
SUBSTITUTE HOUSE BILL 2701

State of Washington

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By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives O'Brien, Pearson, Ericks, Rodne, Nixon, Kilmer, Green, Sells, McDonald, McCoy, Simpson, Moeller, Morrell, Lantz, Linville and Hudgins; by request of Attorney General)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to assault of a child in the second degree;
2 amending RCW 9.94A.030, 9.94A.712, and 9A.36.130; prescribing
3 penalties; and providing an effective date.

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

5 **Sec. 1.** RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read
6 as follows:

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

9 (1) "Board" means the indeterminate sentence review board created
10 under chapter 9.95 RCW.

11 (2) "Collect," or any derivative thereof, "collect and remit," or
12 "collect and deliver," when used with reference to the department,
13 means that the department, either directly or through a collection
14 agreement authorized by RCW 9.94A.760, 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 (3) "Commission" means the sentencing guidelines commission.

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

5 (5) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed
7 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
8 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
9 community subject to controls placed on the offender's movement and
10 activities by the department. For offenders placed on community
11 custody for crimes committed on or after July 1, 2000, the department
12 shall assess the offender's risk of reoffense and may establish and
13 modify conditions of community custody, in addition to those imposed by
14 the court, based upon the risk to community safety.

15 (6) "Community custody range" means the minimum and maximum period
16 of community custody included as part of a sentence under RCW
17 9.94A.715, as established by the commission or the legislature under
18 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

26 (8) "Community restitution" means compulsory service, without
27 compensation, performed for the benefit of the community by the
28 offender.

29 (9) "Community supervision" means a period of time during which a
30 convicted offender is subject to crime-related prohibitions and other
31 sentence conditions imposed by a court pursuant to this chapter or RCW
32 16.52.200(6) or 46.61.524. Where the court finds that any offender has
33 a chemical dependency that has contributed to his or her offense, the
34 conditions of supervision may, subject to available resources, include
35 treatment. For purposes of the interstate compact for out-of-state
36 supervision of parolees and probationers, RCW 9.95.270, community
37 supervision is the functional equivalent of probation and should be
38 considered the same as probation by other states.

1 (10) "Confinement" means total or partial confinement.

2 (11) "Conviction" means an adjudication of guilt pursuant to Titles
3 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
4 acceptance of a plea of guilty.

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

12 (13) "Criminal history" means the list of a defendant's prior
13 convictions and juvenile adjudications, whether in this state, in
14 federal court, or elsewhere.

15 (a) The history shall include, where known, for each conviction (i)
16 whether the defendant has been placed on probation and the length and
17 terms thereof; and (ii) whether the defendant has been incarcerated and
18 the length of incarceration.

19 (b) A conviction may be removed from a defendant's criminal history
20 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
21 a similar out-of-state statute, or if the conviction has been vacated
22 pursuant to a governor's pardon.

23 (c) The determination of a defendant's criminal history is distinct
24 from the determination of an offender score. A prior conviction that
25 was not included in an offender score calculated pursuant to a former
26 version of the sentencing reform act remains part of the defendant's
27 criminal history.

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

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

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

1 (17) "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 restitution work, or
5 dollars or terms of a legal financial obligation. The fact that an
6 offender through earned release can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

9 (18) "Disposable earnings" means that part of the earnings of an
10 offender 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 (19) "Drug offender sentencing alternative" is a sentencing option
22 available to persons convicted of a felony offense other than a violent
23 offense or a sex offense and who are eligible for the option under RCW
24 9.94A.660.

25 (20) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession of
27 a controlled substance (RCW 69.50.4013) or forged prescription for a
28 controlled substance (RCW 69.50.403);

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

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

35 (21) "Earned release" means earned release from confinement as
36 provided in RCW 9.94A.728.

37 (22) "Escape" means:

1 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
13 and-run injury-accident (RCW 46.52.020(4)); or

14 (b) 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 felony
16 traffic offense under (a) of this subsection.

17 (24) "Fine" means a specific sum of money ordered by the sentencing
18 court to be paid by the offender to the court over a specific period of
19 time.

20 (25) "First-time offender" means any person who has no prior
21 convictions for a felony and is eligible for the first-time offender
22 waiver under RCW 9.94A.650.

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

26 (27) "Legal financial obligation" means a sum of money that is
27 ordered by a superior court of the state of Washington for legal
28 financial obligations which may include restitution to the victim,
29 statutorily imposed crime victims' compensation fees as assessed
30 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,
31 court-appointed attorneys' fees, and costs of defense, fines, and any
32 other financial obligation that is assessed to the offender as a result
33 of a felony conviction. Upon conviction for vehicular assault while
34 under the influence of intoxicating liquor or any drug, RCW
35 46.61.522(1)(b), or vehicular homicide while under the influence of
36 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
37 obligations may also include payment to a public agency of the expense

1 of an emergency response to the incident resulting in the conviction,
2 subject to RCW 38.52.430.

3 (28) "Most serious offense" means any of the following felonies or
4 a felony attempt to commit any of the following felonies:

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

8 (b) Assault in the second degree;

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

10 (d) Child molestation in the second degree;

11 (e) Controlled substance homicide;

12 (f) Extortion in the first degree;

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

14 (h) Indecent liberties;

15 (i) Kidnapping in the second degree;

16 (j) Leading organized crime;

17 (k) Manslaughter in the first degree;

18 (l) Manslaughter in the second degree;

19 (m) Promoting prostitution in the first degree;

20 (n) Rape in the third degree;

21 (o) Robbery in the second degree;

22 (p) Sexual exploitation;

23 (q) Vehicular assault, when caused by the operation or driving of
24 a vehicle by a person while under the influence of intoxicating liquor
25 or any drug or by the operation or driving of a vehicle in a reckless
26 manner;

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

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

33 (t) Any other felony with a deadly weapon verdict under RCW
34 9.94A.602;

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

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

3 (v)(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 (29) "Nonviolent offense" means an offense which is not a violent
17 offense.

18 (30) "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 (31) "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
32 detention.

33 (32) "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

1 the laws of this state would be considered most serious offenses and
2 would be included in the offender score under RCW 9.94A.525; provided
3 that of the two or more previous convictions, at least one conviction
4 must have occurred before the commission of any of the other most
5 serious offenses for which the offender was previously convicted; or

6 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
7 of a child in the first degree, child molestation in the first degree,
8 rape in the second degree, rape of a child in the second degree, or
9 indecent liberties by forcible compulsion; (B) any of the following
10 offenses with a finding of sexual motivation: Murder in the first
11 degree, murder in the second degree, homicide by abuse, kidnapping in
12 the first degree, kidnapping in the second degree, assault in the first
13 degree, assault in the second degree, assault of a child in the first
14 degree, assault of a child in the second degree, or burglary in the
15 first degree; or (C) an attempt to commit any crime listed in this
16 subsection (32)(b)(i); and

17 (ii) Has, before the commission of the offense under (b)(i) of this
18 subsection, been convicted as an offender on at least one occasion,
19 whether in this state or elsewhere, of an offense listed in (b)(i) of
20 this subsection or any federal or out-of-state offense or offense under
21 prior Washington law that is comparable to the offenses listed in
22 (b)(i) of this subsection. A conviction for rape of a child in the
23 first degree constitutes a conviction under (b)(i) of this subsection
24 only when the offender was sixteen years of age or older when the
25 offender committed the offense. A conviction for rape of a child in
26 the second degree constitutes a conviction under (b)(i) of this
27 subsection only when the offender was eighteen years of age or older
28 when the offender committed the offense.

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

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

35 (35) "Risk assessment" means the application of an objective
36 instrument supported by research and adopted by the department for the
37 purpose of assessing an offender's risk of reoffense, taking into
38 consideration the nature of the harm done by the offender, place and

1 circumstances of the offender related to risk, the offender's
2 relationship to any victim, and any information provided to the
3 department by victims. The results of a risk assessment shall not be
4 based on unconfirmed or unconfirmable allegations.

5 (36) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any
7 drug (RCW 46.61.502), actual physical control while under the influence
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
10 or

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

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

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

17 (ii) Homicide by abuse;

18 (iii) Murder in the second degree;

19 (iv) Manslaughter in the first degree;

20 (v) Assault in the first degree;

21 (vi) Kidnapping in the first degree;

22 (vii) Rape in the first degree;

23 (viii) Assault of a child in the first degree; or

24 (ix) An attempt, criminal solicitation, or criminal conspiracy to
25 commit one of these felonies; or

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

29 (38) "Sex offense" means:

30 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
31 RCW 9A.44.130(11);

32 (ii) A violation of RCW 9A.64.020;

33 (iii) A felony that is a violation of chapter 9.68A RCW other than
34 RCW 9.68A.070 or 9.68A.080; or

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

37 (b) Any conviction for a felony offense in effect at any time prior

1 to July 1, 1976, that is comparable to a felony classified as a sex
2 offense in (a) of this subsection;

3 (c) A felony with a finding of sexual motivation under RCW
4 9.94A.835 or 13.40.135; or

5 (d) 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 sex
7 offense under (a) of this subsection.

8 (39) "Sexual motivation" means that one of the purposes for which
9 the defendant committed the crime was for the purpose of his or her
10 sexual gratification.

11 (40) "Standard sentence range" means the sentencing court's
12 discretionary range in imposing a nonappealable sentence.

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

17 (42) "Total confinement" means confinement inside the physical
18 boundaries of a facility or institution operated or utilized under
19 contract by the state or any other unit of government for twenty-four
20 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

21 (43) "Transition training" means written and verbal instructions
22 and assistance provided by the department to the offender during the
23 two weeks prior to the offender's successful completion of the work
24 ethic camp program. The transition training shall include instructions
25 in the offender's requirements and obligations during the offender's
26 period of community custody.

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

30 (45) "Violent offense" means:

31 (a) Any of the following felonies:

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

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

36 (iii) Manslaughter in the first degree;

37 (iv) Manslaughter in the second degree;

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

1 (vi) Kidnapping in the second degree;
2 (vii) Arson in the second degree;
3 (viii) Assault in the second degree;
4 (ix) Assault of a child in the second degree;
5 (x) Extortion in the first degree;
6 (xi) Robbery in the second degree;
7 (xii) Drive-by shooting;
8 (xiii) Vehicular assault, when caused by the operation or driving
9 of a vehicle by a person while under the influence of intoxicating
10 liquor or any drug or by the operation or driving of a vehicle in a
11 reckless manner; and

12 (xiv) Vehicular homicide, when proximately caused by the driving of
13 any vehicle by any person while under the influence of intoxicating
14 liquor or any drug as defined by RCW 46.61.502, or by the operation of
15 any vehicle in a reckless manner;

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

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

22 (46) "Work crew" means a program of partial confinement consisting
23 of civic improvement tasks for the benefit of the community that
24 complies with RCW 9.94A.725.

25 (47) "Work ethic camp" means an alternative incarceration program
26 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
27 the cost of corrections by requiring offenders to complete a
28 comprehensive array of real-world job and vocational experiences,
29 character-building work ethics training, life management skills
30 development, substance abuse rehabilitation, counseling, literacy
31 training, and basic adult education.

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

35 **Sec. 2.** RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read
36 as follows:

1 (1) An offender who is not a persistent offender shall be sentenced
2 under this section if the offender:

3 (a) Is convicted of:

4 (i) Rape in the first degree, rape in the second degree, rape of a
5 child in the first degree, child molestation in the first degree, rape
6 of a child in the second degree, or indecent liberties by forcible
7 compulsion;

8 (ii) Any of the following offenses with a finding of sexual
9 motivation: Murder in the first degree, murder in the second degree,
10 homicide by abuse, kidnapping in the first degree, kidnapping in the
11 second degree, assault in the first degree, assault in the second
12 degree, assault of a child in the first degree, assault of a child in
13 the second degree, or burglary in the first degree; or

14 (iii) An attempt to commit any crime listed in this subsection
15 (1)(a);
16 committed on or after September 1, 2001; or

17 (b) Has a prior conviction for an offense listed in RCW
18 9.94A.030(32)(b), and is convicted of any sex offense which was
19 committed after September 1, 2001.

20 For purposes of this subsection (1)(b), failure to register is not
21 a sex offense.

22 (2) An offender convicted of rape of a child in the first or second
23 degree or child molestation in the first degree who was seventeen years
24 of age or younger at the time of the offense shall not be sentenced
25 under this section.

26 (3) Upon a finding that the offender is subject to sentencing under
27 this section, the court shall impose a sentence to a maximum term
28 consisting of the statutory maximum sentence for the offense and a
29 minimum term either within the standard sentence range for the offense,
30 or outside the standard sentence range pursuant to RCW 9.94A.535, if
31 the offender is otherwise eligible for such a sentence.

32 (4) A person sentenced under subsection (3) of this section shall
33 serve the sentence in a facility or institution operated, or utilized
34 under contract, by the state.

35 (5) When a court sentences a person to the custody of the
36 department under this section, the court shall, in addition to the
37 other terms of the sentence, sentence the offender to community custody

1 under the supervision of the department and the authority of the board
2 for any period of time the person is released from total confinement
3 before the expiration of the maximum sentence.

4 (6)(a) Unless a condition is waived by the court, the conditions of
5 community custody shall include those provided for in RCW 9.94A.700(4).
6 The conditions may also include those provided for in RCW 9.94A.700(5).
7 The court may also order the offender to participate in rehabilitative
8 programs or otherwise perform affirmative conduct reasonably related to
9 the circumstances of the offense, the offender's risk of reoffending,
10 or the safety of the community, and the department and the board shall
11 enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and
12 9.95.430.

13 (b) As part of any sentence under this section, the court shall
14 also require the offender to comply with any conditions imposed by the
15 board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

16 **Sec. 3.** RCW 9A.36.130 and 1992 c 145 s 2 are each amended to read
17 as follows:

18 (1) A person eighteen years of age or older is guilty of the crime
19 of assault of a child in the second degree if the child is under the
20 age of thirteen and the person:

21 (a) Commits the crime of assault in the second degree, as defined
22 in RCW 9A.36.021, against a child; or

23 (b) Intentionally assaults the child and causes bodily harm that is
24 greater than transient physical pain or minor temporary marks, and the
25 person has previously engaged in a pattern or practice either of (i)
26 assaulting the child which has resulted in bodily harm that is greater
27 than transient pain or minor temporary marks, or (ii) causing the child
28 physical pain or agony that is equivalent to that produced by torture.

29 (2)(a) Except as provided in (b) of this subsection, assault of a
30 child in the second degree is a class B felony.

31 (b) Assault of a child in the second degree with a finding of
32 sexual motivation is a class A felony.

33 NEW SECTION. **Sec. 4.** This act takes effect July 1, 2006.

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