

2 **SHB 1039** - S COMM AMD
3 By Committee on Judiciary

4

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

7 **"NEW SECTION.** **Sec. 1.** The legislature finds that an ambiguity may
8 exist regarding whether out-of-state convictions or convictions under
9 prior Washington law, for sex offenses that are comparable to current
10 Washington offenses, count when determining whether an offender is a
11 persistent offender. This act is intended to clarify the legislature's
12 intent that out-of-state convictions for comparable sex offenses and
13 prior Washington convictions for comparable sex offenses shall be used
14 to determine whether an offender meets the definition of a persistent
15 offender.

16 **Sec. 2.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

20 (1) "Collect," or any derivative thereof, "collect and remit," or
21 "collect and deliver," when used with reference to the department,
22 means that the department, either directly or through a collection
23 agreement authorized by RCW 9.94A.145, is responsible for monitoring
24 and enforcing the offender's sentence with regard to the legal
25 financial obligation, receiving payment thereof from the offender, and,
26 consistent with current law, delivering daily the entire payment to the
27 superior court clerk without depositing it in a departmental account.

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

29 (3) "Community corrections officer" means an employee of the
30 department who is responsible for carrying out specific duties in
31 supervision of sentenced offenders and monitoring of sentence
32 conditions.

33 (4) "Community custody" means that portion of an offender's
34 sentence of confinement in lieu of earned release time or imposed
35 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,

1 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
2 community subject to controls placed on the offender's movement and
3 activities by the department. For offenders placed on community
4 custody for crimes committed on or after July 1, 2000, the department
5 shall assess the offender's risk of reoffense and may establish and
6 modify conditions of community custody, in addition to those imposed by
7 the court, based upon the risk to community safety.

8 (5) "Community custody range" means the minimum and maximum period
9 of community custody included as part of a sentence under RCW
10 9.94A.715, as established by the commission or the legislature under
11 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

19 (7) "Community service" means compulsory service, without
20 compensation, performed for the benefit of the community by the
21 offender.

22 (8) "Community supervision" means a period of time during which a
23 convicted offender is subject to crime-related prohibitions and other
24 sentence conditions imposed by a court pursuant to this chapter or RCW
25 16.52.200(6) or 46.61.524. Where the court finds that any offender has
26 a chemical dependency that has contributed to his or her offense, the
27 conditions of supervision may, subject to available resources, include
28 treatment. For purposes of the interstate compact for out-of-state
29 supervision of parolees and probationers, RCW 9.95.270, community
30 supervision is the functional equivalent of probation and should be
31 considered the same as probation by other states.

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

33 (10) "Conviction" means an adjudication of guilt pursuant to Titles
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
35 acceptance of a plea of guilty.

36 (11) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be
39 construed to mean orders directing an offender affirmatively to

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct. However, affirmative acts necessary to monitor
3 compliance with the order of a court may be required by the department.

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

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

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

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

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

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

1 (18) "Drug offender sentencing alternative" is a sentencing option
2 available to persons convicted of a felony offense other than a violent
3 offense or a sex offense and who are eligible for the option under RCW
4 9.94A.660.

5 (19) "Drug offense" means:

6 (a) Any felony violation of chapter 69.50 RCW except possession of
7 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
8 controlled substance (RCW 69.50.403);

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

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

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

17 (21) "Escape" means:

18 (a) Escape in the first degree (RCW 9A.76.110), escape in the
19 second degree (RCW 9A.76.120), willful failure to return from furlough
20 (RCW 72.66.060), willful failure to return from work release (RCW
21 72.65.070), or willful failure to be available for supervision by the
22 department while in community custody (RCW 72.09.310); 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 an escape
25 under (a) of this subsection.

26 (22) "Felony traffic offense" means:

27 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
28 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
29 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

1 (25) "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 (26) "Legal financial obligation" means a sum of money that is
5 ordered by a superior court of the state of Washington for legal
6 financial obligations which may include restitution to the victim,
7 statutorily imposed crime victims' compensation fees as assessed
8 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
9 court-appointed attorneys' fees, and costs of defense, fines, and any
10 other financial obligation that is assessed to the offender as a result
11 of a felony conviction. Upon conviction for vehicular assault while
12 under the influence of intoxicating liquor or any drug, RCW
13 46.61.522(1)(b), or vehicular homicide while under the influence of
14 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
15 obligations may also include payment to a public agency of the expense
16 of an emergency response to the incident resulting in the conviction,
17 subject to RCW 38.52.430.

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

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

- 23 (b) Assault in the second degree;
24 (c) Assault of a child in the second degree;
25 (d) Child molestation in the second degree;
26 (e) Controlled substance homicide;
27 (f) Extortion in the first degree;
28 (g) Incest when committed against a child under age fourteen;
29 (h) Indecent liberties;
30 (i) Kidnapping in the second degree;
31 (j) Leading organized crime;
32 (k) Manslaughter in the first degree;
33 (l) Manslaughter in the second degree;
34 (m) Promoting prostitution in the first degree;
35 (n) Rape in the third degree;
36 (o) Robbery in the second degree;
37 (p) Sexual exploitation;
38 (q) Vehicular assault;

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

5 (s) Any other class B felony offense with a finding of sexual
6 motivation;

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.125;

9 (u) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection;

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

19 (ii) A prior conviction for indecent liberties under RCW
20 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
21 if: (A) The crime was committed against a child under the age of
22 fourteen; or (B) the relationship between the victim and perpetrator is
23 included in the definition of indecent liberties under RCW
24 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
25 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
26 through July 27, 1997.

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

29 (29) "Offender" means a person who has committed a felony
30 established by state law and is eighteen years of age or older or is
31 less than eighteen years of age but whose case is under superior court
32 jurisdiction under RCW 13.04.030 or has been transferred by the
33 appropriate juvenile court to a criminal court pursuant to RCW
34 13.40.110. Throughout this chapter, the terms "offender" and
35 "defendant" are used interchangeably.

36 (30) "Partial confinement" means confinement for no more than one
37 year in a facility or institution operated or utilized under contract
38 by the state or any other unit of government, or, if home detention or
39 work crew has been ordered by the court, in an approved residence, for

1 a substantial portion of each day with the balance of the day spent in
2 the community. Partial confinement includes work release, home
3 detention, work crew, and a combination of work crew and home
4 detention.

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

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

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

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

26 (ii) Has, before the commission of the offense under (b)(i) of this
27 subsection, been convicted as an offender on at least one occasion,
28 whether in this state or elsewhere, of an offense listed in (b)(i) of
29 this subsection or any federal or out-of-state offense or offense under
30 prior Washington law that is comparable to the offenses listed in
31 (b)(i) of this subsection.

32 A conviction for rape of a child in the first degree constitutes a
33 conviction under (b)(i) of this subsection only when the offender was
34 sixteen years of age or older when the offender committed the offense.
35 A conviction for rape of a child in the second degree constitutes a
36 conviction under (b)(i) of this subsection only when the offender was
37 eighteen years of age or older when the offender committed the offense.

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

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

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

13 (35) "Serious traffic offense" means:

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

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

22 (36) "Serious violent offense" is a subcategory of violent offense
23 and means:

24 (a)(i) Murder in the first degree;
25 (ii) Homicide by abuse;
26 (iii) Murder in the second degree;
27 (iv) Manslaughter in the first degree;
28 (v) Assault in the first degree;
29 (vi) Kidnapping in the first degree;
30 (vii) Rape in the first degree;
31 (viii) Assault of a child in the first degree; or
32 (ix) An attempt, criminal solicitation, or criminal conspiracy to
33 commit one of these felonies; or
34 (b) Any federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony classified as a serious
36 violent offense under (a) of this subsection.

37 (37) "Sex offense" means:

38 (a) A felony that is a violation of:
39 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

1 (ii) RCW 9A.64.020;

2 (iii) RCW 9.68A.090; or

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

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

8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or

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

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

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

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

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

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

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

35 (44) "Violent offense" means:

36 (a) Any of the following felonies:

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

1 (ii) Criminal solicitation of or criminal conspiracy to commit a
2 class A felony;
3 (iii) Manslaughter in the first degree;
4 (iv) Manslaughter in the second degree;
5 (v) Indecent liberties if committed by forcible compulsion;
6 (vi) Kidnapping in the second degree;
7 (vii) Arson in the second degree;
8 (viii) Assault in the second degree;
9 (ix) Assault of a child in the second degree;
10 (x) Extortion in the first degree;
11 (xi) Robbery in the second degree;
12 (xii) Drive-by shooting;
13 (xiii) Vehicular assault; and
14 (xiv) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of
17 any vehicle in a reckless manner;

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

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

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

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

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

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4 On page 1, line 1 of the title, after "offenders;" strike the
5 remainder of the title and insert "amending RCW 9.94A.030; and creating
6 a new section."

EFFECT: Adds federal convictions to list of convictions which, if comparable, can be considered strikes under "two strikes, you're out" sex offender law.

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