

1 **SHB 1333 - H AMD TO H AMD 110 000126 RULED BEYOND THE SCOPE AND**
2 **OBJECT OF THE BILL 03-12-93**

3 By Representative Vance

4 On page 11 of the amendment, after line 12, insert " **Sec. 14**
5 RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are each
6 reenacted and amended to read as follows:

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

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

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

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

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

26 (5) "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
30 the offender is transferred to community custody in lieu of earned
31 early release. Community placement may consist of entirely

1 community custody, entirely postrelease supervision, or a
2 combination of the two.

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

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

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

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

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

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

1 participate in rehabilitative programs or to otherwise perform
2 affirmative conduct.

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

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

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

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

24 ((+14)) (15) "Determinate sentence" means a sentence that
25 states with exactitude the number of actual years, months, or days
26 of total confinement, of partial confinement, of community
27 supervision, the number of actual hours or days of community
28 service work, or dollars or terms of a legal financial obligation.
29 The fact that an offender through "earned early release" can reduce
30 the actual period of confinement shall not affect the
31 classification of the sentence as a determinate sentence.

32 ((+15)) (16) "Disposable earnings" means that part of the
33 earnings of an individual remaining after the deduction from those

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

11 ((+16+)) (17) "Drug offense" means:

12 (a) Any felony violation of chapter 69.50 RCW except
13 possession of a controlled substance (RCW 69.50.401(d)) or forged
14 prescription for a controlled substance (RCW 69.50.403);

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

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

21 ((+17+)) (18) "Escape" means:

22 (a) Escape in the first degree (RCW 9A.76.110), escape in the
23 second degree (RCW 9A.76.120), willful failure to return from
24 furlough (RCW 72.66.060), willful failure to return from work
25 release (RCW 72.65.070), or willful failure to be available for
26 supervision by the department while in community custody (RCW
27 72.09.310); or

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

31 ((+18+)) (19) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
33 46.61.522), eluding a police officer (RCW 46.61.024), or felony

1 hit-and-run injury-accident (RCW 46.52.020(4)); or

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

5 (~~(19)~~) (20) "Fines" means the requirement that the offender
6 pay a specific sum of money over a specific period of time to the
7 court.

8 (~~(20)~~) (21)(a) "First-time offender" means any person who is
9 convicted of a felony (i) not classified as a violent offense or a
10 sex offense under this chapter, or (ii) that is not the
11 manufacture, delivery, or possession with intent to manufacture or
12 deliver a controlled substance classified in schedule I or II that
13 is a narcotic drug or the selling for profit (~~{of}~~) of any
14 controlled substance or counterfeit substance classified in
15 schedule I, RCW 69.50.204, except leaves and flowering tops of
16 marihuana, and except as provided in (b) of this subsection, who
17 previously has never been convicted of a felony in this state,
18 federal court, or another state, and who has never participated in
19 a program of deferred prosecution for a felony offense.

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

24 (~~(21)~~) (22) "Nonviolent offense" means an offense which is
25 not a violent offense.

26 (~~(22)~~) (23) "Offender" means a person who has committed a
27 felony established by state law and is eighteen years of age or
28 older or is less than eighteen years of age but whose case has been
29 transferred by the appropriate juvenile court to a criminal court
30 pursuant to RCW 13.40.110. Throughout this chapter, the terms
31 "offender" and "defendant" are used interchangeably.

32 (~~(23)~~) (24) "Partial confinement" means confinement for no
33 more than one year in a facility or institution operated or

1 utilized under contract by the state or any other unit of
2 government, or, if home detention or work crew has been ordered by
3 the court, in an approved residence, for a substantial portion of
4 each day with the balance of the day spent in the community.
5 Partial confinement includes work release, home detention, work
6 crew, and a combination of work crew and home detention as defined
7 in this section.

8 ((+24+)) (25) "Postrelease supervision" is that portion of an
9 offender's community placement that is not community custody.

10 ((+25+)) (26) "Restitution" means the requirement that the
11 offender pay a specific sum of money over a specific period of time
12 to the court as payment of damages. The sum may include both
13 public and private costs. The imposition of a restitution order
14 does not preclude civil redress.

15 ((+26+)) (27) "Serious traffic offense" means:

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

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

25 ((+27+)) (28) "Serious violent offense" is a subcategory of
26 violent offense and means:

27 (a) Murder in the first degree, homicide by abuse, murder in
28 the second degree, assault in the first degree, kidnapping in the
29 first degree, or rape in the first degree, assault of a child in
30 the first degree, or an attempt, criminal solicitation, or criminal
31 conspiracy to commit one of these felonies; or

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

1 serious violent offense under (a) of this subsection.

2 ~~((+28+))~~ (29) "Sentence range" means the sentencing court's
3 discretionary range in imposing a nonappealable sentence.

4 ~~((+29+))~~ (30) "Sex offense" means:

5 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
6 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a
7 criminal attempt, criminal solicitation, or criminal conspiracy to
8 commit such crimes;

9 (b) A felony with a finding of sexual motivation under RCW
10 9.94A.127; or

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

14 ~~((+30+))~~ (31) "Sexual motivation" means that one of the
15 purposes for which the defendant committed the crime was for the
16 purpose of his or her sexual gratification.

17 ~~((+31+))~~ (32) "Total confinement" means confinement inside the
18 physical boundaries of a facility or institution operated or
19 utilized under contract by the state or any other unit of
20 government for twenty-four hours a day, or pursuant to RCW
21 72.64.050 and 72.64.060.

22 ~~((+32+))~~ (33) "Victim" means any person who has sustained
23 emotional, psychological, physical, or financial injury to person
24 or property as a direct result of the crime charged.

25 ~~((+33+))~~ (34) "Violent offense" means:

26 (a) Any of the following felonies, as now existing or
27 hereafter amended: Any felony defined under any law as a class A
28 felony or an attempt to commit a class A felony, criminal
29 solicitation of or criminal conspiracy to commit a class A felony,
30 manslaughter in the first degree, manslaughter in the second
31 degree, indecent liberties if committed by forcible compulsion,
32 kidnapping in the second degree, arson in the second degree,
33 assault in the second degree, assault of a child in the second

1 degree, extortion in the first degree, robbery in the second
2 degree, vehicular assault, and vehicular homicide, when proximately
3 caused by the driving of any vehicle by any person while under the
4 influence of intoxicating liquor or any drug as defined by RCW
5 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
7 prior to July 1, 1976, that is comparable to a felony classified as
8 a violent 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
11 violent offense under (a) or (b) of this subsection.

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

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

1 the work release facility.

2 ((+36+)) (37) "Home detention" means a program of partial
3 confinement available to offenders wherein the offender is confined
4 in a private residence subject to electronic surveillance. Home
5 detention may not be imposed for offenders convicted of a violent
6 offense, any sex offense, any drug offense, reckless burning in the
7 first or second degree as defined in RCW 9A.48.040 or 9A.48.050,
8 assault in the third degree as defined in RCW 9A.36.031, assault of
9 a child in the third degree, unlawful imprisonment as defined in
10 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
11 detention may be imposed for offenders convicted of possession of
12 a controlled substance (RCW 69.50.401(d)) or forged prescription
13 for a controlled substance (RCW 69.50.403) if the offender fulfills
14 the participation conditions set forth in this subsection and is
15 monitored for drug use by treatment alternatives to street crime
16 (TASC) or a comparable court or agency-referred program.

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

28 (b) Participation in a home detention program shall be
29 conditioned upon: (i) The offender obtaining or maintaining
30 current employment or attending a regular course of school study at
31 regularly defined hours, or the offender performing parental duties
32 to offspring or minors normally in the custody of the offender,
33 (ii) abiding by the rules of the home detention program, and (iii)

1 compliance with court-ordered legal financial obligations. The
2 home detention program may also be made available to offenders
3 whose charges and convictions do not otherwise disqualify them if
4 medical or health-related conditions, concerns or treatment would
5 be better addressed under the home detention program, or where the
6 health and welfare of the offender, other inmates, or staff would
7 be jeopardized by the offender's incarceration. Participation in
8 the home detention program for medical or health-related reasons is
9 conditioned on the offender abiding by the rules of the home
10 detention program and complying with court-ordered restitution.

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

13 If the sentencing court finds that an exceptional sentence
14 outside the standard range should be imposed in accordance with RCW
15 9.94A.120(2), the sentence is subject to review only as provided
16 for in RCW 9.94A.210(4).

17 The following are illustrative factors which the court may
18 consider in the exercise of its discretion to impose an exceptional
19 sentence. The following are illustrative only and are not intended
20 to be exclusive reasons for exceptional sentences.

21 (1) Mitigating Circumstances

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

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

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

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

32 (e) The defendant's capacity to appreciate the wrongfulness of

1 his conduct or to conform his conduct to the requirements of the
2 law, was significantly impaired (voluntary use of drugs or alcohol
3 is excluded).

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

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

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

14 (2) Aggravating Circumstances

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

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

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

24 (i) The current offense involved multiple victims or multiple
25 incidents per victim;

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

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

31 (iv) The defendant used his or her position of trust,
32 confidence, or fiduciary responsibility to facilitate the
33 commission of the current offense.

1 (d) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than
4 the typical offense of its statutory definition: The presence of
5 ANY of the following may identify a current offense as a major
6 VUCSA:

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

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

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

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

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

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

25 (e) The current offense included a finding of sexual
26 motivation pursuant to RCW 9.94A.127~~((i))~~.

27 (f) The offense was part of an ongoing pattern of sexual abuse
28 of the same victim under the age of eighteen years manifested by
29 multiple incidents over a prolonged period of time~~((i-or))~~.

30 (g) The operation of the multiple offense policy of RCW
31 9.94A.400 results in a presumptive sentence that is clearly too
32 lenient in light of the purpose of this chapter, as expressed in
33 RCW 9.94A.010.

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

5 NEW SECTION. **Sec. 16.** If any provision of this act or its
6 application to any person or circumstance is held invalid, the
7 remainder of the act or the application of the provision to other
8 persons or circumstances is not affected.

EFFECT: This amendment provides for enhanced penalties
for committing crimes as part of a gang activity.

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