

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1176

Chapter 339, Laws of 1997

55th Legislature
1997 Regular Session

PERSISTENT OFFENDERS--RAPE OF A CHILD

EFFECTIVE DATE: 7/27/97

Passed by the House March 13, 1997
Yeas 95 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 18, 1997
Yeas 49 Nays 0

BRAD OWEN
President of the Senate

Approved May 13, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1176** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 13, 1997 - 2:24 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1176

Passed Legislature - 1997 Regular Session

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Koster, Boldt, Smith, Backlund, Dunn, McMorris, Schoesler, Sheldon, Johnson, DeBolt and Mulliken)

Read first time 03/03/97.

1 AN ACT Relating to persistent 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 1996 c 289 s 1 and 1996 c 275 s 5 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 or imposed pursuant
3 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
4 controls placed on the inmate's movement and activities by the
5 department of corrections.

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

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

16 (7) "Community supervision" means a period of time during which a
17 convicted offender is subject to crime-related prohibitions and other
18 sentence conditions imposed by a court pursuant to this chapter or RCW
19 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
20 may include crime-related prohibitions and other conditions imposed
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
22 for out-of-state supervision of parolees and probationers, RCW
23 9.95.270, community supervision is the functional equivalent of
24 probation and should be considered the same as probation by other
25 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, court costs, county or interlocal
36 drug funds, court-appointed attorneys' fees, and costs of defense,
37 fines, and any other financial obligation that is assessed to the
38 offender as a result of a felony conviction. Upon conviction for
39 vehicular assault while under the influence of intoxicating liquor or

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

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

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

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

28 (13) "Day fine" means a fine imposed by the sentencing judge that
29 equals the difference between the offender's net daily income and the
30 reasonable obligations that the offender has for the support of the
31 offender and any dependents.

32 (14) "Day reporting" means a program of enhanced supervision
33 designed to monitor the defendant's daily activities and compliance
34 with sentence conditions, and in which the defendant is required to
35 report daily to a specific location designated by the department or the
36 sentencing judge.

37 (15) "Department" means the department of corrections.

38 (16) "Determinate sentence" means a sentence that states with
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community service work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through "earned early release" can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

7 (17) "Disposable earnings" means that part of the earnings of an
8 individual remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for personal
11 services, whether denominated as wages, salary, commission, bonuses, or
12 otherwise, and, notwithstanding any other provision of law making the
13 payments exempt from garnishment, attachment, or other process to
14 satisfy a court-ordered legal financial obligation, specifically
15 includes periodic payments pursuant to pension or retirement programs,
16 or insurance policies of any type, but does not include payments made
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
18 or Title 74 RCW.

19 (18) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
22 controlled substance (RCW 69.50.403);

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

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

29 (19) "Escape" means:

30 (a) Escape in the first degree (RCW 9A.76.110), escape in the
31 second degree (RCW 9A.76.120), willful failure to return from furlough
32 (RCW 72.66.060), willful failure to return from work release (RCW
33 72.65.070), or willful failure to be available for supervision by the
34 department while in community custody (RCW 72.09.310); or

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

38 (20) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
3 and-run injury-accident (RCW 46.52.020(4)); or

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

7 (21) "Fines" means the requirement that the offender pay a specific
8 sum of money over a specific period of time to the court.

9 (22)(a) "First-time offender" means any person who is convicted of
10 a felony (i) not classified as a violent offense or a sex offense under
11 this chapter, or (ii) that is not the manufacture, delivery, or
12 possession with intent to manufacture or deliver a controlled substance
13 classified in schedule I or II that is a narcotic drug, nor the
14 manufacture, delivery, or possession with intent to deliver
15 methamphetamine, its salts, isomers, and salts of its isomers as
16 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
17 controlled substance or counterfeit substance classified in schedule I,
18 RCW 69.50.204, except leaves and flowering tops of marihuana, and
19 except as provided in (b) of this subsection, who previously has never
20 been convicted of a felony in this state, federal court, or another
21 state, and who has never participated in a program of deferred
22 prosecution for a felony offense.

23 (b) For purposes of (a) of this subsection, a juvenile adjudication
24 for an offense committed before the age of fifteen years is not a
25 previous felony conviction except for adjudications of sex offenses and
26 serious violent offenses.

27 (23) "Most serious offense" means any of the following felonies or
28 a felony attempt to commit any of the following felonies, as now
29 existing or hereafter amended:

30 (a) Any felony defined under any law as a class A felony or
31 criminal solicitation of or criminal conspiracy to commit a class A
32 felony;

33 (b) Assault in the second degree;

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

35 (d) Child molestation in the second degree;

36 (e) Controlled substance homicide;

37 (f) Extortion in the first degree;

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

39 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault;
- 10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
- 14 (s) Any other class B felony offense with a finding of sexual
15 motivation, as "sexual motivation" is defined under this section;
- 16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.125;
- 18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection.
- 23 (24) "Nonviolent offense" means an offense which is not a violent
24 offense.
- 25 (25) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older or is
27 less than eighteen years of age but whose case has been transferred by
28 the appropriate juvenile court to a criminal court pursuant to RCW
29 13.40.110. Throughout this chapter, the terms "offender" and
30 "defendant" are used interchangeably.
- 31 (26) "Partial confinement" means confinement for no more than one
32 year in a facility or institution operated or utilized under contract
33 by the state or any other unit of government, or, if home detention or
34 work crew has been ordered by the court, in an approved residence, for
35 a substantial portion of each day with the balance of the day spent in
36 the community. Partial confinement includes work release, home
37 detention, work crew, and a combination of work crew and home detention
38 as defined in this section.
- 39 (27) "Persistent offender" is an offender who:

1 (a)(i) Has been convicted in this state of any felony considered a
2 most serious offense; and

3 (ii) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.360; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of (A) rape in the first degree, rape in
12 the second degree, rape of a child in the first degree, rape of a child
13 in the second degree, or indecent liberties by forcible compulsion; (B)
14 murder in the first degree, murder in the second degree, kidnapping in
15 the first degree, kidnapping in the second degree, assault in the first
16 degree, assault in the second degree, or burglary in the first degree,
17 with a finding of sexual motivation; or (C) an attempt to commit any
18 crime listed in this subsection (27)(b)(i); and

19 (ii) Has, before the commission of the offense under (b)(i) of this
20 subsection, been convicted as an offender on at least one occasion,
21 whether in this state or elsewhere, of an offense listed in (b)(i) of
22 this subsection. A conviction for rape of a child in the first degree
23 constitutes a conviction under subsection (27)(b)(i) only when the
24 offender was sixteen years of age or older when the offender committed
25 the offense. A conviction for rape of a child in the second degree
26 constitutes a conviction under subsection (27)(b)(i) only when the
27 offender was eighteen years of age or older when the offender committed
28 the offense.

29 (28) "Postrelease supervision" is that portion of an offender's
30 community placement that is not community custody.

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

35 (30) "Serious traffic offense" means:

36 (a) Driving while under the influence of intoxicating liquor or any
37 drug (RCW 46.61.502), actual physical control while under the influence
38 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
2 or

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

6 (31) "Serious violent offense" is a subcategory of violent offense
7 and means:

8 (a) Murder in the first degree, homicide by abuse, murder in the
9 second degree, assault in the first degree, kidnapping in the first
10 degree, or rape in the first degree, assault of a child in the first
11 degree, or an attempt, criminal solicitation, or criminal conspiracy to
12 commit one of these felonies; 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 a serious
15 violent offense under (a) of this subsection.

16 (32) "Sentence range" means the sentencing court's discretionary
17 range in imposing a nonappealable sentence.

18 (33) "Sex offense" means:

19 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
20 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
21 criminal attempt, criminal solicitation, or criminal conspiracy to
22 commit such crimes;

23 (b) A felony with a finding of sexual motivation under RCW
24 9.94A.127 or 13.40.135; or

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

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

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

35 (36) "Transition training" means written and verbal instructions
36 and assistance provided by the department to the offender during the
37 two weeks prior to the offender's successful completion of the work
38 ethic camp program. The transition training shall include instructions

1 in the offender's requirements and obligations during the offender's
2 period of community custody.

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

6 (38) "Violent offense" means:

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

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

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

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

37 (40) "Work ethic camp" means an alternative incarceration program
38 designed to reduce recidivism and lower the cost of corrections by
39 requiring offenders to complete a comprehensive array of real-world job

1 and vocational experiences, character-building work ethics training,
2 life management skills development, substance abuse rehabilitation,
3 counseling, literacy training, and basic adult education.

4 (41) "Work release" means a program of partial confinement
5 available to offenders who are employed or engaged as a student in a
6 regular course of study at school. Participation in work release shall
7 be conditioned upon the offender attending work or school at regularly
8 defined hours and abiding by the rules of the work release facility.

9 (42) "Home detention" means a program of partial confinement
10 available to offenders wherein the offender is confined in a private
11 residence subject to electronic surveillance.

Passed the House March 13, 1997.

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Approved by the Governor May 13, 1997.

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