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SENATE BILL 6360

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State of Washington

54th Legislature

1996 Regular Session

By Senators Kohl, Prentice, Pelz and Fairley

Read first time 01/12/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to first-time offenders; reenacting and amending  
2 RCW 9.94A.030; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that there is strong  
5 public support for use of first offender waiver programs for those  
6 charged with nonviolent offenses. The legislature finds that the first  
7 offender waiver program results in significant savings of public funds.  
8 The legislature also finds that there is evidence that when the first  
9 offender waiver is used for drug offenses, the rates of conviction for  
10 a subsequent felony are considerably lower for those drug offenders who  
11 receive the first offender waiver when compared with those who are  
12 eligible but do not receive it. The legislature further finds that  
13 there is strong public support for saving public funds by reinstating  
14 the first offender waiver for drug offenses.

15 It is the intent of the legislature to reduce prison overcrowding,  
16 reduce recidivism, and save public funds by reinstating the first  
17 offender waiver for those charged with drug offenses.

1       **Sec. 2.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995  
2 c 101 s 2 are each reenacted and amended to read as follows:

3       Unless the context clearly requires otherwise, the definitions in  
4 this section apply throughout this chapter.

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

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

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

17       (4) "Community custody" means that portion of an inmate's sentence  
18 of confinement in lieu of earned early release time or imposed pursuant  
19 to RCW 9.94A.120(6) served in the community subject to controls placed  
20 on the inmate's movement and activities by the department of  
21 corrections.

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

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

32       (7) "Community supervision" means a period of time during which a  
33 convicted offender is subject to crime-related prohibitions and other  
34 sentence conditions imposed by a court pursuant to this chapter or RCW  
35 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
36 may include crime-related prohibitions and other conditions imposed  
37 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
38 for out-of-state supervision of parolees and probationers, RCW  
39 9.95.270, community supervision is the functional equivalent of

1 probation and should be considered the same as probation by other  
2 states.

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

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

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

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

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

34 (b) "Criminal history" shall always include juvenile convictions  
35 for sex offenses and serious violent offenses and shall also include a  
36 defendant's other prior convictions in juvenile court if: (i) The  
37 conviction was for an offense which is a felony or a serious traffic  
38 offense and is criminal history as defined in RCW 13.40.020(9); (ii)  
39 the defendant was fifteen years of age or older at the time the offense

1 was committed; and (iii) with respect to prior juvenile class B and C  
2 felonies or serious traffic offenses, the defendant was less than  
3 twenty-three years of age at the time the offense for which he or she  
4 is being sentenced was committed.

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

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

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

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

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

35 (18) "Drug offense" means:

36 (a) Any felony violation of chapter 69.50 RCW except possession of  
37 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
38 controlled substance (RCW 69.50.403);

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

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

7 (19) "Escape" means:

8 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
9 second degree (RCW 9A.76.120), willful failure to return from furlough  
10 (RCW 72.66.060), willful failure to return from work release (RCW  
11 72.65.070), or willful failure to be available for supervision by the  
12 department while in community custody (RCW 72.09.310); or

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

16 (20) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
19 and-run injury-accident (RCW 46.52.020(4)); or

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

23 (21) "Fines" means the requirement that the offender pay a specific  
24 sum of money over a specific period of time to the court.

25 (22)(a) "First-time offender" means any person who is convicted of  
26 a felony (~~((i))~~) not classified as a violent offense or a sex offense  
27 under this chapter, (~~((or (ii) that is not the manufacture, delivery, or~~  
28 ~~possession with intent to manufacture or deliver a controlled substance~~  
29 ~~classified in schedule I or II that is a narcotic drug, nor the~~  
30 ~~manufacture, delivery, or possession with intent to deliver~~  
31 ~~methamphetamine, its salts, isomers, and salts of its isomers as~~  
32 ~~defined in RCW 69.50.206(d)(2), nor the selling for profit of any~~  
33 ~~controlled substance or counterfeit substance classified in schedule I,~~  
34 ~~RCW 69.50.204, except leaves and flowering tops of marihuana,))~~) and  
35 except as provided in (b) of this subsection, who previously has never  
36 been convicted of a felony in this state, federal court, or another  
37 state, and who has never participated in a program of deferred  
38 prosecution for a felony offense.

1 (b) For purposes of (a) of this subsection, a juvenile adjudication  
2 for an offense committed before the age of fifteen years is not a  
3 previous felony conviction except for adjudications of sex offenses and  
4 serious violent offenses.

5 (23) "Most serious offense" means any of the following felonies or  
6 a felony attempt to commit any of the following felonies, as now  
7 existing or hereafter amended:

8 (a) Any felony defined under any law as a class A felony or  
9 criminal solicitation of or criminal conspiracy to commit a class A  
10 felony;

11 (b) Assault in the second degree;

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

13 (d) Child molestation in the second degree;

14 (e) Controlled substance homicide;

15 (f) Extortion in the first degree;

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

17 (h) Indecent liberties;

18 (i) Kidnapping in the second degree;

19 (j) Leading organized crime;

20 (k) Manslaughter in the first degree;

21 (l) Manslaughter in the second degree;

22 (m) Promoting prostitution in the first degree;

23 (n) Rape in the third degree;

24 (o) Robbery in the second degree;

25 (p) Sexual exploitation;

26 (q) Vehicular assault;

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

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

33 (t) Any other felony with a deadly weapon verdict under RCW  
34 9.94A.125;

35 (u) Any felony offense in effect at any time prior to December 2,  
36 1993, that is comparable to a most serious offense under this  
37 subsection, or any federal or out-of-state conviction for an offense  
38 that under the laws of this state would be a felony classified as a  
39 most serious offense under this subsection.

1 (24) "Nonviolent offense" means an offense which is not a violent  
2 offense.

3 (25) "Offender" means a person who has committed a felony  
4 established by state law and is eighteen years of age or older or is  
5 less than eighteen years of age but whose case has been transferred by  
6 the appropriate juvenile court to a criminal court pursuant to RCW  
7 13.40.110. Throughout this chapter, the terms "offender" and  
8 "defendant" are used interchangeably.

9 (26) "Partial confinement" means confinement for no more than one  
10 year in a facility or institution operated or utilized under contract  
11 by the state or any other unit of government, or, if home detention or  
12 work crew has been ordered by the court, in an approved residence, for  
13 a substantial portion of each day with the balance of the day spent in  
14 the community. Partial confinement includes work release, home  
15 detention, work crew, and a combination of work crew and home detention  
16 as defined in this section.

17 (27) "Persistent offender" is an offender who:

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

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

28 (28) "Postrelease supervision" is that portion of an offender's  
29 community placement that is not community custody.

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

34 (30) "Serious traffic offense" means:

35 (a) Driving while under the influence of intoxicating liquor or any  
36 drug (RCW 46.61.502), actual physical control while under the influence  
37 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
38 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
39 or

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

4 (31) "Serious violent offense" is a subcategory of violent offense  
5 and means:

6 (a) Murder in the first degree, homicide by abuse, murder in the  
7 second degree, assault in the first degree, kidnapping in the first  
8 degree, or rape in the first degree, assault of a child in the first  
9 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
10 commit one of these felonies; or

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

14 (32) "Sentence range" means the sentencing court's discretionary  
15 range in imposing a nonappealable sentence.

16 (33) "Sex offense" means:

17 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
18 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
19 criminal attempt, criminal solicitation, or criminal conspiracy to  
20 commit such crimes;

21 (b) A felony with a finding of sexual motivation under RCW  
22 9.94A.127 or 13.40.135; or

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

26 (34) "Sexual motivation" means that one of the purposes for which  
27 the defendant committed the crime was for the purpose of his or her  
28 sexual gratification.

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

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

1 (37) "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 (38) "Violent offense" means:

5 (a) Any of the following felonies, as now existing or hereafter  
6 amended: Any felony defined under any law as a class A felony or an  
7 attempt to commit a class A felony, criminal solicitation of or  
8 criminal conspiracy to commit a class A felony, manslaughter in the  
9 first degree, manslaughter in the second degree, indecent liberties if  
10 committed by forcible compulsion, kidnapping in the second degree,  
11 arson in the second degree, assault in the second degree, assault of a  
12 child in the second degree, extortion in the first degree, robbery in  
13 the second degree, vehicular assault, and vehicular homicide, when  
14 proximately caused by the driving of any vehicle by any person while  
15 under the influence of intoxicating liquor or any drug as defined by  
16 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

23 (39) "Work crew" means a program of partial confinement consisting  
24 of civic improvement tasks for the benefit of the community of not less  
25 than thirty-five hours per week that complies with RCW 9.94A.135. The  
26 civic improvement tasks shall have minimal negative impact on existing  
27 private industries or the labor force in the county where the service  
28 or labor is performed. The civic improvement tasks shall not affect  
29 employment opportunities for people with developmental disabilities  
30 contracted through sheltered workshops as defined in RCW 82.04.385.  
31 Only those offenders sentenced to a facility operated or utilized under  
32 contract by a county or the state are eligible to participate on a work  
33 crew. Offenders sentenced for a sex offense as defined in subsection  
34 (33) of this section are not eligible for the work crew program.

35 (40) "Work ethic camp" means an alternative incarceration program  
36 designed to reduce recidivism and lower the cost of corrections by  
37 requiring offenders to complete a comprehensive array of real-world job  
38 and vocational experiences, character-building work ethics training,

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

3 (41) "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. Participation in work release shall  
6 be conditioned upon the offender attending work or school at regularly  
7 defined hours and abiding by the rules of the work release facility.

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

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