
HOUSE BILL 2846

State of Washington 53rd Legislature 1994 Regular Session

By Representatives Lemmon, Linville, Campbell, Karahalios and Johanson

Read first time 01/26/94. Referred to Committee on Corrections.

1 AN ACT Relating to penalty assessments to fund the crime victims'
2 compensation fund; reenacting and amending RCW 9.94A.030; adding a new
3 section to chapter 9.94A RCW; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.94A.030 and 1994 c 1 s 3 (Initiative Measure No.
6 593), 1993 c 338 s 2, 1993 c 251 s 4, and 1993 c 164 s 1 are each
7 reenacted and amended to read as follows:

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

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

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

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

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

14 (6) "Community service" means compulsory service, without
15 compensation, performed for the benefit of the community by the
16 offender.

17 (7) "Community supervision" means a period of time during which a
18 convicted offender is subject to crime-related prohibitions and other
19 sentence conditions imposed by a court pursuant to this chapter or RCW
20 46.61.524. For first-time offenders, the supervision may include
21 crime-related prohibitions and other conditions imposed pursuant to RCW
22 9.94A.120(5). For purposes of the interstate compact for out-of-state
23 supervision of parolees and probationers, RCW 9.95.270, community
24 supervision is the functional equivalent of probation and should be
25 considered the same as probation by other states.

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

28 (9) "Conviction" means an adjudication of guilt pursuant to Titles
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

31 (10) "Court-ordered legal financial obligation" means a sum of
32 money that is ordered by a superior court of the state of Washington
33 for legal financial obligations which may include restitution to the
34 victim, statutorily imposed crime victims' compensation fees as
35 assessed pursuant to RCW 7.68.035, assessments imposed pursuant to
36 section 2 of this act, court costs, county or interlocal drug funds,
37 court-appointed attorneys' fees, and costs of defense, fines, and any
38 other financial obligation that is assessed to the offender as a result
39 of a felony conviction. Upon conviction for vehicular assault while

1 under the influence of intoxicating liquor or any drug, RCW
2 46.61.522(1)(b), or vehicular homicide while under the influence of
3 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial
4 obligations may also include payment to a public agency of the expense
5 of an emergency response to the incident resulting in the conviction,
6 subject to the provisions in RCW 38.52.430.

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

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

19 (b) "Criminal history" shall always include juvenile convictions
20 for sex offenses and shall also include a defendant's other prior
21 convictions in juvenile court if: (i) The conviction was for an
22 offense which is a felony or a serious traffic offense and is criminal
23 history as defined in RCW 13.40.020(~~(+6)~~)(9)(a); (ii) the defendant
24 was fifteen years of age or older at the time the offense was
25 committed; and (iii) with respect to prior juvenile class B and C
26 felonies or serious traffic offenses, the defendant was less than
27 twenty-three years of age at the time the offense for which he or she
28 is being sentenced was committed.

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

30 (14) "Determinate sentence" means a sentence that states with
31 exactitude the number of actual years, months, or days of total
32 confinement, of partial confinement, of community supervision, the
33 number of actual hours or days of community service work, or dollars or
34 terms of a legal financial obligation. The fact that an offender
35 through "earned early release" can reduce the actual period of
36 confinement shall not affect the classification of the sentence as a
37 determinate sentence.

38 (15) "Disposable earnings" means that part of the earnings of an
39 individual remaining after the deduction from those earnings of any

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

11 (16) "Drug offense" means:

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

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

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

21 (17) "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 furlough
24 (RCW 72.66.060), willful failure to return from work release (RCW
25 72.65.070), or willful failure to be available for supervision by the
26 department while in community custody (RCW 72.09.310); or

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

30 (18) "Felony traffic offense" means:

31 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
32 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
33 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

18 (a) Any felony defined under any law as a class A felony or
19 criminal solicitation of or criminal conspiracy to commit a class A
20 felony;

21 (b) Assault in the second degree;

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

23 (d) Child molestation in the second degree;

24 (e) Controlled substance homicide;

25 (f) Extortion in the first degree;

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

27 (h) Indecent liberties;

28 (i) Kidnapping in the second degree;

29 (j) Leading organized crime;

30 (k) Manslaughter in the first degree;

31 (l) Manslaughter in the second degree;

32 (m) Promoting prostitution in the first degree;

33 (n) Rape in the third degree;

34 (o) Robbery in the second degree;

35 (p) Sexual exploitation;

36 (q) Vehicular assault;

37 (r) Vehicular homicide, when proximately caused by the driving of
38 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

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

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection.

12 (22) "Nonviolent offense" means an offense which is not a violent
13 offense.

14 (23) "Offender" means a person who has committed a felony
15 established by state law and is eighteen years of age or older or is
16 less than eighteen years of age but whose case has been transferred by
17 the appropriate juvenile court to a criminal court pursuant to RCW
18 13.40.110. Throughout this chapter, the terms "offender" and
19 "defendant" are used interchangeably.

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

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

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

31 (b) Has, before the commission of the offense under (a) of this
32 subsection, been convicted as an offender on at least two separate
33 occasions, whether in this state or elsewhere, of felonies that under
34 the laws of this state would be considered most serious offenses and
35 would be included in the offender score under RCW 9.94A.360; provided
36 that of the two or more previous convictions, at least one conviction
37 must have occurred before the commission of any of the other most
38 serious offenses for which the offender was previously convicted.

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

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

7 (28) "Serious traffic offense" means:

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

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

16 (29) "Serious violent offense" is a subcategory of violent offense
17 and means:

18 (a) Murder in the first degree, homicide by abuse, murder in the
19 second degree, assault in the first degree, kidnapping in the first
20 degree, or rape in the first degree, assault of a child in the first
21 degree, or an attempt, criminal solicitation, or criminal conspiracy to
22 commit one of these felonies; 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 serious
25 violent offense under (a) of this subsection.

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

28 (31) "Sex offense" means:

29 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
30 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
31 attempt, criminal solicitation, or criminal conspiracy to commit such
32 crimes;

33 (b) A felony with a finding of sexual motivation under RCW
34 9.94A.127; or

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

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

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

8 (34) "Transition training" means written and verbal instructions
9 and assistance provided by the department to the offender during the
10 two weeks prior to the offender's successful completion of the work
11 ethic camp program. The transition training shall include instructions
12 in the offender's requirements and obligations during the offender's
13 period of community custody.

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

17 (36) "Violent offense" means:

18 (a) Any of the following felonies, as now existing or hereafter
19 amended: Any felony defined under any law as a class A felony or an
20 attempt to commit a class A felony, criminal solicitation of or
21 criminal conspiracy to commit a class A felony, manslaughter in the
22 first degree, manslaughter in the second degree, indecent liberties if
23 committed by forcible compulsion, kidnapping in the second degree,
24 arson in the second degree, assault in the second degree, assault of a
25 child in the second degree, extortion in the first degree, robbery in
26 the second degree, vehicular assault, and vehicular homicide, when
27 proximately caused by the driving of any vehicle by any person while
28 under the influence of intoxicating liquor or any drug as defined by
29 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

36 (37) "Work crew" means a program of partial confinement consisting
37 of civic improvement tasks for the benefit of the community of not less
38 than thirty-five hours per week that complies with RCW 9.94A.135. The
39 civic improvement tasks shall have minimal negative impact on existing

1 private industries or the labor force in the county where the service
2 or labor is performed. The civic improvement tasks shall not affect
3 employment opportunities for people with developmental disabilities
4 contracted through sheltered workshops as defined in RCW 82.04.385.
5 Only those offenders sentenced to a facility operated or utilized under
6 contract by a county or the state are eligible to participate on a work
7 crew. Offenders sentenced for a sex offense as defined in subsection
8 (31) of this section are not eligible for the work crew program.

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

15 (39) "Work release" means a program of partial confinement
16 available to offenders who are employed or engaged as a student in a
17 regular course of study at school. Participation in work release shall
18 be conditioned upon the offender attending work or school at regularly
19 defined hours and abiding by the rules of the work release facility.

20 (40) "Home detention" means a program of partial confinement
21 available to offenders wherein the offender is confined in a private
22 residence subject to electronic surveillance. Home detention may not
23 be imposed for offenders convicted of a violent offense, any sex
24 offense, any drug offense, reckless burning in the first or second
25 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
26 degree as defined in RCW 9A.36.031, assault of a child in the third
27 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
28 harassment as defined in RCW 9A.46.020. Home detention may be imposed
29 for offenders convicted of possession of a controlled substance (RCW
30 69.50.401(d)) or forged prescription for a controlled substance (RCW
31 69.50.403) if the offender fulfills the participation conditions set
32 forth in this subsection and is monitored for drug use by treatment
33 alternatives to street crime (TASC) or a comparable court or agency-
34 referred program.

35 (a) Home detention may be imposed for offenders convicted of
36 burglary in the second degree as defined in RCW 9A.52.030 or
37 residential burglary conditioned upon the offender: (i) Successfully
38 completing twenty-one days in a work release program, (ii) having no
39 convictions for burglary in the second degree or residential burglary

1 during the preceding two years and not more than two prior convictions
2 for burglary or residential burglary, (iii) having no convictions for
3 a violent felony offense during the preceding two years and not more
4 than two prior convictions for a violent felony offense, (iv) having no
5 prior charges of escape, and (v) fulfilling the other conditions of the
6 home detention program.

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

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW
24 to read as follows:

25 (1) The court shall impose at sentencing a penalty assessment on a
26 person found guilty of having committed a felony or of a violation of
27 RCW 46.61.502 or 46.61.504 committed on or after the effective date of
28 this section. The assessment shall be in addition to any other penalty
29 or fine imposed by law and shall be equal to one percent of the
30 convicted person's earnings. The assessment shall be due beginning
31 from the later of the date the convicted person is released from
32 confinement or the date the person is sentenced and shall be payable
33 for ten years from that date.

34 (2) The penalty assessment shall be paid to the clerk of the
35 superior court. All assessments received by the clerk pursuant to this
36 section shall be paid to the county treasurer who shall monthly
37 transmit the money as provided in RCW 10.82.070.

1 (3) Moneys deposited under this section shall be used to compensate
2 victims of crimes through the crime victims' compensation fund.

3 NEW SECTION. **Sec. 3.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

--- END ---