

2 SHB 1051 - S COMM AMD

3 By Committee on Law & Justice

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that a public agency
8 incurs expenses in an emergency response. It is the intent of the
9 legislature to allow a public agency to recover the expenses of an
10 emergency response to an incident involving persons who operate a motor
11 vehicle, boat or vessel, or a civil aircraft while under the influence
12 of an alcoholic beverage or a drug, or the combined influence of an
13 alcoholic beverage and a drug. It is the intent of the legislature
14 that the recovery of expenses of an emergency response under this act
15 shall supplement and shall not supplant other provisions of law
16 relating to the recovery of those expenses.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 38.52 RCW
18 to read as follows:

19 A person whose intoxication causes an incident resulting in an
20 appropriate emergency response, and who, in connection with the
21 incident, has been found guilty of or has had their prosecution
22 deferred for (1) driving while under the influence of intoxicating
23 liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the
24 influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel
25 while under the influence of alcohol or drugs, RCW 88.12.100; (4)
26 vehicular homicide while under the influence of intoxicating liquor or
27 any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the
28 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is
29 liable for the expense of an emergency response by a public agency to
30 the incident.

31 The expense of an emergency response is a charge against the person
32 liable for expenses under this section. The charge constitutes a debt
33 of that person and is collectible by the public agency incurring those
34 costs in the same manner as in the case of an obligation under a
35 contract, expressed or implied.

1 In no event shall a person's liability under this section for the
2 expense of an emergency response exceed one thousand dollars for a
3 particular incident.

4 If more than one public agency makes a claim for payment from an
5 individual for an emergency response to a single incident under the
6 provisions of this section, and the sum of the claims exceeds the
7 amount recovered, the division of the amount recovered shall be
8 determined by an interlocal agreement consistent with the requirements
9 of chapter 39.34 RCW.

10 **Sec. 3.** RCW 9.95.210 and 1992 c 86 s 1 are each amended to read as
11 follows:

12 In granting probation, the court may suspend the imposition or the
13 execution of the sentence and may direct that the suspension may
14 continue upon such conditions and for such time as it shall designate,
15 not exceeding the maximum term of sentence or two years, whichever is
16 longer.

17 In the order granting probation and as a condition thereof, the
18 court may in its discretion imprison the defendant in the county jail
19 for a period not exceeding one year and may fine the defendant any sum
20 not exceeding the statutory limit for the offense committed, and court
21 costs. As a condition of probation, the court shall require the
22 payment of the penalty assessment required by RCW 7.68.035. The court
23 may also require the defendant to make such monetary payments, on such
24 terms as it deems appropriate under the circumstances, as are necessary
25 (1) to comply with any order of the court for the payment of family
26 support, (2) to make restitution to any person or persons who may have
27 suffered loss or damage by reason of the commission of the crime in
28 question or when the offender pleads guilty to a lesser offense or
29 fewer offenses and agrees with the prosecutor's recommendation that the
30 offender be required to pay restitution to a victim of an offense or
31 offenses which are not prosecuted pursuant to a plea agreement, (3) to
32 pay such fine as may be imposed and court costs, including
33 reimbursement of the state for costs of extradition if return to this
34 state by extradition was required, (4) following consideration of the
35 financial condition of the person subject to possible electronic
36 monitoring, to pay for the costs of electronic monitoring if that
37 monitoring was required by the court as a condition of release from
38 custody or as a condition of probation, ((and)) (5) to contribute to a

1 county or interlocal drug fund, and (6) to make restitution to a public
2 agency for the costs of an emergency response under section 2 of this
3 act, and may require bonds for the faithful observance of any and all
4 conditions imposed in the probation. The court shall order the
5 probationer to report to the secretary of corrections or such officer
6 as the secretary may designate and as a condition of the probation to
7 follow implicitly the instructions of the secretary. If the
8 probationer has been ordered to make restitution, the officer
9 supervising the probationer shall make a reasonable effort to ascertain
10 whether restitution has been made. If restitution has not been made as
11 ordered, the officer shall inform the prosecutor of that violation of
12 the terms of probation not less than three months prior to the
13 termination of the probation period. The secretary of corrections will
14 promulgate rules and regulations for the conduct of the person during
15 the term of probation. For defendants found guilty in district court,
16 like functions as the secretary performs in regard to probation may be
17 performed by probation officers employed for that purpose by the county
18 legislative authority of the county wherein the court is located.

19 **Sec. 4.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
20 each reenacted and amended to read as follows:

21 Unless the context clearly requires otherwise, the definitions in
22 this section apply throughout this chapter.

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

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

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

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

1 (5) "Community placement" means that period during which the
2 offender is subject to the conditions of community custody and/or
3 postrelease supervision, which begins either upon completion of the
4 term of confinement (postrelease supervision) or at such time as the
5 offender is transferred to community custody in lieu of earned early
6 release. Community placement may consist of entirely community
7 custody, entirely postrelease supervision, or a combination of the two.

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

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

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

21 (9) "Conviction" means an adjudication of guilt pursuant to Titles
22 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
23 acceptance of a plea of guilty.

24 (10) "Court-ordered legal financial obligation" means a sum of
25 money that is ordered by a superior court of the state of Washington
26 for legal financial obligations which may include restitution to the
27 victim, statutorily imposed crime victims' compensation fees as
28 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
29 drug funds, court-appointed attorneys' fees, and costs of defense,
30 fines, and any other financial obligation that is assessed to the
31 offender as a result of a felony conviction. Upon conviction for
32 vehicular assault while under the influence of intoxicating liquor or
33 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
34 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
35 legal financial obligations may also include payment to a public agency
36 of the expense of an emergency response to the incident resulting in
37 the conviction, subject to the provisions in section 2 of this act.

38 (11) "Crime-related prohibition" means an order of a court
39 prohibiting conduct that directly relates to the circumstances of the

1 crime for which the offender has been convicted, and shall not be
2 construed to mean orders directing an offender affirmatively to
3 participate in rehabilitative programs or to otherwise perform
4 affirmative conduct.

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

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

21 (13) "Department" means the department of corrections.

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

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

1 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
2 or Title 74 RCW.

3 (16) "Drug offense" means:

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

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

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

13 (17) "Escape" means:

14 (a) Escape in the first degree (RCW 9A.76.110), escape in the
15 second degree (RCW 9A.76.120), willful failure to return from furlough
16 (RCW 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to be available for supervision by the
18 department while in community custody (RCW 72.09.310); or

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

22 (18) "Felony traffic offense" means:

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); 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 felony
28 traffic offense under (a) of this subsection.

29 (19) "Fines" means the requirement that the offender pay a specific
30 sum of money over a specific period of time to the court.

31 (20)(a) "First-time offender" means any person who is convicted of
32 a felony (i) not classified as a violent offense or a sex offense under
33 this chapter, or (ii) that is not the manufacture, delivery, or
34 possession with intent to manufacture or deliver a controlled substance
35 classified in schedule I or II that is a narcotic drug or the selling
36 for profit [of] any controlled substance or counterfeit substance
37 classified in schedule I, RCW 69.50.204, except leaves and flowering
38 tops of marihuana, and except as provided in (b) of this subsection,
39 who previously has never been convicted of a felony in this state,

1 federal court, or another state, and who has never participated in a
2 program of deferred prosecution for a felony offense.

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

6 (21) "Nonviolent offense" means an offense which is not a violent
7 offense.

8 (22) "Offender" means a person who has committed a felony
9 established by state law and is eighteen years of age or older or is
10 less than eighteen years of age but whose case has been transferred by
11 the appropriate juvenile court to a criminal court pursuant to RCW
12 13.40.110. Throughout this chapter, the terms "offender" and
13 "defendant" are used interchangeably.

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

22 (24) "Postrelease supervision" is that portion of an offender's
23 community placement that is not community custody.

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

28 (26) "Serious traffic offense" means:

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

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

37 (27) "Serious violent offense" is a subcategory of violent offense
38 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) "Sentence range" means the sentencing court's discretionary
10 range in imposing a nonappealable sentence.

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

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

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

31 (33) "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
39 child in the second degree, extortion in the first degree, robbery in

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

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

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

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

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

32 (36) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance. Home detention may not
35 be imposed for offenders convicted of a violent offense, any sex
36 offense, any drug offense, reckless burning in the first or second
37 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
38 degree as defined in RCW 9A.36.031, assault of a child in the third
39 degree, unlawful imprisonment as defined in RCW 9A.40.040, or

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

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

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

35 **Sec. 5.** RCW 38.52.010 and 1986 c 266 s 23 are each amended to read
36 as follows:

37 As used in this chapter:

1 (1) "Emergency management" or "comprehensive emergency management"
2 means the preparation for and the carrying out of all emergency
3 functions, other than functions for which the military forces are
4 primarily responsible, to mitigate, prepare for, respond to, and
5 recover from emergencies and disasters, and to aid victims suffering
6 from injury or damage, resulting from disasters caused by all hazards,
7 whether natural or man-made, and to provide support for search and
8 rescue operations for persons and property in distress. However,
9 "emergency management" or "comprehensive emergency management" does not
10 mean preparation for emergency evacuation or relocation of residents in
11 anticipation of nuclear attack.

12 (2) "Local organization for emergency services or management" means
13 an organization created in accordance with the provisions of this
14 chapter by state or local authority to perform local emergency
15 management functions.

16 (3) "Political subdivision" means any county, city or town.

17 (4) "Emergency worker" means any person who is registered with a
18 local emergency management organization or the department of community
19 development and holds an identification card issued by the local
20 emergency management director or the department of community
21 development for the purpose of engaging in authorized emergency
22 management activities or is an employee of the state of Washington or
23 any political subdivision thereof who is called upon to perform
24 emergency management activities.

25 (5) "Injury" as used in this chapter shall mean and include
26 accidental injuries and/or occupational diseases arising out of
27 emergency management activities.

28 (6)(a) "Emergency or disaster" as used in all sections of this
29 chapter except section 2 of this act shall mean an event or set of
30 circumstances which: (~~(a)~~) (i) Demands immediate action to preserve
31 public health, protect life, protect public property, or to provide
32 relief to any stricken community overtaken by such occurrences, or
33 (~~(b)~~) (ii) reaches such a dimension or degree of destructiveness as
34 to warrant the governor declaring a state of emergency pursuant to RCW
35 43.06.010.

36 (b) "Emergency" as used in section 2 of this act means an incident
37 that requires a normal police, coroner, fire, rescue, emergency medical
38 services, or utility response as a result of a violation of one of the
39 statutes enumerated in section 2 of this act.

1 (7) "Search and rescue" means the acts of searching for, rescuing,
2 or recovering by means of ground, marine, or air activity any person
3 who becomes lost, injured, or is killed while outdoors or as a result
4 of a natural or man-made disaster, including instances involving
5 searches for downed aircraft when ground personnel are used. Nothing
6 in this section shall affect appropriate activity by the department of
7 transportation under chapter 47.68 RCW.

8 (8) "Executive head" and "executive heads" means the county
9 executive in those charter counties with an elective office of county
10 executive, however designated, and, in the case of other counties, the
11 county legislative authority. In the case of cities and towns, it
12 means the mayor.

13 (9) "Director" means the director of community development.

14 (10) "Local director" means the director of a local organization of
15 emergency management or emergency services.

16 (11) "Department" means the department of community development.

17 (12) "Emergency response" as used in section 2 of this act means a
18 public agency's use of emergency services during an emergency or
19 disaster as defined in subsection (6)(b) of this section.

20 (13) "Expense of an emergency response" as used in section 2 of
21 this act means reasonable costs incurred by a public agency in
22 reasonably making an appropriate emergency response to the incident,
23 but shall only include those costs directly arising from the response
24 to the particular incident. Reasonable costs shall include the costs
25 of providing police, coroner, fire fighting, rescue, emergency medical
26 services, or utility response at the scene of the incident, as well as
27 the salaries of the personnel responding to the incident.

28 (14) "Public agency" means the state, and a city, county, municipal
29 corporation, district, or public authority located, in whole or in
30 part, within this state which provides or may provide fire fighting,
31 police, ambulance, medical, or other emergency services."

32 **SHB 1051** - S COMM AMD

33 By Committee on Law & Justice

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35 On page 1, line 1 of the title, after "management;" strike the
36 remainder of the title and insert "amending RCW 9.95.210 and 38.52.010;

1 reenacting and amending RCW 9.94A.030; adding a new section to chapter
2 38.52 RCW; and creating a new section."

--- **END** ---