

NEW SECTION. Sec. 19. Sections 1 through 9 and 11 of this act shall constitute a new chapter in Title 88 RCW.

Passed the Senate April 23, 1989.

Passed the House April 23, 1989.

Approved by the Governor May 13, 1989.

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CHAPTER 394

[House Bill No. 1019]

HOME DETENTION—DRUG OFFENDERS—ELIGIBILITY

AN ACT Relating to home detention; and reenacting and amending RCW 9.94A.030.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 11, chapter 145, Laws of 1988, section 1, chapter 153, Laws of 1988, section 2, chapter 154, Laws of 1988, and section 1, chapter 157, Laws of 1988 and RCW 9.94A.030 are each reenacted and amended to read as follows:

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

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

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

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

(4) "Community placement" means a one-year period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(5) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(6) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers,

RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(7) "Confinement" means total or partial confinement as defined in this section.

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

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

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

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

(11) "Department" means the department of corrections.

(12) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(13) "Drug offense" means:

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

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

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

(14) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to comply with any limitations on the inmate's movements while in community custody (RCW 72.09.310); or

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

(15) "Felony traffic offense" means:

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

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

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

(17) (a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

(18) "Nonviolent offense" means an offense which is not a violent offense.

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

(20) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention has been ordered by the court, in the residence of either the defendant or a member of the defendant's immediate family, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release and home detention as defined in this section.

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

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

(23) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

(24) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

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

(26) "Sex offense" means:

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

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

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

(28) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

(29) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion,

child molestation in the first degree, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

(31) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance. Home detention may not be imposed for offenders convicted of a violent offense, any sex offense, ~~((for the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug))~~ any drug offense, reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in RCW 9A.40.040, ~~((burglary in the second degree as defined in RCW 9A.52.030;))~~ or harassment as defined in RCW 9A.46.020. Home detention may be imposed for offenders convicted of possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403) if the offender fulfills the participation conditions set forth in this subsection and is monitored for drug use by treatment alternatives to street crime (TASC) or a comparable court or agency-referred program. Home detention may be imposed for offenders convicted of burglary in the second degree as defined in RCW 9A.52.030 conditioned upon the offender: (a) Successfully completing twenty-one days in a work release program, (b) having no convictions for burglary in the second degree during the preceding two years and not more than two prior convictions for burglary, (c) having no convictions for a violent felony offense during the preceding two years and not more than two prior convictions for a violent felony offense, (d) having no prior charges of escape, and (e) fulfilling the other conditions of the home detention program. Participation in a home detention program

shall be conditioned upon: (a) The offender obtaining or maintaining current employment or attending a regular course of school study at regularly defined hours, or the offender performing parental duties to offspring or minors normally in the custody of the offender, (b) abiding by the rules of the home detention program, and (c) compliance with court-ordered restitution. The home detention program may also be made available to offenders whose charges and convictions do not otherwise disqualify them if medical or health-related conditions, concerns or treatment would be better addressed under the home detention program, or where the health and welfare of the offender, other inmates, or staff would be jeopardized by the offender's incarceration. Participation in the home detention program for medical or health-related reasons is conditioned on the offender abiding by the rules of the home detention program and complying with court-ordered restitution.

Passed the House April 17, 1989.

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## CHAPTER 395

[Substitute House Bill No. 1071]

### CRIMINAL JUDGMENTS AND SENTENCES—COLLATERAL ATTACKS—ONE YEAR TIME LIMIT

AN ACT Relating to criminal procedure; amending RCW 7.36.130; adding new sections to chapter 10.73 RCW; and creating new sections.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. (1) No petition or motion for collateral attack on a judgment and sentence in a criminal case may be filed more than one year after the judgment becomes final if the judgment and sentence is valid on its face and was rendered by a court of competent jurisdiction.

(2) For the purposes of this section, "collateral attack" means any form of postconviction relief other than a direct appeal. "Collateral attack" includes, but is not limited to, a personal restraint petition, a habeas corpus petition, a motion to vacate judgment, a motion to withdraw guilty plea, a motion for a new trial, and a motion to arrest judgment.

(3) For the purposes of this section, a judgment becomes final on the last of the following dates:

(a) The date it is filed with the clerk of the trial court;

(b) The date that an appellate court issues its mandate disposing of a timely direct appeal from the conviction; or

(c) The date that the United States Supreme Court denies a timely petition for certiorari to review a decision affirming the conviction on direct appeal. The filing of a motion to reconsider denial of certiorari does not prevent a judgment from becoming final.