

2 EHB 2791 - S COMM AMD  
3 By Committee on Law & Justice

4 ADOPTED 3/4/98

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c  
8 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each  
9 reenacted and amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in  
11 this section apply throughout this chapter.

12 (1) "Collect," or any derivative thereof, "collect and remit," or  
13 "collect and deliver," when used with reference to the department of  
14 corrections, means that the department is responsible for monitoring  
15 and enforcing the offender's sentence with regard to the legal  
16 financial obligation, receiving payment thereof from the offender, and,  
17 consistent with current law, delivering daily the entire payment to the  
18 superior court clerk without depositing it in a departmental 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 inmate's sentence  
25 of confinement in lieu of earned early release time or imposed pursuant  
26 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to  
27 controls placed on the inmate's movement and activities by the  
28 department of corrections.

29 (5) "Community placement" means that period during which the  
30 offender is subject to the conditions of community custody and/or  
31 postrelease supervision, which begins either upon completion of the  
32 term of confinement (postrelease supervision) or at such time as the  
33 offender is transferred to community custody in lieu of earned early  
34 release. Community placement may consist of entirely community  
35 custody, entirely postrelease supervision, or a combination of the two.

1 (6) "Community service" means compulsory service, without  
2 compensation, performed for the benefit of the community by the  
3 offender.

4 (7) "Community supervision" means a period of time during which a  
5 convicted offender is subject to crime-related prohibitions and other  
6 sentence conditions imposed by a court pursuant to this chapter or RCW  
7 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
8 may include crime-related prohibitions and other conditions imposed  
9 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
10 for out-of-state supervision of parolees and probationers, RCW  
11 9.95.270, community supervision is the functional equivalent of  
12 probation and should be considered the same as probation by other  
13 states.

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

16 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
17 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
18 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

37 (18) "Drug offense" means:

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

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

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

10 (19) "Escape" means:

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

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

19 (20) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
22 and-run injury-accident (RCW 46.52.020(4)); or

23 (b) 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 felony  
25 traffic offense under (a) of this subsection.

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

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

1 court, or another state, and who has never participated in a program of  
2 deferred prosecution for a felony offense.

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

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

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Manufacture or possession of ephedrine or pseudoephedrine with  
21 intent to manufacture methamphetamine in or near a residence in which  
22 a minor or a pregnant woman resides;

23 (n) Promoting prostitution in the first degree;

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

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

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

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

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

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

35 (~~(t)~~) (u) Any other felony with a deadly weapon verdict under RCW  
36 9.94A.125;

37 (~~(u)~~) (v) Any felony offense in effect at any time prior to  
38 December 2, 1993, that is comparable to a most serious offense under  
39 this subsection, or any federal or out-of-state conviction for an

1 offense that under the laws of this state would be a felony classified  
2 as a most serious offense under this subsection;

3 ((~~v~~)) w(i) A prior conviction for indecent liberties under RCW  
4 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
5 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
6 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
7 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

8 (ii) A prior conviction for indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
10 if: (A) The crime was committed against a child under the age of  
11 fourteen; or (B) the relationship between the victim and perpetrator is  
12 included in the definition of indecent liberties under RCW  
13 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
14 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
15 through July 27, 1997.

16 (24) "Nonviolent offense" means an offense which is not a violent  
17 offense.

18 (25) "Offender" means a person who has committed a felony  
19 established by state law and is eighteen years of age or older or is  
20 less than eighteen years of age but whose case is under superior court  
21 jurisdiction under RCW 13.04.030 or has been transferred by the  
22 appropriate juvenile court to a criminal court pursuant to RCW  
23 13.40.110. Throughout this chapter, the terms "offender" and  
24 "defendant" are used interchangeably.

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

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

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

36 (ii) Has, before the commission of the offense under (a) of this  
37 subsection, been convicted as an offender on at least two separate  
38 occasions, whether in this state or elsewhere, of felonies that under  
39 the laws of this state would be considered most serious offenses and

1 would be included in the offender score under RCW 9.94A.360; provided  
2 that of the two or more previous convictions, at least one conviction  
3 must have occurred before the commission of any of the other most  
4 serious offenses for which the offender was previously convicted; or

5 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
6 of a child in the first degree, child molestation in the first degree,  
7 rape in the second degree, rape of a child in the second degree, or  
8 indecent liberties by forcible compulsion; (B) murder in the first  
9 degree, murder in the second degree, homicide by abuse, kidnapping in  
10 the first degree, kidnapping in the second degree, assault in the first  
11 degree, assault in the second degree, assault of a child in the first  
12 degree, or burglary in the first degree, with a finding of sexual  
13 motivation; or (C) an attempt to commit any crime listed in this  
14 subsection (27)(b)(i); and

15 (ii) Has, before the commission of the offense under (b)(i) of this  
16 subsection, been convicted as an offender on at least one occasion,  
17 whether in this state or elsewhere, of an offense listed in (b)(i) of  
18 this subsection. A conviction for rape of a child in the first degree  
19 constitutes a conviction under subsection (27)(b)(i) only when the  
20 offender was sixteen years of age or older when the offender committed  
21 the offense. A conviction for rape of a child in the second degree  
22 constitutes a conviction under subsection (27)(b)(i) only when the  
23 offender was eighteen years of age or older when the offender committed  
24 the offense.

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

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

31 (30) "Serious traffic offense" means:

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

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

1 (31) "Serious violent offense" is a subcategory of violent offense  
2 and means:

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

9 (b) 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 serious  
11 violent offense under (a) of this subsection.

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

14 (33) "Sex offense" means:

15 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
16 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
17 criminal attempt, criminal solicitation, or criminal conspiracy to  
18 commit such crimes;

19 (b) A felony with a finding of sexual motivation under RCW  
20 9.94A.127 or 13.40.135; or

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 sex  
23 offense under (a) of this subsection.

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

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

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

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

1 (38) "Violent offense" means:

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

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

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 violent  
20 offense under (a) or (b) of this subsection.

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

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

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

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

9 **Sec. 2.** RCW 70.105D.070 and 1997 c 406 s 5 are each amended to  
10 read as follows:

11 (1) The state toxics control account and the local toxics control  
12 account are hereby created in the state treasury.

13 (2) The following moneys shall be deposited into the state toxics  
14 control account: (a) Those revenues which are raised by the tax  
15 imposed under RCW 82.21.030 and which are attributable to that portion  
16 of the rate equal to thirty-three one-hundredths of one percent; (b)  
17 the costs of remedial actions recovered under this chapter or chapter  
18 70.105A RCW; (c) penalties collected or recovered under this chapter;  
19 and (d) any other money appropriated or transferred to the account by  
20 the legislature. Moneys in the account may be used only to carry out  
21 the purposes of this chapter, including but not limited to the  
22 following activities:

23 (i) The state's responsibility for hazardous waste planning,  
24 management, regulation, enforcement, technical assistance, and public  
25 education required under chapter 70.105 RCW;

26 (ii) The state's responsibility for solid waste planning,  
27 management, regulation, enforcement, technical assistance, and public  
28 education required under chapter 70.95 RCW;

29 (iii) The hazardous waste cleanup program required under this  
30 chapter;

31 (iv) State matching funds required under the federal cleanup law;

32 (v) Financial assistance for local programs in accordance with  
33 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

34 (vi) State government programs for the safe reduction, recycling,  
35 or disposal of hazardous wastes from households, small businesses, and  
36 agriculture;

37 (vii) Hazardous materials emergency response training;

1 (viii) Water and environmental health protection and monitoring  
2 programs;

3 (ix) Programs authorized under chapter 70.146 RCW;

4 (x) A public participation program, including regional citizen  
5 advisory committees;

6 (xi) Public funding to assist potentially liable persons to pay for  
7 the costs of remedial action in compliance with cleanup standards under  
8 RCW 70.105D.030(2)(e) but only when the amount and terms of such  
9 funding are established under a settlement agreement under RCW  
10 70.105D.040(4) and when the director has found that the funding will  
11 achieve both (A) a substantially more expeditious or enhanced cleanup  
12 than would otherwise occur, and (B) the prevention or mitigation of  
13 unfair economic hardship; and

14 (xii) Development and demonstration of alternative management  
15 technologies designed to carry out the top two hazardous waste  
16 management priorities of RCW 70.105.150.

17 (3) The following moneys shall be deposited into the local toxics  
18 control account: Those revenues which are raised by the tax imposed  
19 under RCW 82.21.030 and which are attributable to that portion of the  
20 rate equal to thirty-seven one-hundredths of one percent.

21 (a) Moneys deposited in the local toxics control account shall be  
22 used by the department for grants or loans to local governments for the  
23 following purposes in descending order of priority: (i) Remedial  
24 actions; (ii) hazardous waste plans and programs under chapter 70.105  
25 RCW; ~~((and))~~ (iii) solid waste plans and programs under chapters 70.95,  
26 70.95C, 70.95I, and 70.105 RCW; and (iv) funds for a program to assist  
27 in the assessment and cleanup of sites of methamphetamine production,  
28 but not to be used for the initial containment of such sites,  
29 consistent with the responsibilities and intent of RCW 69.50.511.  
30 Funds for plans and programs shall be allocated consistent with the  
31 priorities and matching requirements established in chapters 70.105,  
32 70.95C, 70.95I, and 70.95 RCW.

33 (b) Funds may also be appropriated to the department of health to  
34 implement programs to reduce testing requirements under the federal  
35 safe drinking water act for public water systems. The department of  
36 health shall reimburse the account from fees assessed under RCW  
37 70.119A.115 by June 30, 1995.

1 (4) Except for unanticipated receipts under RCW 43.79.260 through  
2 43.79.282, moneys in the state and local toxics control accounts may be  
3 spent only after appropriation by statute.

4 (5) One percent of the moneys deposited into the state and local  
5 toxics control accounts shall be allocated only for public  
6 participation grants to persons who may be adversely affected by a  
7 release or threatened release of a hazardous substance and to not-for-  
8 profit public interest organizations. The primary purpose of these  
9 grants is to facilitate the participation by persons and organizations  
10 in the investigation and remedying of releases or threatened releases  
11 of hazardous substances and to implement the state's solid and  
12 hazardous waste management priorities. No grant may exceed sixty  
13 thousand dollars. Grants may be renewed annually. Moneys appropriated  
14 for public participation from either account which are not expended at  
15 the close of any biennium shall revert to the state toxics control  
16 account.

17 (6) No moneys deposited into either the state or local toxics  
18 control account may be used for solid waste incinerator feasibility  
19 studies, construction, maintenance, or operation.

20 (7) The department shall adopt rules for grant or loan issuance and  
21 performance."

22 **EHB 2791** - S COMM AMD  
23 By Committee on Law & Justice

24 ADOPTED 3/4/98

25 In line 1 of the title, after "methamphetamine;" strike the  
26 remainder of the title and insert "amending RCW 70.105D.070; and  
27 reenacting and amending RCW 9.94A.030."

--- END ---