

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

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

35 (44) "Violent offense" means:

36 (a) Any of the following felonies:

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

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault; and

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

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

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

24 (45) "Work crew" means a program of partial confinement  
25 consisting of civic improvement tasks for the benefit of the  
26 community that complies with RCW 9.94A.135.

27 (46) "Work ethic camp" means an alternative incarceration program  
28 as provided in RCW 9.94A.137 designed to reduce recidivism and lower  
29 the cost of corrections by requiring offenders to complete a  
30 comprehensive array of real-world job and vocational experiences,  
31 character-building work ethics training, life management skills  
32 development, substance abuse rehabilitation, counseling, literacy  
33 training, and basic adult education.

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

1           On page 17, line 22 of the title amendment, after "9.94A.360;"  
2 insert "amending RCW 9.94A.030;".

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

« END «

**EFFECT:** Makes manufacture, delivery, or possession with intent to deliver heroin or cocaine a "3 strikes" offense.