
SENATE BILL 5266

State of Washington

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By Senators Niemi, Pelz and McAuliffe

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1 AN ACT Relating to first-time offenders; and reenacting and
2 amending RCW 9.94A.030.

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

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

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

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

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

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

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

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

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

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

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

25 (9) "Conviction" means an adjudication of guilt pursuant to Titles
26 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
27 acceptance of a plea of guilty.

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

36 (11) "Crime-related prohibition" means an order of a court
37 prohibiting conduct that directly relates to the circumstances of the
38 crime for which the offender has been convicted, and shall not be
39 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 prior
4 convictions, whether in this state, in federal court, or elsewhere.
5 The history shall include, where known, for each conviction (i) whether
6 the defendant has been placed on probation and the length and terms
7 thereof; and (ii) whether the defendant has been incarcerated and the
8 length of incarceration.

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

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

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

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

1 (16) "Drug offense" means:

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

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

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

11 (17) "Escape" means:

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

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

20 (18) "Felony traffic offense" means:

21 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
22 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
23 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

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

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

26 (26) "Serious traffic offense" means:

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

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

35 (27) "Serious violent offense" is a subcategory of violent offense
36 and means:

37 (a) Murder in the first degree, homicide by abuse, murder in the
38 second degree, assault in the first degree, kidnapping in the first
39 degree, or rape in the first degree, assault of a child in the first

1 degree, or an attempt, criminal solicitation, or criminal conspiracy to
2 commit one of these felonies; or

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

6 (28) "Sentence range" means the sentencing court's discretionary
7 range in imposing a nonappealable sentence.

8 (29) "Sex offense" means:

9 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
10 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
11 attempt, criminal solicitation, or criminal conspiracy to commit such
12 crimes;

13 (b) A felony with a finding of sexual motivation under RCW
14 9.94A.127; or

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

18 (30) "Sexual motivation" means that one of the purposes for which
19 the defendant committed the crime was for the purpose of his or her
20 sexual gratification.

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

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

28 (33) "Violent offense" means:

29 (a) Any of the following felonies, as now existing or hereafter
30 amended: Any felony defined under any law as a class A felony or an
31 attempt to commit a class A felony, criminal solicitation of or
32 criminal conspiracy to commit a class A felony, manslaughter in the
33 first degree, manslaughter in the second degree, indecent liberties if
34 committed by forcible compulsion, kidnapping in the second degree,
35 arson in the second degree, assault in the second degree, assault of a
36 child in the second degree, extortion in the first degree, robbery in
37 the second degree, vehicular assault, and vehicular homicide, when
38 proximately caused by the driving of any vehicle by any person while

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

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

6 (c) 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 violent
8 offense under (a) or (b) of this subsection.

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

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

30 (36) "Home detention" means a program of partial confinement
31 available to offenders wherein the offender is confined in a private
32 residence subject to electronic surveillance. Home detention may not
33 be imposed for offenders convicted of a violent offense, any sex
34 offense, any drug offense, reckless burning in the first or second
35 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
36 degree as defined in RCW 9A.36.031, assault of a child in the third
37 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
38 harassment as defined in RCW 9A.46.020. Home detention may be imposed
39 for offenders convicted of possession of a controlled substance (RCW

1 69.50.401(d)) or forged prescription for a controlled substance (RCW
2 69.50.403) if the offender fulfills the participation conditions set
3 forth in this subsection and is monitored for drug use by treatment
4 alternatives to street crime (TASC) or a comparable court or agency-
5 referred program.

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

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

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