
SENATE BILL 5013

State of Washington

57th Legislature

2001 Regular Session

By Senators McCaslin, Haugen and Long

Read first time 01/08/2001. Referred to Committee on Judiciary.

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

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

4 **Sec. 1.** RCW 9.94A.030 and 2000 c 28 s 2 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,
10 means that the department, either directly or through a collection
11 agreement authorized by RCW 9.94A.145, is responsible for monitoring
12 and enforcing the offender's sentence with regard to the legal
13 financial obligation, receiving payment thereof from the offender, and,
14 consistent with current law, delivering daily the entire payment to the
15 superior court clerk without depositing it in a departmental account.

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

17 (3) "Community corrections officer" means an employee of the
18 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

3 (4) "Community custody" means that portion of an offender's
4 sentence of confinement in lieu of earned release time or imposed
5 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
6 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
7 community subject to controls placed on the offender's movement and
8 activities by the department. For offenders placed on community
9 custody for crimes committed on or after July 1, 2000, the department
10 shall assess the offender's risk of reoffense and may establish and
11 modify conditions of community custody, in addition to those imposed by
12 the court, based upon the risk to community safety.

13 (5) "Community custody range" means the minimum and maximum period
14 of community custody included as part of a sentence under RCW
15 9.94A.715, as established by the commission or the legislature under
16 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

24 (7) "Community service" means compulsory service, without
25 compensation, performed for the benefit of the community by the
26 offender.

27 (8) "Community supervision" means a period of time during which a
28 convicted offender is subject to crime-related prohibitions and other
29 sentence conditions imposed by a court pursuant to this chapter or RCW
30 16.52.200(6) or 46.61.524. Where the court finds that any offender has
31 a chemical dependency that has contributed to his or her offense, the
32 conditions of supervision may, subject to available resources, include
33 treatment. For purposes of the interstate compact for out-of-state
34 supervision of parolees and probationers, RCW 9.95.270, community
35 supervision is the functional equivalent of probation and should be
36 considered the same as probation by other states.

37 (9) "Confinement" means total or partial confinement.

1 (10) "Conviction" means an adjudication of guilt pursuant to Titles
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
3 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

12 (19) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of
14 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
15 controlled substance (RCW 69.50.403);

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

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

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

24 (21) "Escape" means:

25 (a) Escape in the first degree (RCW 9A.76.110), escape in the
26 second degree (RCW 9A.76.120), willful failure to return from furlough
27 (RCW 72.66.060), willful failure to return from work release (RCW
28 72.65.070), or willful failure to be available for supervision by the
29 department while in community custody (RCW 72.09.310); 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 an escape
32 under (a) of this subsection.

33 (22) "Felony traffic offense" means:

34 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
35 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
36 and-run injury-accident (RCW 46.52.020(4)); 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 a felony
39 traffic offense under (a) of this subsection.

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

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

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

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

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

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

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

1 (m) Promoting prostitution in the first degree;
2 (n) Rape in the third degree;
3 (o) Robbery in the second degree;
4 (p) Sexual exploitation;
5 (q) Vehicular assault;
6 (r) Vehicular homicide, when proximately caused by the driving of
7 any vehicle by any person while under the influence of intoxicating
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
9 any vehicle in a reckless manner;
10 (s) Any other class B felony offense with a finding of sexual
11 motivation;
12 (t) Any other felony with a deadly weapon verdict under RCW
13 9.94A.125;
14 (u) Any felony offense in effect at any time prior to December 2,
15 1993, that is comparable to a most serious offense under this
16 subsection, or any federal or out-of-state conviction for an offense
17 that under the laws of this state would be a felony classified as a
18 most serious offense under this subsection;
19 (v)(i) A prior conviction for indecent liberties under RCW
20 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
21 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
22 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
23 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
24 (ii) A prior conviction for indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
26 if: (A) The crime was committed against a child under the age of
27 fourteen; or (B) the relationship between the victim and perpetrator is
28 included in the definition of indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
30 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
31 through July 27, 1997.
32 (28) "Nonviolent offense" means an offense which is not a violent
33 offense.
34 (29) "Offender" means a person who has committed a felony
35 established by state law and is eighteen years of age or older or is
36 less than eighteen years of age but whose case is under superior court
37 jurisdiction under RCW 13.04.030 or has been transferred by the
38 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 (30) "Partial confinement" means confinement for no more than one
4 year in a facility or institution operated or utilized under contract
5 by the state or any other unit of government, or, if home detention or
6 work crew has been ordered by the court, in an approved residence, for
7 a substantial portion of each day with the balance of the day spent in
8 the community. Partial confinement includes work release, home
9 detention, work crew, and a combination of work crew and home
10 detention.

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

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

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.360; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) murder in the first
26 degree, murder in the second degree, homicide by abuse, kidnapping in
27 the first degree, kidnapping in the second degree, assault in the first
28 degree, assault in the second degree, assault of a child in the first
29 degree, or burglary in the first degree, with a finding of sexual
30 motivation; or (C) an attempt to commit any crime listed in this
31 subsection (31)(b)(i); and

32 (ii) Has, before the commission of the offense under (b)(i) of this
33 subsection, been convicted as an offender on at least one occasion,
34 whether in this state or elsewhere, of an offense listed in (b)(i) of
35 this subsection or an out-of-state offense or offense under prior
36 Washington law that is comparable to the offenses listed in (b)(i) of
37 this subsection. A conviction for rape of a child in the first degree
38 constitutes a conviction under (b)(i) of this subsection only when the
39 offender was sixteen years of age or older when the offender committed

1 the offense. A conviction for rape of a child in the second degree
2 constitutes a conviction under (b)(i) of this subsection only when the
3 offender was eighteen years of age or older when the offender committed
4 the offense.

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

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

11 (34) "Risk assessment" means the application of an objective
12 instrument supported by research and adopted by the department for the
13 purpose of assessing an offender's risk of reoffense, taking into
14 consideration the nature of the harm done by the offender, place and
15 circumstances of the offender related to risk, the offender's
16 relationship to any victim, and any information provided to the
17 department by victims. The results of a risk assessment shall not be
18 based on unconfirmed or unconfirmable allegations.

19 (35) "Serious traffic offense" means:

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

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

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

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

31 (ii) Homicide by abuse;

32 (iii) Murder in the second degree;

33 (iv) Manslaughter in the first degree;

34 (v) Assault in the first degree;

35 (vi) Kidnapping in the first degree;

36 (vii) Rape in the first degree;

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

38 (ix) An attempt, criminal solicitation, or criminal conspiracy to
39 commit one of these felonies; 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 a serious
3 violent offense under (a) of this subsection.

4 (37) "Sex offense" means:

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

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

7 (ii) RCW 9A.64.020;

8 (iii) RCW 9.68A.090; or

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

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

14 (c) A felony with a finding of sexual motivation under RCW
15 9.94A.127 or 13.40.135; or

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

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

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

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

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

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

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

4 (44) "Violent offense" means:

5 (a) Any of the following felonies:

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

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

10 (iii) Manslaughter in the first degree;

11 (iv) Manslaughter in the second degree;

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

13 (vi) Kidnapping in the second degree;

14 (vii) Arson in the second degree;

15 (viii) Assault in the second degree;

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

17 (x) Extortion in the first degree;

18 (xi) Robbery in the second degree;

19 (xii) Drive-by shooting;

20 (xiii) Vehicular assault; and

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

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

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

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

34 (46) "Work ethic camp" means an alternative incarceration program
35 as provided in RCW 9.94A.137 designed to reduce recidivism and lower
36 the cost of corrections by requiring offenders to complete a
37 comprehensive array of real-world job and vocational experiences,
38 character-building work ethics training, life management skills

1 development, substance abuse rehabilitation, counseling, literacy
2 training, and basic adult education.

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

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