

2 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94)

3 By Senators Nelson, Amondson, McDonald, Roach, Anderson and L.
4 Smith

5 ADOPTED; IMMEDIATELY RECONSIDERED, AND **NOT ADOPTED 3/4/94**

6 On page 57, after line 21 of the amendment, insert the following:

7 "Sec. 434. RCW 9.94A.030 and 1994 c 1 s 3 (Initiative Measure No.
8 593), 1993 c 338 s 2, 1993 c 251 s 4, and 1993 c 164 s 1 are each
9 reenacted and amended to read as follows:

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

12 (1) "Collect," or any derivative thereof, "collect and remit," or
13 "collect and deliver," when used with reference to the department of
14 corrections, means that the department 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 (2) "Commission" means the sentencing guidelines commission.

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

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

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

35 (6) "Community service" means compulsory service, without
36 compensation, performed for the benefit of the community by the
37 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter or RCW
4 46.61.524. For first-time offenders, the supervision may include
5 crime-related prohibitions and other conditions imposed pursuant to RCW
6 9.94A.120(5). For purposes of the interstate compact for out-of-state
7 supervision of parolees and probationers, RCW 9.95.270, community
8 supervision is the functional equivalent of probation and should be
9 considered the same as probation by other states.

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

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

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

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

35 (12)(a) "Criminal history" means the list of a defendant's prior
36 convictions, whether in this state, in federal court, or elsewhere.
37 The history shall include, where known, for each conviction (i) whether
38 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))~~) (9); (ii) the defendant
8 was fifteen years of age or older at the time the offense was
9 committed; and (iii) with respect to prior juvenile class B and C
10 felonies (~~((or serious traffic offenses, the defendant was less than~~
11 ~~twenty-three years of age at the time the offense for which he or she~~
12 ~~is being sentenced was committed))~~) the offense would be included under
13 RCW 9.94A.360(2).

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

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

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

35 (16) "Drug offense" means:

36 (a) Any felony violation of chapter 69.50 RCW except possession of
37 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
38 controlled substance (RCW 69.50.403);

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

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

7 (17) "Escape" means:

8 (a) Escape in the first degree (RCW 9A.76.110), escape in the
9 second degree (RCW 9A.76.120), willful failure to return from furlough
10 (RCW 72.66.060), willful failure to return from work release (RCW
11 72.65.070), or willful failure to be available for supervision by the
12 department while in community custody (RCW 72.09.310); or

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

16 (18) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
19 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

1 (21) "Most serious offense" means any of the following felonies or
2 a felony attempt to commit any of the following felonies, as now
3 existing or hereafter amended:

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

7 (b) Assault in the second degree;

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

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

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

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

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

27 (s) Any other class B felony offense with a finding of sexual
28 motivation, as "sexual motivation" is defined under this section;

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.125;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection.

36 (22) "Nonviolent offense" means an offense which is not a violent
37 offense.

38 (23) "Offender" means a person who has committed a felony
39 established by state law and is eighteen years of age or older or is

1 less than eighteen years of age but whose case has been transferred by
2 the appropriate juvenile court to a criminal court pursuant to RCW
3 13.40.110 or has been tried in a criminal court pursuant to RCW
4 13.04.030(5)(d). Throughout this chapter, the terms "offender" and
5 "defendant" are used interchangeably.

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

14 (25) "Persistent offender" is an offender who:

15 (a) Has been convicted in this state of any felony considered a
16 most serious offense; and

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

25 (26) "Postrelease supervision" is that portion of an offender's
26 community placement that is not community custody.

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

31 (28) "Serious traffic offense" means:

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

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

1 (29) "Serious violent offense" is a subcategory of violent offense
2 and means:

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

8 (b) 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 serious
10 violent offense under (a) of this subsection.

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

13 (31) "Sex offense" means:

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

18 (b) A felony with a finding of sexual motivation under RCW
19 9.94A.127; or

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

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

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

30 (34) "Transition training" means written and verbal instructions
31 and assistance provided by the department to the offender during the
32 two weeks prior to the offender's successful completion of the work
33 ethic camp program. The transition training shall include instructions
34 in the offender's requirements and obligations during the offender's
35 period of community custody.

36 (35) "Victim" means any person who has sustained emotional,
37 psychological, physical, or financial injury to person or property as
38 a direct result of the crime charged.

39 (36) "Violent offense" means:

1 (a) Any of the following felonies, as now existing or hereafter
2 amended: Any felony defined under any law as a class A felony or an
3 attempt to commit a class A felony, criminal solicitation of or
4 criminal conspiracy to commit a class A felony, manslaughter in the
5 first degree, manslaughter in the second degree, indecent liberties if
6 committed by forcible compulsion, kidnapping in the second degree,
7 arson in the second degree, assault in the second degree, assault of a
8 child in the second degree, extortion in the first degree, robbery in
9 the second degree, vehicular assault, and vehicular homicide, when
10 proximately caused by the driving of any vehicle by any person while
11 under the influence of intoxicating liquor or any drug as defined by
12 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

19 (37) "Work crew" means a program of partial confinement consisting
20 of civic improvement tasks for the benefit of the community of not less
21 than thirty-five hours per week that complies with RCW 9.94A.135. The
22 civic improvement tasks shall have minimal negative impact on existing
23 private industries or the labor force in the county where the service
24 or labor is performed. The civic improvement tasks shall not affect
25 employment opportunities for people with developmental disabilities
26 contracted through sheltered workshops as defined in RCW 82.04.385.
27 Only those offenders sentenced to a facility operated or utilized under
28 contract by a county or the state are eligible to participate on a work
29 crew. Offenders sentenced for a sex offense as defined in subsection
30 (31) of this section are not eligible for the work crew program.

31 (38) "Work ethic camp" means an alternative incarceration program
32 designed to reduce recidivism and lower the cost of corrections by
33 requiring offenders to complete a comprehensive array of real-world job
34 and vocational experiences, character-building work ethics training,
35 life management skills development, substance abuse rehabilitation,
36 counseling, literacy training, and basic adult education.

37 (39) "Work release" means a program of partial confinement
38 available to offenders who are employed or engaged as a student in a
39 regular course of study at school. Participation in work release shall

1 be conditioned upon the offender attending work or school at regularly
2 defined hours and abiding by the rules of the work release facility.

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

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

29 (b) Participation in a home detention program shall be conditioned
30 upon: (i) The offender obtaining or maintaining current employment or
31 attending a regular course of school study at regularly defined hours,
32 or the offender performing parental duties to offspring or minors
33 normally in the custody of the offender, (ii) abiding by the rules of
34 the home detention program, and (iii) compliance with court-ordered
35 legal financial obligations. The home detention program may also be
36 made available to offenders whose charges and convictions do not
37 otherwise disqualify them if medical or health-related conditions,
38 concerns or treatment would be better addressed under the home
39 detention program, or where the health and welfare of the offender,

1 other inmates, or staff would be jeopardized by the offender's
2 incarceration. Participation in the home detention program for medical
3 or health-related reasons is conditioned on the offender abiding by the
4 rules of the home detention program and complying with court-ordered
5 restitution."

6 Renumber the remaining sections consecutively and correct any
7 internal references accordingly.

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10 Smith

11 ADOPTED; IMMEDIATELY RECONSIDERED AND **NOT ADOPTED 3/4/94**

12 On page 159, line 33 of the title amendment, after "9.41.040,"
13 insert "9.94A.030,"

--- END ---