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**SUBSTITUTE HOUSE BILL 1039**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Ballasiotes, O'Brien, Ahern, Morell and Woods)

Read first time . Referred to Committee on .

1 AN ACT Relating to persistent offenders; amending RCW 9.94A.030;  
2 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 an ambiguity may  
5 exist regarding whether out-of-state convictions or convictions under  
6 prior Washington law, for sex offenses that are comparable to current  
7 Washington offenses, count when determining whether an offender is a  
8 persistent offender. This act is intended to clarify the legislature's  
9 intent that out-of-state convictions for comparable sex offenses and  
10 prior Washington convictions for comparable sex offenses shall be used  
11 to determine whether an offender meets the definition of a persistent  
12 offender.

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

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17 (1) "Collect," or any derivative thereof, "collect and remit," or  
18 "collect and deliver," when used with reference to the department,

1 means that the department, either directly or through a collection  
2 agreement authorized by RCW 9.94A.145, is responsible for monitoring  
3 and enforcing the offender's sentence with regard to the legal  
4 financial obligation, receiving payment thereof from the offender, and,  
5 consistent with current law, delivering daily the entire payment to the  
6 superior court clerk without depositing it in a departmental account.

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

8 (3) "Community corrections officer" means an employee of the  
9 department who is responsible for carrying out specific duties in  
10 supervision of sentenced offenders and monitoring of sentence  
11 conditions.

12 (4) "Community custody" means that portion of an offender's  
13 sentence of confinement in lieu of earned release time or imposed  
14 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,  
15 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the  
16 community subject to controls placed on the offender's movement and  
17 activities by the department. For offenders placed on community  
18 custody for crimes committed on or after July 1, 2000, the department  
19 shall assess the offender's risk of reoffense and may establish and  
20 modify conditions of community custody, in addition to those imposed by  
21 the court, based upon the risk to community safety.

22 (5) "Community custody range" means the minimum and maximum period  
23 of community custody included as part of a sentence under RCW  
24 9.94A.715, as established by the commission or the legislature under  
25 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

33 (7) "Community service" means compulsory service, without  
34 compensation, performed for the benefit of the community by the  
35 offender.

36 (8) "Community supervision" means a period of time during which a  
37 convicted offender is subject to crime-related prohibitions and other  
38 sentence conditions imposed by a court pursuant to this chapter or RCW  
39 16.52.200(6) or 46.61.524. Where the court finds that any offender has

1 a chemical dependency that has contributed to his or her offense, the  
2 conditions of supervision may, subject to available resources, include  
3 treatment. For purposes of the interstate compact for out-of-state  
4 supervision of parolees and probationers, RCW 9.95.270, community  
5 supervision is the functional equivalent of probation and should be  
6 considered the same as probation by other states.

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

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

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

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

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

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

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

34 (16) "Determinate sentence" means a sentence that states with  
35 exactitude the number of actual years, months, or days of total  
36 confinement, of partial confinement, of community supervision, the  
37 number of actual hours or days of community service work, or dollars or  
38 terms of a legal financial obligation. The fact that an offender  
39 through earned release can reduce the actual period of confinement

1 shall not affect the classification of the sentence as a determinate  
2 sentence.

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

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

19 (19) "Drug offense" means:

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

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

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

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

31 (21) "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 (22) "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 (23) "Fine" means a specific sum of money ordered by the sentencing  
9 court to be paid by the offender to the court over a specific period of  
10 time.

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

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

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

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

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

36 (b) Assault in the second degree;

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

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

- 1 (f) Extortion in the first degree;
- 2 (g) Incest when committed against a child under age fourteen;
- 3 (h) Indecent liberties;
- 4 (i) Kidnapping in the second degree;
- 5 (j) Leading organized crime;
- 6 (k) Manslaughter in the first degree;
- 7 (l) Manslaughter in the second degree;
- 8 (m) Promoting prostitution in the first degree;
- 9 (n) Rape in the third degree;
- 10 (o) Robbery in the second degree;
- 11 (p) Sexual exploitation;
- 12 (q) Vehicular assault;
- 13 (r) Vehicular homicide, when proximately caused by the driving of
- 14 any vehicle by any person while under the influence of intoxicating
- 15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 16 any vehicle in a reckless manner;
- 17 (s) Any other class B felony offense with a finding of sexual
- 18 motivation;
- 19 (t) Any other felony with a deadly weapon verdict under RCW
- 20 9.94A.125;
- 21 (u) Any felony offense in effect at any time prior to December 2,
- 22 1993, that is comparable to a most serious offense under this
- 23 subsection, or any federal or out-of-state conviction for an offense
- 24 that under the laws of this state would be a felony classified as a
- 25 most serious offense under this subsection;
- 26 (v)(i) A prior conviction for indecent liberties under RCW
- 27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
- 32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
- 33 if: (A) The crime was committed against a child under the age of
- 34 fourteen; or (B) the relationship between the victim and perpetrator is
- 35 included in the definition of indecent liberties under RCW
- 36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
- 37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
- 38 through July 27, 1997.

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

3 (29) "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 is under superior court  
6 jurisdiction under RCW 13.04.030 or has been transferred by the  
7 appropriate juvenile court to a criminal court pursuant to RCW  
8 13.40.110. Throughout this chapter, the terms "offender" and  
9 "defendant" are used interchangeably.

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

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

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

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

29 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
30 of a child in the first degree, child molestation in the first degree,  
31 rape in the second degree, rape of a child in the second degree, or  
32 indecent liberties by forcible compulsion; (B) murder in the first  
33 degree, murder in the second degree, homicide by abuse, kidnapping in  
34 the first degree, kidnapping in the second degree, assault in the first  
35 degree, assault in the second degree, assault of a child in the first  
36 degree, or burglary in the first degree, with a finding of sexual  
37 motivation; or (C) an attempt to commit any crime listed in this  
38 subsection (31)(b)(i); and

1 (ii) Has, before the commission of the offense under (b)(i) of this  
2 subsection, been convicted as an offender on at least one occasion,  
3 whether in this state or elsewhere, of an offense listed in (b)(i) of  
4 this subsection or an out-of-state offense or offense under prior  
5 Washington law that is comparable to the offenses listed in (b)(i) of  
6 this subsection.

7 A conviction for rape of a child in the first degree constitutes a  
8 conviction under (b)(i) of this subsection only when the offender was  
9 sixteen years of age or older when the offender committed the offense.  
10 A conviction for rape of a child in the second degree constitutes a  
11 conviction under (b)(i) of this subsection only when the offender was  
12 eighteen years of age or older when the offender committed the offense.

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

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

19 (34) "Risk assessment" means the application of an objective  
20 instrument supported by research and adopted by the department for the  
21 purpose of assessing an offender's risk of reoffense, taking into  
22 consideration the nature of the harm done by the offender, place and  
23 circumstances of the offender related to risk, the offender's  
24 relationship to any victim, and any information provided to the  
25 department by victims. The results of a risk assessment shall not be  
26 based on unconfirmed or unconfirmable allegations.

27 (35) "Serious traffic offense" means:

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

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

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

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

39 (ii) Homicide by abuse;

1 (iii) Murder in the second degree;  
2 (iv) Manslaughter in the first degree;  
3 (v) Assault in the first degree;  
4 (vi) Kidnapping in the first degree;  
5 (vii) Rape in the first degree;  
6 (viii) Assault of a child in the first degree; or  
7 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
8 commit one of these felonies; 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 (37) "Sex offense" means:

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

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

15 (ii) RCW 9A.64.020;

16 (iii) RCW 9.68A.090; or

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

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

22 (c) A felony with a finding of sexual motivation under RCW  
23 9.94A.127 or 13.40.135; or

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

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

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

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

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

1 (42) "Transition training" means written and verbal instructions  
2 and assistance provided by the department to the offender during the  
3 two weeks prior to the offender's successful completion of the work  
4 ethic camp program. The transition training shall include instructions  
5 in the offender's requirements and obligations during the offender's  
6 period of community custody.

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

10 (44) "Violent offense" means:

11 (a) Any of the following felonies:

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

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

16 (iii) Manslaughter in the first degree;

17 (iv) Manslaughter in the second degree;

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

19 (vi) Kidnapping in the second degree;

20 (vii) Arson in the second degree;

21 (viii) Assault in the second degree;

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

23 (x) Extortion in the first degree;

24 (xi) Robbery in the second degree;

25 (xii) Drive-by shooting;

26 (xiii) Vehicular assault; and

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

34 (c) 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 violent  
36 offense under (a) or (b) of this subsection.

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

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

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

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