
SENATE BILL 6041

State of Washington 53rd Legislature 1994 Regular Session

By Senators Ludwig, A. Smith, Winsley, Oke, Nelson and McAuliffe

Read first time 01/10/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to sentencing for crimes committed by gang members;
2 amending RCW 9.94A.390; reenacting and amending RCW 9.94A.030;
3 prescribing penalties; and providing an effective date.

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 compensa-
15 tion, performed for the benefit of the community by the 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 46.61.524. For first-time offenders, the supervision may include
20 crime-related prohibitions and other conditions imposed pursuant to RCW
21 9.94A.120(5). For purposes of the interstate compact for out-of-state
22 supervision of parolees and probationers, RCW 9.95.270, community
23 supervision is the functional equivalent of probation and should be
24 considered the same as probation by other states.

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

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

30 (10) "Court-ordered legal financial obligation" means a sum of
31 money that is ordered by a superior court of the state of Washington
32 for legal financial obligations which may include restitution to the
33 victim, statutorily imposed crime victims' compensation fees as
34 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
35 drug funds, court-appointed attorneys' fees, and costs of defense,
36 fines, and any other financial obligation that is assessed to the
37 offender as a result of a felony conviction. Upon conviction for
38 vehicular assault while under the influence of intoxicating liquor or
39 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the

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

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

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

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

27 (13) "Criminal street gang" means any ongoing organization,
28 association, or group of three or more persons, whether formal or
29 informal, that has as one of its primary activities the commission of
30 a criminal act or acts.

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

32 (~~((14))~~) (15) "Determinate sentence" means a sentence that states
33 with exactitude the number of actual years, months, or days of total
34 confinement, of partial confinement, of community supervision, the
35 number of actual hours or days of community service work, or dollars or
36 terms of a legal financial obligation. The fact that an offender
37 through "earned early release" can reduce the actual period of
38 confinement shall not affect the classification of the sentence as a
39 determinate sentence.

1 (~~(15)~~) (16) "Disposable earnings" means that part of the earnings
2 of an individual remaining after the deduction from those earnings of
3 any amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (~~(16)~~) (17) "Drug offense" means:

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

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

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

23 (~~(17)~~) (18) "Escape" means:

24 (a) Escape in the first degree (RCW 9A.76.110), escape in the
25 second degree (RCW 9A.76.120), willful failure to return from furlough
26 (RCW 72.66.060), willful failure to return from work release (RCW
27 72.65.070), or willful failure to be available for supervision by the
28 department while in community custody (RCW 72.09.310); or

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

32 (~~(18)~~) (19) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (~~(19)~~) (20) "Fines" means the requirement that the offender pay
2 a specific sum of money over a specific period of time to the court.

3 (~~(20)~~) (21)(a) "First-time offender" means any person who is
4 convicted of a felony (i) not classified as a violent offense or a sex
5 offense under this chapter, or (ii) that is not the manufacture,
6 delivery, or possession with intent to manufacture or deliver a
7 controlled substance classified in schedule I or II that is a narcotic
8 drug or the selling for profit of any controlled substance or
9 counterfeit substance classified in schedule I, RCW 69.50.204, except
10 leaves and flowering tops of marihuana, and except as provided in (b)
11 of this subsection, who previously has never been convicted of a felony
12 in this state, federal court, or another state, and who has never
13 participated in a program of deferred prosecution for a felony offense.

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

17 (~~(21)~~) (22) "Most serious offense" means any of the following
18 felonies or a felony attempt to commit any of the following felonies,
19 as now existing or hereafter amended:

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

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

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

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault;

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

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

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.125;

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

14 (~~(22)~~) (23) "Nonviolent offense" means an offense which is not a
15 violent offense.

16 (~~(23)~~) (24) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older or is
18 less than eighteen years of age but whose case has been transferred by
19 the appropriate juvenile court to a criminal court pursuant to RCW
20 13.40.110. Throughout this chapter, the terms "offender" and
21 "defendant" are used interchangeably.

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

30 (~~(25)~~) (26) "Persistent offender" is an offender who:

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

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

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted.

3 ~~((26))~~ (27) "Postrelease supervision" is that portion of an
4 offender's community placement that is not community custody.

5 ~~((27))~~ (28) "Restitution" means the requirement that the offender
6 pay a specific sum of money over a specific period of time to the court
7 as payment of damages. The sum may include both public and private
8 costs. The imposition of a restitution order does not preclude civil
9 redress.

10 ~~((28))~~ (29) "Serious traffic offense" means:

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

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

19 ~~((29))~~ (30) "Serious violent offense" is a subcategory of violent
20 offense and means:

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

29 ~~((30))~~ (31) "Sentence range" means the sentencing court's
30 discretionary range in imposing a nonappealable sentence.

31 ~~((31))~~ (32) "Sex offense" means:

32 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
33 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
34 attempt, criminal solicitation, or criminal conspiracy to commit such
35 crimes;

36 (b) A felony with a finding of sexual motivation under RCW
37 9.94A.127; or

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

4 (~~(32)~~) (33) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(33)~~) (34) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(34)~~) (35) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(35)~~) (36) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(36)~~) (37) "Violent offense" means:

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

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

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

1 (~~(37)~~) (38) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the community
3 of not less than thirty-five hours per week that complies with RCW
4 9.94A.135. The civic improvement tasks shall have minimal negative
5 impact on existing private industries or the labor force in the county
6 where the service or labor is performed. The civic improvement tasks
7 shall not affect employment opportunities for people with developmental
8 disabilities contracted through sheltered workshops as defined in RCW
9 82.04.385. Only those offenders sentenced to a facility operated or
10 utilized under contract by a county or the state are eligible to
11 participate on a work crew. Offenders sentenced for a sex offense as
12 defined in subsection (~~(31)~~) (32) of this section are not eligible
13 for the work crew program.

14 (~~(38)~~) (39) "Work ethic camp" means an alternative incarceration
15 program designed to reduce recidivism and lower the cost of corrections
16 by requiring offenders to complete a comprehensive array of real-world
17 job and vocational experiences, character-building work ethics
18 training, life management skills development, substance abuse
19 rehabilitation, counseling, literacy training, and basic adult
20 education.

21 (~~(39)~~) (40) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school. Participation in work release shall
24 be conditioned upon the offender attending work or school at regularly
25 defined hours and abiding by the rules of the work release facility.

26 (~~(40)~~) (41) "Home detention" means a program of partial
27 confinement available to offenders wherein the offender is confined in
28 a private residence subject to electronic surveillance. Home detention
29 may not be imposed for offenders convicted of a violent offense, any
30 sex offense, any drug offense, reckless burning in the first or second
31 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
32 degree as defined in RCW 9A.36.031, assault of a child in the third
33 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
34 harassment as defined in RCW 9A.46.020. Home detention may be imposed
35 for offenders convicted of possession of a controlled substance (RCW
36 69.50.401(d)) or forged prescription for a controlled substance (RCW
37 69.50.403) if the offender fulfills the participation conditions set
38 forth in this subsection and is monitored for drug use by treatment

1 alternatives to street crime (TASC) or a comparable court or agency-
2 referred program.

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

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

30 **Sec. 2.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
31 as follows:

32 If the sentencing court finds that an exceptional sentence outside
33 the standard range should be imposed in accordance with RCW
34 9.94A.120(2), the sentence is subject to review only as provided for in
35 RCW 9.94A.210(4).

36 The following are illustrative factors which the court may consider
37 in the exercise of its discretion to impose an exceptional sentence.

1 The following are illustrative only and are not intended to be
2 exclusive reasons for exceptional sentences.

3 (1) Mitigating Circumstances

4 (a) To a significant degree, the victim was an initiator, willing
5 participant, aggressor, or provoker of the incident.

6 (b) Before detection, the defendant compensated, or made a good
7 faith effort to compensate, the victim of the criminal conduct for any
8 damage or injury sustained.

9 (c) The defendant committed the crime under duress, coercion,
10 threat, or compulsion insufficient to constitute a complete defense but
11 which significantly affected his or her conduct.

12 (d) The defendant, with no apparent predisposition to do so, was
13 induced by others to participate in the crime.

14 (e) The defendant's capacity to appreciate the wrongfulness of his
15 conduct or to conform his conduct to the requirements of the law, was
16 significantly impaired (voluntary use of drugs or alcohol is excluded).

17 (f) The offense was principally accomplished by another person and
18 the defendant manifested extreme caution or sincere concern for the
19 safety or well-being of the victim.

20 (g) The operation of the multiple offense policy of RCW 9.94A.400
21 results in a presumptive sentence that is clearly excessive in light of
22 the purpose of this chapter, as expressed in RCW 9.94A.010.

23 (h) The defendant or the defendant's children suffered a continuing
24 pattern of physical or sexual abuse by the victim of the offense and
25 the offense is a response to that abuse.

26 (2) Aggravating Circumstances

27 (a) The defendant's conduct during the commission of the current
28 offense manifested deliberate cruelty to the victim.

29 (b) The defendant knew or should have known that the victim of the
30 current offense was particularly vulnerable or incapable of resistance
31 due to extreme youth, advanced age, disability, or ill health.

32 (c) The current offense was a major economic offense or series of
33 offenses, so identified by a consideration of any of the following
34 factors:

35 (i) The current offense involved multiple victims or multiple
36 incidents per victim;

37 (ii) The current offense involved attempted or actual monetary loss
38 substantially greater than typical for the offense;

1 (iii) The current offense involved a high degree of sophistication
2 or planning or occurred over a lengthy period of time;

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

6 (d) The current offense was a major violation of the Uniform
7 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
8 trafficking in controlled substances, which was more onerous than the
9 typical offense of its statutory definition: The presence of ANY of
10 the following may identify a current offense as a major VUCSA:

11 (i) The current offense involved at least three separate
12 transactions in which controlled substances were sold, transferred, or
13 possessed with intent to do so; or

14 (ii) The current offense involved an attempted or actual sale or
15 transfer of controlled substances in quantities substantially larger
16 than for personal use; or

17 (iii) The current offense involved the manufacture of controlled
18 substances for use by other parties; or

19 (iv) The circumstances of the current offense reveal the offender
20 to have occupied a high position in the drug distribution hierarchy; or

21 (v) The current offense involved a high degree of sophistication or
22 planning or occurred over a lengthy period of time or involved a broad
23 geographic area of disbursement; or

24 (vi) The offender used his or her position or status to facilitate
25 the commission of the current offense, including positions of trust,
26 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
27 other medical professional)(~~(i-or)~~).

28 (e) The current offense included a finding of sexual motivation
29 pursuant to RCW 9.94A.127(~~(i)~~).

30 (f) The offense was part of an ongoing pattern of sexual abuse of
31 the same victim under the age of eighteen years manifested by multiple
32 incidents over a prolonged period of time(~~(i-or)~~).

33 (g) The operation of the multiple offense policy of RCW 9.94A.400
34 results in a presumptive sentence that is clearly too lenient in light
35 of the purpose of this chapter, as expressed in RCW 9.94A.010.

36 (h) The offense was committed for the benefit of, at the direction
37 of, or in association with any criminal street gang as defined in RCW
38 9.94A.030, with the specific intent to promote, further, or assist in
39 any criminal conduct by gang members.

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

5 NEW SECTION. **Sec. 4.** This act shall take effect July 1, 1994.

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