

1 **SHB 1333 - H AMD 000107 ADOPTED 03-12-93**

2 By Representative Vance

3 On page 7, after line 20, strike the remainder of the act and
4 insert "sections 2 through 11 of this act, referencing this act by
5 bill number, is not provided by June 30, 1993, in the omnibus
6 appropriation act, this act, this act is null and void.

7 **Sec. 14.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
8 each reenacted and amended to read as follows:

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

11 (1) "Collect," or any derivative thereof, "collect and remit," or
12 "collect and deliver," when used with reference to the department of
13 corrections, means that the department is responsible for monitoring
14 and enforcing the offender's sentence with regard to the legal
15 financial obligation, receiving payment thereof from the offender, and,
16 consistent with current law, delivering daily the entire payment to the
17 superior court clerk without depositing it in a departmental account.

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

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

23 (4) "Community custody" means that portion of an inmate's sentence
24 of confinement in lieu of earned early release time served in the
25 community subject to controls placed on the inmate's movement and
26 activities by the department of corrections.

27 (5) "Community placement" means that period during which the
28 offender is subject to the conditions of community custody and/or
29 postrelease supervision, which begins either upon completion of the
30 term of confinement (postrelease supervision) or at such time as the

1 offender is transferred to community custody in lieu of earned early
2 release. Community placement may consist of entirely community
3 custody, entirely postrelease supervision, or a combination of the two.

4 (6) "Community service" means compulsory service, without compensa-
5 tion, performed for the benefit of the community by the offender.

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

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

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

20 (10) "Court-ordered legal financial obligation" means a sum of
21 money that is ordered by a superior court of the state of Washington
22 for legal financial obligations which may include restitution to the
23 victim, statutorily imposed crime victims' compensation fees as
24 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
25 drug funds, court-appointed attorneys' fees, and costs of defense,
26 fines, and any other financial obligation that is assessed to the
27 offender as a result of a felony conviction.

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

34 (12)(a) "Criminal history" means the list of a defendant's prior
35 convictions, whether in this state, in federal court, or elsewhere.
36 The history shall include, where known, for each conviction (i) whether
37 the defendant has been placed on probation and the length and terms

1 thereof; and (ii) whether the defendant has been incarcerated and the
2 length of incarceration.

3 (b) "Criminal history" shall always include juvenile convictions
4 for sex offenses and shall also include a defendant's other prior
5 convictions in juvenile court if: (i) The conviction was for an
6 offense which is a felony or a serious traffic offense and is criminal
7 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
8 fifteen years of age or older at the time the offense was committed;
9 and (iii) with respect to prior juvenile class B and C felonies or
10 serious traffic offenses, the defendant was less than twenty-three
11 years of age at the time the offense for which he or she is being
12 sentenced was committed.

13 (13) "Criminal street gang" means any ongoing organization,
14 association, or group of three or more persons, whether formal or
15 informal, that has as one of its primary activities the commission of
16 a criminal act or acts.

17 (14) "Department" means the department of corrections.

18 ((~~14~~)) (15) "Determinate sentence" means a sentence that states
19 with exactitude the number of actual years, months, or days of total
20 confinement, of partial confinement, of community supervision, the
21 number of actual hours or days of community service work, or dollars or
22 terms of a legal financial obligation. The fact that an offender
23 through "earned early release" can reduce the actual period of
24 confinement shall not affect the classification of the sentence as a
25 determinate sentence.

26 ((~~15~~)) (16) "Disposable earnings" means that part of the earnings
27 of an individual remaining after the deduction from those earnings of
28 any amount required by law to be withheld. For the purposes of this
29 definition, "earnings" means compensation paid or payable for personal
30 services, whether denominated as wages, salary, commission, bonuses, or
31 otherwise, and, notwithstanding any other provision of law making the
32 payments exempt from garnishment, attachment, or other process to
33 satisfy a court-ordered legal financial obligation, specifically
34 includes periodic payments pursuant to pension or retirement programs,
35 or insurance policies of any type, but does not include payments made
36 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
37 or Title 74 RCW.

38 ((~~16~~)) (17) "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 (~~(17)~~) (18) "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 (~~(18)~~) (19) "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 (~~(19)~~) (20) "Fines" means the requirement that the offender pay
27 a specific sum of money over a specific period of time to the court.

28 (~~(20)~~) (21)(a) "First-time offender" means any person who is
29 convicted of a felony (i) not classified as a violent offense or a sex
30 offense under this chapter, or (ii) that is not the manufacture,
31 delivery, or possession with intent to manufacture or deliver a
32 controlled substance classified in schedule I or II that is a narcotic
33 drug or the selling for profit (~~{ef}~~) of any controlled substance or
34 counterfeit substance classified in schedule I, RCW 69.50.204, except
35 leaves and flowering tops of marihuana, and except as provided in (b)
36 of this subsection, who previously has never been convicted of a felony
37 in this state, federal court, or another state, and who has never
38 participated in a program of deferred prosecution for a felony offense.

1 (b) For purposes of (a) of this subsection, a juvenile adjudication
2 for an offense committed before the age of fifteen years is not a
3 previous felony conviction except for adjudications of sex offenses.

4 (~~(21)~~) (22) "Nonviolent offense" means an offense which is not a
5 violent offense.

6 (~~(22)~~) (23) "Offender" means a person who has committed a felony
7 established by state law and is eighteen years of age or older or is
8 less than eighteen years of age but whose case has been transferred by
9 the appropriate juvenile court to a criminal court pursuant to RCW
10 13.40.110. Throughout this chapter, the terms "offender" and
11 "defendant" are used interchangeably.

12 (~~(23)~~) (24) "Partial confinement" means confinement for no more
13 than one year in a facility or institution operated or utilized under
14 contract by the state or any other unit of government, or, if home
15 detention or work crew has been ordered by the court, in an approved
16 residence, for a substantial portion of each day with the balance of
17 the day spent in the community. Partial confinement includes work
18 release, home detention, work crew, and a combination of work crew and
19 home detention as defined in this section.

20 (~~(24)~~) (25) "Postrelease supervision" is that portion of an
21 offender's community placement that is not community custody.

22 (~~(25)~~) (26) "Restitution" means the requirement that the offender
23 pay a specific sum of money over a specific period of time to the court
24 as payment of damages. The sum may include both public and private
25 costs. The imposition of a restitution order does not preclude civil
26 redress.

27 (~~(26)~~) (27) "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 (~~(27)~~) (28) "Serious violent offense" is a subcategory of violent
37 offense and means:

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

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

9 ~~((28))~~ (29) "Sentence range" means the sentencing court's
10 discretionary range in imposing a nonappealable sentence.

11 ~~((29))~~ (30) "Sex offense" means:

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

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

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

21 ~~((30))~~ (31) "Sexual motivation" means that one of the purposes
22 for which the defendant committed the crime was for the purpose of his
23 or her sexual gratification.

24 ~~((31))~~ (32) "Total confinement" means confinement inside the
25 physical boundaries of a facility or institution operated or utilized
26 under contract by the state or any other unit of government for twenty-
27 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

28 ~~((32))~~ (33) "Victim" means any person who has sustained
29 emotional, psychological, physical, or financial injury to person or
30 property as a direct result of the crime charged.

31 ~~((33))~~ (34) "Violent offense" means:

32 (a) Any of the following felonies, as now existing or hereafter
33 amended: Any felony defined under any law as a class A felony or an
34 attempt to commit a class A felony, criminal solicitation of or
35 criminal conspiracy to commit a class A felony, manslaughter in the
36 first degree, manslaughter in the second degree, indecent liberties if
37 committed by forcible compulsion, kidnapping in the second degree,
38 arson in the second degree, assault in the second degree, assault of a

1 child in the second degree, extortion in the first degree, robbery in
2 the second degree, vehicular assault, and vehicular homicide, when
3 proximately caused by the driving of any vehicle by any person while
4 under the influence of intoxicating liquor or any drug as defined by
5 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

12 (~~(34)~~) (35) "Work crew" means a program of partial confinement
13 consisting of civic improvement tasks for the benefit of the community
14 of not less than thirty-five hours per week that complies with RCW
15 9.94A.135. The civic improvement tasks shall be performed on public
16 property or on private property owned or operated by nonprofit
17 entities, except that, for emergency purposes only, work crews may
18 perform snow removal on any private property. The civic improvement
19 tasks shall have minimal negative impact on existing private industries
20 or the labor force in the county where the service or labor is
21 performed. The civic improvement tasks shall not affect employment
22 opportunities for people with developmental disabilities contracted
23 through sheltered workshops as defined in RCW 82.04.385. Only those
24 offenders sentenced to a facility operated or utilized under contract
25 by a county are eligible to participate on a work crew. Offenders
26 sentenced for a sex offense as defined in subsection (~~(29)~~) (30) of
27 this section are not eligible for the work crew program.

28 (~~(35)~~) (36) "Work release" means a program of partial confinement
29 available to offenders who are employed or engaged as a student in a
30 regular course of study at school. Participation in work release shall
31 be conditioned upon the offender attending work or school at regularly
32 defined hours and abiding by the rules of the work release facility.

33 (~~(36)~~) (37) "Home detention" means a program of partial
34 confinement available to offenders wherein the offender is confined in
35 a private residence subject to electronic surveillance. Home detention
36 may not be imposed for offenders convicted of a violent offense, any
37 sex offense, any drug offense, reckless burning in the first or second
38 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third

1 degree as defined in RCW 9A.36.031, assault of a child in the third
2 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
3 harassment as defined in RCW 9A.46.020. Home detention may be imposed
4 for offenders convicted of possession of a controlled substance (RCW
5 69.50.401(d)) or forged prescription for a controlled substance (RCW
6 69.50.403) if the offender fulfills the participation conditions set
7 forth in this subsection and is monitored for drug use by treatment
8 alternatives to street crime (TASC) or a comparable court or agency-
9 referred program.

10 (a) Home detention may be imposed for offenders convicted of
11 burglary in the second degree as defined in RCW 9A.52.030 or
12 residential burglary conditioned upon the offender: (i) Successfully
13 completing twenty-one days in a work release program, (ii) having no
14 convictions for burglary in the second degree or residential burglary
15 during the preceding two years and not more than two prior convictions
16 for burglary or residential burglary, (iii) having no convictions for
17 a violent felony offense during the preceding two years and not more
18 than two prior convictions for a violent felony offense, (iv) having no
19 prior charges of escape, and (v) fulfilling the other conditions of the
20 home detention program.

21 (b) Participation in a home detention program shall be conditioned
22 upon: (i) The offender obtaining or maintaining current employment or
23 attending a regular course of school study at regularly defined hours,
24 or the offender performing parental duties to offspring or minors
25 normally in the custody of the offender, (ii) abiding by the rules of
26 the home detention program, and (iii) compliance with court-ordered
27 legal financial obligations. The home detention program may also be
28 made available to offenders whose charges and convictions do not
29 otherwise disqualify them if medical or health-related conditions,
30 concerns or treatment would be better addressed under the home
31 detention program, or where the health and welfare of the offender,
32 other inmates, or staff would be jeopardized by the offender's
33 incarceration. Participation in the home detention program for medical
34 or health-related reasons is conditioned on the offender abiding by the
35 rules of the home detention program and complying with court-ordered
36 restitution.

1 **Sec. 15.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
2 as follows:

3 If the sentencing court finds that an exceptional sentence outside
4 the standard range should be imposed in accordance with RCW
5 9.94A.120(2), the sentence is subject to review only as provided for in
6 RCW 9.94A.210(4).

7 The following are illustrative factors which the court may consider
8 in the exercise of its discretion to impose an exceptional sentence.
9 The following are illustrative only and are not intended to be
10 exclusive reasons for exceptional sentences.

11 (1) Mitigating Circumstances

12 (a) To a significant degree, the victim was an initiator, willing
13 participant, aggressor, or provoker of the incident.

14 (b) Before detection, the defendant compensated, or made a good
15 faith effort to compensate, the victim of the criminal conduct for any
16 damage or injury sustained.

17 (c) The defendant committed the crime under duress, coercion,
18 threat, or compulsion insufficient to constitute a complete defense but
19 which significantly affected his or her conduct.

20 (d) The defendant, with no apparent predisposition to do so, was
21 induced by others to participate in the crime.

22 (e) The defendant's capacity to appreciate the wrongfulness of his
23 conduct or to conform his conduct to the requirements of the law, was
24 significantly impaired (voluntary use of drugs or alcohol is excluded).

25 (f) The offense was principally accomplished by another person and
26 the defendant manifested extreme caution or sincere concern for the
27 safety or well-being of the victim.

28 (g) The operation of the multiple offense policy of RCW 9.94A.400
29 results in a presumptive sentence that is clearly excessive in light of
30 the purpose of this chapter, as expressed in RCW 9.94A.010.

31 (h) The defendant or the defendant's children suffered a continuing
32 pattern of physical or sexual abuse by the victim of the offense and
33 the offense is a response to that abuse.

34 (2) Aggravating Circumstances

35 (a) The defendant's conduct during the commission of the current
36 offense manifested deliberate cruelty to the victim.

1 (b) The defendant knew or should have known that the victim of the
2 current offense was particularly vulnerable or incapable of resistance
3 due to extreme youth, advanced age, disability, or ill health.

4 (c) The current offense was a major economic offense or series of
5 offenses, so identified by a consideration of any of the following
6 factors:

7 (i) The current offense involved multiple victims or multiple
8 incidents per victim;

9 (ii) The current offense involved attempted or actual monetary loss
10 substantially greater than typical for the offense;

11 (iii) The current offense involved a high degree of sophistication
12 or planning or occurred over a lengthy period of time;

13 (iv) The defendant used his or her position of trust, confidence,
14 or fiduciary responsibility to facilitate the commission of the current
15 offense.

16 (d) The current offense was a major violation of the Uniform
17 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
18 trafficking in controlled substances, which was more onerous than the
19 typical offense of its statutory definition: The presence of ANY of
20 the following may identify a current offense as a major VUCSA:

21 (i) The current offense involved at least three separate
22 transactions in which controlled substances were sold, transferred, or
23 possessed with intent to do so; or

24 (ii) The current offense involved an attempted or actual sale or
25 transfer of controlled substances in quantities substantially larger
26 than for personal use; or

27 (iii) The current offense involved the manufacture of controlled
28 substances for use by other parties; or

29 (iv) The circumstances of the current offense reveal the offender
30 to have occupied a high position in the drug distribution hierarchy; or

31 (v) The current offense involved a high degree of sophistication or
32 planning or occurred over a lengthy period of time or involved a broad
33 geographic area of disbursement; or

34 (vi) The offender used his or her position or status to facilitate
35 the commission of the current offense, including positions of trust,
36 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
37 other medical professional)(~~(i-or)~~).

1 (e) The current offense included a finding of sexual motivation
2 pursuant to RCW 9.94A.127(~~(+)~~).

3 (f) The offense was part of an ongoing pattern of sexual abuse of
4 the same victim under the age of eighteen years manifested by multiple
5 incidents over a prolonged period of time(~~(+or)~~).

6 (g) The operation of the multiple offense policy of RCW 9.94A.400
7 results in a presumptive sentence that is clearly too lenient in light
8 of the purpose of this chapter, as expressed in RCW 9.94A.010.

9 (h) The offense was committed for the benefit of, at the direction
10 of, or in association with any criminal street gang as defined in RCW
11 9.94A.030, with the specific intent to promote, further, or assist in
12 any criminal conduct by gang members.

13 NEW SECTION. Sec. 16. If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. Sec. 17 Sections fourteen through sixteen of this
18 act are necessary for the immediate preservation of the public peace,
19 health, or safety, or support of the state government and its existing
20 public institutions, and shall take effect July 1, 1993.

--- END ---