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SENATE BILL 5964

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Kline and Hargrove

Read first time 02/08/2007. Referred to Committee on Judiciary.

1            AN ACT Relating to persistent offenders; reenacting and amending  
2 RCW 9.94A.030; adding a new section to chapter 9.94A RCW; prescribing  
3 penalties; and providing an expiration date.

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

5            **Sec. 1.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c  
6 122 s 7, and 2006 c 73 s 5 are each reenacted and amended to read as  
7 follows:

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

10            (1) "Board" means the indeterminate sentence review board created  
11 under chapter 9.95 RCW.

12            (2) "Collect," or any derivative thereof, "collect and remit," or  
13 "collect and deliver," when used with reference to the department,  
14 means that the department, either directly or through a collection  
15 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
16 and enforcing the offender's sentence with regard to the legal  
17 financial obligation, receiving payment thereof from the offender, and,  
18 consistent with current law, delivering daily the entire payment to the  
19 superior court clerk without depositing it in a departmental account.

1 (3) "Commission" means the sentencing guidelines commission.

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

6 (5) "Community custody" means that portion of an offender's  
7 sentence of confinement in lieu of earned release time or imposed  
8 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
9 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
10 community subject to controls placed on the offender's movement and  
11 activities by the department. For offenders placed on community  
12 custody for crimes committed on or after July 1, 2000, the department  
13 shall assess the offender's risk of reoffense and may establish and  
14 modify conditions of community custody, in addition to those imposed by  
15 the court, based upon the risk to community safety.

16 (6) "Community custody range" means the minimum and maximum period  
17 of community custody included as part of a sentence under RCW  
18 9.94A.715, as established by the commission or the legislature under  
19 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

20 (7) "Community placement" means that period during which the  
21 offender is subject to the conditions of community custody and/or  
22 postrelease supervision, which begins either upon completion of the  
23 term of confinement (postrelease supervision) or at such time as the  
24 offender is transferred to community custody in lieu of earned release.  
25 Community placement may consist of entirely community custody, entirely  
26 postrelease supervision, or a combination of the two.

27 (8) "Community protection zone" means the area within eight hundred  
28 eighty feet of the facilities and grounds of a public or private  
29 school.

30 (9) "Community restitution" means compulsory service, without  
31 compensation, performed for the benefit of the community by the  
32 offender.

33 (10) "Community supervision" means a period of time during which a  
34 convicted offender is subject to crime-related prohibitions and other  
35 sentence conditions imposed by a court pursuant to this chapter or RCW  
36 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
37 a chemical dependency that has contributed to his or her offense, the  
38 conditions of supervision may, subject to available resources, include

1 treatment. For purposes of the interstate compact for out-of-state  
2 supervision of parolees and probationers, RCW 9.95.270, community  
3 supervision is the functional equivalent of probation and should be  
4 considered the same as probation by other states.

5 (11) "Confinement" means total or partial confinement.

6 (12) "Conviction" means an adjudication of guilt pursuant to Titles  
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
8 acceptance of a plea of guilty.

9 (13) "Crime-related prohibition" means an order of a court  
10 prohibiting conduct that directly relates to the circumstances of the  
11 crime for which the offender has been convicted, and shall not be  
12 construed to mean orders directing an offender affirmatively to  
13 participate in rehabilitative programs or to otherwise perform  
14 affirmative conduct. However, affirmative acts necessary to monitor  
15 compliance with the order of a court may be required by the department.

16 (14) "Criminal history" means the list of a defendant's prior  
17 convictions and juvenile adjudications, whether in this state, in  
18 federal court, or elsewhere.

19 (a) The history shall include, where known, for each conviction (i)  
20 whether the defendant has been placed on probation and the length and  
21 terms thereof; and (ii) whether the defendant has been incarcerated and  
22 the length of incarceration.

23 (b) A conviction may be removed from a defendant's criminal history  
24 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
25 a similar out-of-state statute, or if the conviction has been vacated  
26 pursuant to a governor's pardon.

27 (c) The determination of a defendant's criminal history is distinct  
28 from the determination of an offender score. A prior conviction that  
29 was not included in an offender score calculated pursuant to a former  
30 version of the sentencing reform act remains part of the defendant's  
31 criminal history.

32 (15) "Day fine" means a fine imposed by the sentencing court that  
33 equals the difference between the offender's net daily income and the  
34 reasonable obligations that the offender has for the support of the  
35 offender and any dependents.

36 (16) "Day reporting" means a program of enhanced supervision  
37 designed to monitor the offender's daily activities and compliance with

1 sentence conditions, and in which the offender is required to report  
2 daily to a specific location designated by the department or the  
3 sentencing court.

4 (17) "Department" means the department of corrections.

5 (18) "Determinate sentence" means a sentence that states with  
6 exactitude the number of actual years, months, or days of total  
7 confinement, of partial confinement, of community supervision, the  
8 number of actual hours or days of community restitution work, or  
9 dollars or terms of a legal financial obligation. The fact that an  
10 offender through earned release can reduce the actual period of  
11 confinement shall not affect the classification of the sentence as a  
12 determinate sentence.

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

25 (20) "Drug offender sentencing alternative" is a sentencing option  
26 available to persons convicted of a felony offense other than a violent  
27 offense or a sex offense and who are eligible for the option under RCW  
28 9.94A.660.

29 (21) "Drug offense" means:

30 (a) Any felony violation of chapter 69.50 RCW except possession of  
31 a controlled substance (RCW 69.50.4013) or forged prescription for a  
32 controlled substance (RCW 69.50.403);

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

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

1 (22) "Earned release" means earned release from confinement as  
2 provided in RCW 9.94A.728.

3 (23) "Escape" means:

4 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
5 first degree (RCW 9A.76.110), escape in the second degree (RCW  
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
7 willful failure to return from work release (RCW 72.65.070), or willful  
8 failure to be available for supervision by the department while in  
9 community custody (RCW 72.09.310); or

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

13 (24) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-  
16 run injury-accident (RCW 46.52.020(4)), felony driving while under the  
17 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or  
18 felony physical control of a vehicle while under the influence of  
19 intoxicating liquor or any drug (RCW 46.61.504(6)); or

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

23 (25) "Fine" means a specific sum of money ordered by the sentencing  
24 court to be paid by the offender to the court over a specific period of  
25 time.

26 (26) "First-time offender" means any person who has no prior  
27 convictions for a felony and is eligible for the first-time offender  
28 waiver under RCW 9.94A.650.

29 (27) "Home detention" means a program of partial confinement  
30 available to offenders wherein the offender is confined in a private  
31 residence subject to electronic surveillance.

32 (28) "Legal financial obligation" means a sum of money that is  
33 ordered by a superior court of the state of Washington for legal  
34 financial obligations which may include restitution to the victim,  
35 statutorily imposed crime victims' compensation fees as assessed  
36 pursuant to RCW 7.68.035, 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

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

8 (29) "Most serious offense" means any of the following felonies or  
9 a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or  
11 criminal solicitation of or criminal conspiracy to commit a class A  
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of  
29 a vehicle by a person while under the influence of intoxicating liquor  
30 or any drug or by the operation or driving of a vehicle in a reckless  
31 manner;

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

36 (s) Any other class B felony offense with a finding of sexual  
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW  
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
15 if: (A) The crime was committed against a child under the age of  
16 fourteen; or (B) the relationship between the victim and perpetrator is  
17 included in the definition of indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
20 through July 27, 1997.

21 (30) "Nonviolent offense" means an offense which is not a violent  
22 offense.

23 (31) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case is under superior court  
26 jurisdiction under RCW 13.04.030 or has been transferred by the  
27 appropriate juvenile court to a criminal court pursuant to RCW  
28 13.40.110. Throughout this chapter, the terms "offender" and  
29 "defendant" are used interchangeably.

30 (32) "Partial confinement" means confinement for no more than one  
31 year in a facility or institution operated or utilized under contract  
32 by the state or any other unit of government, or, if home detention or  
33 work crew has been ordered by the court, in an approved residence, for  
34 a substantial portion of each day with the balance of the day spent in  
35 the community. Partial confinement includes work release, home  
36 detention, work crew, and a combination of work crew and home  
37 detention.

38 (33) "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.525; 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.  
11 However, an offender who has no current or past conviction of any most  
12 serious offense other than assault in the second degree or robbery in  
13 the second degree, or an attempt of either, shall not be considered a  
14 persistent offender; or

15 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
16 of a child in the first degree, child molestation in the first degree,  
17 rape in the second degree, rape of a child in the second degree, or  
18 indecent liberties by forcible compulsion; (B) any of the following  
19 offenses with a finding of sexual motivation: Murder in the first  
20 degree, murder in the second degree, homicide by abuse, kidnapping in  
21 the first degree, kidnapping in the second degree, assault in the first  
22 degree, assault in the second degree, assault of a child in the first  
23 degree, assault of a child in the second degree, or burglary in the  
24 first degree; or (C) an attempt to commit any crime listed in this  
25 subsection (33)(b)(i); and

26 (ii) Has, before the commission of the offense under (b)(i) of this  
27 subsection, been convicted as an offender on at least one occasion,  
28 whether in this state or elsewhere, of an offense listed in (b)(i) of  
29 this subsection or any federal or out-of-state offense or offense under  
30 prior Washington law that is comparable to the offenses listed in  
31 (b)(i) of this subsection. A conviction for rape of a child in the  
32 first degree constitutes a conviction under (b)(i) of this subsection  
33 only when the offender was sixteen years of age or older when the  
34 offender committed the offense. A conviction for rape of a child in  
35 the second degree constitutes a conviction under (b)(i) of this  
36 subsection only when the offender was eighteen years of age or older  
37 when the offender committed the offense.



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

3 (35) "Predatory" means: (a) The perpetrator of the crime was a  
4 stranger to the victim, as defined in this section; (b) the perpetrator  
5 established or promoted a relationship with the victim prior to the  
6 offense and the victimization of the victim was a significant reason  
7 the perpetrator established or promoted the relationship; or (c) the  
8 perpetrator was: (i) A teacher, counselor, volunteer, or other person  
9 in authority in any public or private school and the victim was a  
10 student of the school under his or her authority or supervision. For  
11 purposes of this subsection, "school" does not include home-based  
12 instruction as defined in RCW 28A.225.010; (ii) a coach, trainer,  
13 volunteer, or other person in authority in any recreational activity  
14 and the victim was a participant in the activity under his or her  
15 authority or supervision; or (iii) a pastor, elder, volunteer, or other  
16 person in authority in any church or religious organization, and the  
17 victim was a member or participant of the organization under his or her  
18 authority.

19 (36) "Private school" means a school regulated under chapter  
20 28A.195 or 28A.205 RCW.

21 (37) "Public school" has the same meaning as in RCW 28A.150.010.

22 (38) "Restitution" means a specific sum of money ordered by the  
23 sentencing court to be paid by the offender to the court over a  
24 specified period of time as payment of damages. The sum may include  
25 both public and private costs.

26 (39) "Risk assessment" means the application of an objective  
27 instrument supported by research and adopted by the department for the  
28 purpose of assessing an offender's risk of reoffense, taking into  
29 consideration the nature of the harm done by the offender, place and  
30 circumstances of the offender related to risk, the offender's  
31 relationship to any victim, and any information provided to the  
32 department by victims. The results of a risk assessment shall not be  
33 based on unconfirmed or unconfirmable allegations.

34 (40) "Serious traffic offense" means:

35 (a) Nonfelony driving while under the influence of intoxicating  
36 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
37 while under the influence of intoxicating liquor or any drug (RCW

1 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
2 attended vehicle (RCW 46.52.020(5)); 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 (41) "Serious violent offense" is a subcategory of violent offense  
7 and means:  
8 (a)(i) Murder in the first degree;  
9 (ii) Homicide by abuse;  
10 (iii) Murder in the second degree;  
11 (iv) Manslaughter in the first degree;  
12 (v) Assault in the first degree;  
13 (vi) Kidnapping in the first degree;  
14 (vii) Rape in the first degree;  
15 (viii) Assault of a child in the first degree; or  
16 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
17 commit one of these felonies; or  
18 (b) Any federal or out-of-state conviction for an offense that  
19 under the laws of this state would be a felony classified as a serious  
20 violent offense under (a) of this subsection.  
21 (42) "Sex offense" means:  
22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
23 RCW 9A.44.130(~~(11)~~) (12);  
24 (ii) A violation of RCW 9A.64.020;  
25 (iii) A felony that is a violation of chapter 9.68A RCW other than  
26 RCW 9.68A.080; or  
27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
28 criminal solicitation, or criminal conspiracy to commit such crimes;  
29 (b) Any conviction for a felony offense in effect at any time prior  
30 to July 1, 1976, that is comparable to a felony classified as a sex  
31 offense in (a) of this subsection;  
32 (c) A felony with a finding of sexual motivation under RCW  
33 9.94A.835 or 13.40.135; or  
34 (d) 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 sex  
36 offense under (a) of this subsection.  
37 (43) "Sexual motivation" means that one of the purposes for which

1 the defendant committed the crime was for the purpose of his or her  
2 sexual gratification.

3 (44) "Standard sentence range" means the sentencing court's  
4 discretionary range in imposing a nonappealable sentence.

5 (45) "Statutory maximum sentence" means the maximum length of time  
6 for which an offender may be confined as punishment for a crime as  
7 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
8 crime, or other statute defining the maximum penalty for a crime.

9 (46) "Stranger" means that the victim did not know the offender  
10 twenty-four hours before the offense.

11 (47) "Total confinement" means confinement inside the physical  
12 boundaries of a facility or institution operated or utilized under  
13 contract by the state or any other unit of government for twenty-four  
14 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (48) "Transition training" means written and verbal instructions  
16 and assistance provided by the department to the offender during the  
17 two weeks prior to the offender's successful completion of the work  
18 ethic camp program. The transition training shall include instructions  
19 in the offender's requirements and obligations during the offender's  
20 period of community custody.

21 (49) "Victim" means any person who has sustained emotional,  
22 psychological, physical, or financial injury to person or property as  
23 a direct result of the crime charged.

24 (50) "Violent offense" means:

25 (a) Any of the following felonies:

26 (i) Any felony defined under any law as a class A felony or an  
27 attempt to commit a class A felony;

28 (ii) Criminal solicitation of or criminal conspiracy to commit a  
29 class A felony;

30 (iii) Manslaughter in the first degree;

31 (iv) Manslaughter in the second degree;

32 (v) Indecent liberties if committed by forcible compulsion;

33 (vi) Kidnapping in the second degree;

34 (vii) Arson in the second degree;

35 (viii) Assault in the second degree;

36 (ix) Assault of a child in the second degree;

37 (x) Extortion in the first degree;

38 (xi) Robbery in the second degree;

1 (xii) Drive-by shooting;

2 (xiii) Vehicular assault, when caused by the operation or driving  
3 of a vehicle by a person while under the influence of intoxicating  
4 liquor or any drug or by the operation or driving of a vehicle in a  
5 reckless manner; and

6 (xiv) Vehicular homicide, when proximately caused by the driving of  
7 any vehicle by any person while under the influence of intoxicating  
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
9 any vehicle in a reckless manner;

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

13 (c) 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 violent  
15 offense under (a) or (b) of this subsection.

16 (51) "Work crew" means a program of partial confinement consisting  
17 of civic improvement tasks for the benefit of the community that  
18 complies with RCW 9.94A.725.

19 (52) "Work ethic camp" means an alternative incarceration program  
20 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
21 the cost of corrections by requiring offenders to complete a  
22 comprehensive array of real-world job and vocational experiences,  
23 character-building work ethics training, life management skills  
24 development, substance abuse rehabilitation, counseling, literacy  
25 training, and basic adult education.

26 (53) "Work release" means a program of partial confinement  
27 available to offenders who are employed or engaged as a student in a  
28 regular course of study at school.

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

31 (1) In any criminal case wherein an offender has been sentenced as  
32 a persistent offender prior to the effective date of this act, the  
33 offender shall have a resentencing hearing if only current or past  
34 convictions for assault in the second degree or robbery in the second  
35 degree, or an attempt of either, were used as the basis for the finding  
36 that the offender was a persistent offender and the offender has no

1 current or past conviction of any felony considered a most serious  
2 offense other than assault in the second degree or robbery in the  
3 second degree, or an attempt of either.

4 (2) The prosecuting attorney for the county in which any offender  
5 was sentenced as a persistent offender shall review each persistent  
6 offender's sentencing documents. For any offender eligible for a  
7 resentencing hearing pursuant to subsection (1) of this section, the  
8 prosecuting attorney shall, or the offender may, make a motion for  
9 relief from sentence to the original sentencing court.

10 (3) The sentencing court shall grant the motion if it finds that  
11 only current or past convictions for assault in the second degree or  
12 robbery in the second degree, or an attempt of either, were used as the  
13 basis for a finding that the offender was a persistent offender and the  
14 offender has no current or past conviction of any felony considered a  
15 most serious offense other than assault in the second degree or robbery  
16 in the second degree, or an attempt of either, and shall immediately  
17 set an expedited date for resentencing. At resentencing, the court  
18 shall sentence the offender as if offenses were not most serious  
19 offenses at the time the original sentence was imposed.

20 (4) This section expires July 1, 2009.

--- END ---