

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2320

Chapter 289, Laws of 1996

(partial veto)

54th Legislature
1996 Regular Session

PERSISTENT OFFENDERS

EFFECTIVE DATE: 6/6/96

Passed by the House February 7, 1996
Yeas 97 Nays 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Passed by the Senate February 29, 1996
Yeas 45 Nays 3

JOEL PRITCHARD

President of the Senate

Approved March 30, 1996, with the
exception of section 2, which is
vetoed.

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of
the House of Representatives of the
State of Washington, do hereby certify
that the attached is **SUBSTITUTE HOUSE
BILL 2320** as passed by the House of
Representatives and the Senate on the
dates hereon set forth.

TIMOTHY A. MARTIN

Chief Clerk

FILED

March 30, 1996 - 4:23 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 2320

Passed Legislature - 1996 Regular Session

State of Washington 54th Legislature 1996 Regular Session

By House Committee on Corrections (originally sponsored by Representatives Ballasiotes, Blanton, Radcliff, Backlund, Robertson, Hatfield, Mulliken, Sheldon, Hymes, Kessler, Carlson, Johnson, Thompson, Costa and Boldt)

Read first time 01/30/96.

1 AN ACT Relating to persistent offenders; reenacting and amending
2 RCW 9.94A.030; adding a new section to chapter 72.09 RCW; and
3 prescribing penalties.

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

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

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

9 (1) "Collect," or any derivative thereof, "collect and remit," or
10 "collect and deliver," when used with reference to the department of
11 corrections, means that the department 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 inmate's sentence
4 of confinement in lieu of earned early release time or imposed pursuant
5 to RCW 9.94A.120(6) served in the community subject to controls placed
6 on the inmate's movement and activities by the department of
7 corrections.

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

15 (6) "Community service" means compulsory service, without
16 compensation, performed for the benefit of the community by the
17 offender.

18 (7) "Community supervision" means a period of time during which a
19 convicted offender is subject to crime-related prohibitions and other
20 sentence conditions imposed by a court pursuant to this chapter or RCW
21 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
22 may include crime-related prohibitions and other conditions imposed
23 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
24 for out-of-state supervision of parolees and probationers, RCW
25 9.95.270, community supervision is the functional equivalent of
26 probation and should be considered the same as probation by other
27 states.

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

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of
34 money that is ordered by a superior court of the state of Washington
35 for legal financial obligations which may include restitution to the
36 victim, statutorily imposed crime victims' compensation fees as
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
38 drug funds, court-appointed attorneys' fees, and costs of defense,
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to the provisions in RCW 38.52.430.

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

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

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

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

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

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

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

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

21 (18) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
24 controlled substance (RCW 69.50.403);

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

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

31 (19) "Escape" means:

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

1 (20) "Felony traffic offense" means:

2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
4 and-run injury-accident (RCW 46.52.020(4)); or

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

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

10 (22)(a) "First-time offender" means any person who is convicted of
11 a felony (i) not classified as a violent offense or a sex offense under
12 this chapter, or (ii) that is not the manufacture, delivery, or
13 possession with intent to manufacture or deliver a controlled substance
14 classified in schedule I or II that is a narcotic drug, nor the
15 manufacture, delivery, or possession with intent to deliver
16 methamphetamine, its salts, isomers, and salts of its isomers as
17 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
18 controlled substance or counterfeit substance classified in schedule I,
19 RCW 69.50.204, except leaves and flowering tops of marihuana, and
20 except as provided in (b) of this subsection, who previously has never
21 been convicted of a felony in this state, federal court, or another
22 state, and who has never participated in a program of deferred
23 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 and
27 serious violent offenses.

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

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

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

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

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

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

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

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

12 (b)(i) Has been convicted of (A) rape in the first degree, rape in
13 the second degree, or indecent liberties by forcible compulsion; (B)
14 murder in the first degree, murder in the second degree, kidnapping in
15 the first degree, kidnapping in the second degree, assault in the first
16 degree, assault in the second degree, or burglary in the first degree,
17 with a finding of sexual motivation; or (C) an attempt to commit any
18 crime listed in this subsection (27)(b)(i); and

19 (ii) Has, before the commission of the offense under (b)(i) of this
20 subsection, been convicted as an offender on at least one occasion,
21 whether in this state or elsewhere, of an offense listed in (b)(i) of
22 this subsection.

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

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

29 (30) "Serious traffic offense" means:

30 (a) Driving while under the influence of intoxicating liquor or any
31 drug (RCW 46.61.502), actual physical control while under the influence
32 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
33 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
34 or

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

38 (31) "Serious violent offense" is a subcategory of violent offense
39 and means:

1 (a) Murder in the first degree, homicide by abuse, murder in the
2 second degree, assault in the first degree, kidnapping in the first
3 degree, or rape in the first degree, assault of a child in the first
4 degree, or an attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or

6 (b) 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 serious
8 violent offense under (a) of this subsection.

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

11 (33) "Sex offense" means:

12 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
13 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
14 criminal attempt, criminal solicitation, or criminal conspiracy to
15 commit such crimes;

16 (b) A felony with a finding of sexual motivation under RCW
17 9.94A.127 or 13.40.135; or

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

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

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

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

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

37 (38) "Violent offense" means:

38 (a) Any of the following felonies, as now existing or hereafter
39 amended: Any felony defined under any law as a class A felony or an

1 attempt to commit a class A felony, criminal solicitation of or
2 criminal conspiracy to commit a class A felony, manslaughter in the
3 first degree, manslaughter in the second degree, indecent liberties if
4 committed by forcible compulsion, kidnapping in the second degree,
5 arson in the second degree, assault in the second degree, assault of a
6 child in the second degree, extortion in the first degree, robbery in
7 the second degree, vehicular assault, and vehicular homicide, when
8 proximately caused by the driving of any vehicle by any person while
9 under the influence of intoxicating liquor or any drug as defined by
10 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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 violent
13 offense in (a) of this subsection; and

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

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

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

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

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

4 ****NEW SECTION. Sec. 2. A new section is added to chapter 72.09 RCW***
5 ***to read as follows:***

6 ***The department shall not provide sex offender treatment or sex***
7 ***offender counseling services to a sex offender convicted as a***
8 ***persistent offender as defined in RCW 9.94A.030.***

9 ****Sec. 2 was vetoed. See message at end of chapter.***

Passed the House February 7, 1996.

Passed the Senate February 29, 1996.

Approved by the Governor March 30, 1996, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 1996.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 2,
3 Substitute House Bill No. 2320 entitled:

4 "AN ACT Relating to persistent offenders;"

5 Substitute House Bill No. 2320 mandates life imprisonment upon an
6 individual's second conviction for a number of sex offenses or for
7 certain other offenses if specifically found to be sexually motivated.
8 This legislation reaffirms our unconditional intolerance of persistent
9 sex offenders and our commitment to keeping public safety paramount in
10 our dealings with those who leave such devastating impacts on their
11 victims -- and on all of us.

12 Substitute House Bill No. 2320 lists the various offenses that are
13 subject to this mandatory sentencing. This roster of offenses prompts
14 my concern and comment. When we make our choices and draw the line on
15 whom we will automatically send to prison for life, we seldom have
16 problems with the top of the list -- the most serious and reprehensible
17 crimes -- which cry out for harsh penalties. No one disagrees that the
18 sexually motivated murderer, the violent rapist, and even those who
19 attempt such heinous crimes, deserve life-long exile from society. The
20 difficulty arises when we try to decide where to end our list and
21 distinguish those offenses that may not warrant life behind bars.

22 Substitute House Bill No. 2320 specifies that a second conviction
23 of indecent liberties results in a mandatory life sentence. Under
24 current law, an offender convicted of indecent liberties with one prior
25 sex conviction normally faces a four to five year sentence. This
26 overwhelming increase in punishment for this particular offense may
27 very well be appropriate for each and every offender covered by this
28 new law. I worry that, at least on occasion, it will not. Because
29 life imprisonment follows immediately upon the second conviction of the
30 enumerated offenses, there is no opportunity for consideration, no
31 room for judgment, and no mechanism for later review. It is my hope
32 that the legislature will consider the possibility of adding future
33 review by a sentencing court to this model of life imprisonment.

1 I entreat the legislature, and all who share concern and interest
2 with our system of criminal justice, to look closely at our changing
3 mix of mandatory and discretionary sentencing. We should contemplate
4 the wisdom of moving ever further from letting judges judge.

5 Section 2 of Substitute House Bill No. 2320 prohibits the
6 Department of Corrections (DOC) from providing sex offender treatment
7 or sex offender counseling to those individuals convicted under this
8 law. Current DOC policy already bars offenders serving life terms from
9 receiving treatment due to the limited available space in treatment
10 programs. While I agree that the offender who will eventually be
11 released back into society should receive priority in treatment, I am
12 concerned about how this blanket prohibition might impact DOC's
13 population.

14 Our sentencing laws, including this legislation, are increasing the
15 number of sex offenders who will spend their lives or most of their
16 lives incarcerated. We should not forget the danger these offenders
17 pose to other inmates, particularly younger offenders who will be
18 released at some point. The influence and effects that these "lifers"
19 may have on the more vulnerable members of the prison population is
20 obvious. While many may argue that we must throw away the key on the
21 former group, none can disagree that we should minimize the chance that
22 the latter group will follow in their path.

23 Maintaining DOC's flexibility in dealing with lifetime inmates
24 through treatment or counseling is prudent. It stands to be a cost
25 effective tool and recognizes the changing reality we are imposing on
26 the lives of those we incarcerate. I cannot approve a blanket
27 prohibition against counseling or treatment for individuals sentenced
28 under this law.

29 For this reason, I have vetoed section 2 of Substitute House Bill
30 No. 2320.

31 With the exception of section 2, Substitute House Bill No. 2320 is
32 approved."