
HOUSE BILL 2119

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Appelwick and Vance.

Read first time February 26, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to the sentencing of offenders convicted of
2 sexually violent offenses; amending RCW 9.94A.030, 9.94A.120,
3 9.94A.390, 9A.20.021, 9A.32.050, 9A.36.011, 9A.40.020, 9A.40.030,
4 9A.40.040, 9A.52.020, 9A.52.025, 9A.44.045, 9A.44.050, 9A.44.073,
5 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.100, and 9A.64.020; reenacting
6 and amending RCW 9A.36.021 and 9A.44.040; adding a new section to
7 chapter 71.09 RCW; prescribing penalties; and providing a contingent
8 effective date.

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

10 **Sec. 1.** RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
11 as follows:

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

14 (1) "Collect," or any derivative thereof, "collect and remit," or
15 "collect and deliver," when used with reference to the department of

1 corrections, means that the department is responsible for monitoring
2 and enforcing the offender's sentence with regard to the legal
3 financial obligation, receiving payment thereof from the offender, and,
4 consistent with current law, delivering daily the entire payment to the
5 superior court clerk without depositing it in a departmental account.

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

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

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

15 (5) "Community placement" means that period during which the
16 offender is subject to the conditions of community custody and/or
17 postrelease supervision, which begins either upon completion of the
18 term of confinement (postrelease supervision) or at such time as the
19 offender is transferred to community custody in lieu of earned early
20 release. Community placement may consist of entirely community custody,
21 entirely postrelease supervision, or a combination of the two.

22 (6) "Community service" means compulsory service, without
23 compensation, performed for the benefit of the community by the
24 offender.

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

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

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

6 (9) "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 (10) "Court-ordered legal financial obligation" means a sum of
10 money that is ordered by a superior court of the state of Washington
11 for legal financial obligations which may include restitution to the
12 victim, statutorily imposed crime victims' compensation fees as
13 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
14 drug funds, court-appointed attorneys' fees, and costs of defense,
15 fines, and any other financial obligation that is assessed to the
16 offender as a result of a felony conviction.

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

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

29 (b) "Criminal history" shall always include juvenile convictions
30 for sex offenses and shall also include a defendant's other prior

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

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

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

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

30 (16) "Drug offense" means:

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

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

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

10 (17) "Escape" means:

11 (a) Escape in the first degree (RCW 9A.76.110), escape in the
12 second degree (RCW 9A.76.120), willful failure to return from furlough
13 (RCW 72.66.060), willful failure to return from work release (RCW
14 72.65.070), or willful failure to comply with any limitations on the
15 inmate's movements while in community custody (RCW 72.09.310); or

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

19 (18) "Felony traffic offense" means:

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

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

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

28 (20)(a) "First-time offender" means any person who is convicted of
29 a felony (i) not classified as a violent offense or a sex offense under
30 this chapter, or (ii) that is not the manufacture, delivery, or

1 possession with intent to manufacture or deliver a controlled substance
2 classified in schedule I or II that is a narcotic drug, and except as
3 provided in (b) of this subsection, who previously has never been
4 convicted of a felony in this state, federal court, or another state,
5 and who has never participated in a program of deferred prosecution for
6 a felony offense.

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

10 (21) "Nonviolent offense" means an offense which is not a violent
11 offense.

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

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

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

28 (25) "Restitution" means the requirement that the offender pay a
29 specific sum of money over a specific period of time to the court as

1 payment of damages. The sum may include both public and private costs.
2 The imposition of a restitution order does not preclude civil redress.

3 (26) "Serious traffic offense" means:

4 (a) Driving while intoxicated (RCW 46.61.502), actual physical
5 control while intoxicated (RCW 46.61.504), reckless driving (RCW
6 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

10 (27) "Serious violent offense" is a subcategory of violent offense
11 and means:

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

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

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

22 (29) "Sex offense" means:

23 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
24 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
25 attempt, criminal solicitation, or criminal conspiracy to commit such
26 crimes;

27 (b) A felony with a finding of sexual motivation under RCW
28 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 (30) "Sexual motivation" means that one of the purposes for which
5 the defendant committed the crime was for the purpose of his or her
6 sexual gratification.

7 (31) "Sexually violent offense" is a subcategory of sex offense and
8 means: (a) An act defined in Title 9A RCW as rape in the first degree,
9 rape in the second degree by forcible compulsion, rape of a child in
10 the first or second degree, statutory rape in the first or second
11 degree, indecent liberties by forcible compulsion, indecent liberties
12 against a child under age fourteen, incest against a child under age
13 fourteen, or child molestation in the first or second degree; (b) an
14 act of murder in the first or second degree, assault in the first or
15 second degree, kidnapping in the first or second degree, burglary in
16 the first degree, residential burglary, or unlawful imprisonment, which
17 act at the time of sentencing for the offense has been determined
18 beyond a reasonable doubt to have been sexually motivated, as that term
19 is defined in this section; or (c) any federal or out-of-state
20 conviction for a felony offense that under the laws of this state would
21 be a sexually violent offense as defined in this subsection.

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

26 (~~(32)~~) (33) "Victim" means any person who has sustained
27 emotional, psychological, physical, or financial injury to person or
28 property as a direct result of the crime charged.

29 (~~(33)~~) (34) "Violent offense" means:

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

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

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

19 (~~(34)~~) (35) "Work release" means a program of partial confinement
20 available to offenders who are employed or engaged as a student in a
21 regular course of study at school. Participation in work release shall
22 be conditioned upon the offender attending work or school at regularly
23 defined hours and abiding by the rules of the work release facility.

24 (~~(35)~~) (36)(a) "Home detention" means a program of partial
25 confinement available to offenders wherein the offender is confined in
26 a private residence subject to electronic surveillance. Home detention
27 may not be imposed for offenders convicted of a violent offense, any
28 sex offense, any drug offense, reckless burning in the first or second
29 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third

1 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
2 RCW 9A.40.040, or
3 harassment as defined in RCW 9A.46.020.

4 (b) Home detention may be imposed for offenders convicted of
5 possession of a controlled substance (RCW 69.50.401(d)) or forged
6 prescription for a controlled substance (RCW 69.50.403) if the offender
7 fulfills the participation conditions set forth in this subsection and
8 is monitored for drug use by treatment alternatives to street crime
9 (TASC) or a comparable court or agency-referred program. Home
10 detention may be imposed for offenders convicted of burglary in the
11 second degree as defined in RCW 9A.52.030 or residential burglary
12 conditioned upon the offender: ~~((a))~~ (i) Successfully completing
13 twenty-one days in a work release program, ~~((b))~~ (ii) having no
14 convictions for burglary in the second degree or residential burglary
15 during the preceding two years and not more than two prior convictions
16 for burglary or residential burglary, ~~((c))~~ (iii) having no
17 convictions for a violent felony offense during the preceding two years
18 and not more than two prior convictions for a violent felony offense,
19 ~~((d))~~ (iv) having no prior charges of escape, and ~~((e))~~ (v)
20 fulfilling the other conditions of the home detention program.

21 (c) Participation in a home detention program shall be conditioned
22 upon: ~~((a))~~ (i) The offender obtaining or maintaining current
23 employment or attending a regular course of school study at regularly
24 defined hours, or the offender performing parental duties to offspring
25 or minors normally in the custody of the offender, ~~((b))~~ (ii) abiding
26 by the rules of the home detention program, and ~~((c))~~ (iii)
27 compliance with court-ordered legal financial obligations. The home
28 detention program may also be made available to offenders whose charges
29 and convictions do not otherwise disqualify them if medical or health-
30 related conditions, concerns or treatment would be better addressed

1 under the home detention program, or where the health and welfare of
2 the offender, other inmates, or staff would be jeopardized by the
3 offender's incarceration. Participation in the home detention program
4 for medical or health-related reasons is conditioned on the offender
5 abiding by the rules of the home detention program and complying with
6 court-ordered restitution.

7 **Sec. 2.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read
8 as follows:

9 When a person is convicted of a felony, the court shall impose
10 punishment as provided in this section.

11 (1) Except as authorized in subsections (2), (5), (~~and~~) (7), and
12 (9) of this section, the court shall impose a sentence within the
13 sentence range for the offense.

14 (2) The court may impose a sentence outside the standard sentence
15 range for that offense if it finds, considering the purpose of this
16 chapter, that there are substantial and compelling reasons justifying
17 an exceptional sentence.

18 (3) Whenever a sentence outside the standard range is imposed, the
19 court shall set forth the reasons for its decision in written findings
20 of fact and conclusions of law. A sentence outside the standard range
21 shall be a determinate sentence.

22 (4) An offender convicted of the crime of murder in the first
23 degree shall be sentenced to a term of total confinement not less than
24 twenty years. An offender convicted of the crime of assault in the
25 first degree where the offender used force or means likely to result in
26 death or intended to kill the victim shall be sentenced to a term of
27 total confinement not less than five years. An offender convicted of
28 the crime of rape in the first degree shall be sentenced to a term of
29 total confinement not less than five years, and shall not be eligible

1 for furlough, work release or other authorized leave of absence from
2 the correctional facility during such minimum five-year term except for
3 the purpose of commitment to an inpatient treatment facility. The
4 foregoing minimum terms of total confinement are mandatory and shall
5 not be varied or modified as provided in subsection (2) of this
6 section.

7 (5) In sentencing a first-time offender the court may waive the
8 imposition of a sentence within the sentence range and impose a
9 sentence which may include up to ninety days of confinement in a
10 facility operated or utilized under contract by the county and a
11 requirement that the offender refrain from committing new offenses.
12 The sentence may also include up to two years of community supervision,
13 which, in addition to crime-related prohibitions, may include
14 requirements that the offender perform any one or more of the
15 following:

16 (a) Devote time to a specific employment or occupation;

17 (b) Undergo available outpatient treatment for up to two years, or
18 inpatient treatment not to exceed the standard range of confinement for
19 that offense;

20 (c) Pursue a prescribed, secular course of study or vocational
21 training;

22 (d) Remain within prescribed geographical boundaries and notify the
23 court or the community corrections officer prior to any change in the
24 offender's address or employment;

25 (e) Report as directed to the court and a community corrections
26 officer; or

27 (f) Pay all court-ordered legal financial obligations as provided
28 in RCW 9.94A.030 and/or perform community service work.

29 (6) If a sentence range has not been established for the
30 defendant's crime, the court shall impose a determinate sentence which

1 may include not more than one year of confinement, community service
2 work, a term of community supervision not to exceed one year, and/or
3 other legal financial obligations. The court may impose a sentence
4 which provides more than one year of confinement if the court finds,
5 considering the purpose of this chapter, that there are substantial and
6 compelling reasons justifying an exceptional sentence.

7 (7)(a)(i) When an offender is convicted of a sex offense other than
8 a violation of RCW 9A.44.050 or a sex offense that is also a serious
9 violent offense and has no prior convictions for a sex offense or any
10 other felony sex offenses in this or any other state, the sentencing
11 court, on its own motion or the motion of the state or the defendant,
12 may order an examination to determine whether the defendant is amenable
13 to treatment.

14 The report of the examination shall include at a minimum the
15 following: The defendant's version of the facts and the official
16 version of the facts, the defendant's offense history, an assessment of
17 problems in addition to alleged deviant behaviors, the offender's
18 social and employment situation, and other evaluation measures used.
19 The report shall set forth the sources of the evaluator's information.

20 The examiner shall assess and report regarding the defendant's
21 amenability to treatment and relative risk to the community. A proposed
22 treatment plan shall be provided and shall include, at a minimum:

23 (A) Frequency and type of contact between offender and therapist;

24 (B) Specific issues to be addressed in the treatment and
25 description of planned treatment modalities;

26 (C) Monitoring plans, including any requirements regarding living
27 conditions, lifestyle requirements, and monitoring by family members
28 and others;

29 (D) Anticipated length of treatment; and

30 (E) Recommended crime-related prohibitions.

1 The court on its own motion may order, or on a motion by the state
2 shall order, a second examination regarding the offender's amenability
3 to treatment. The evaluator shall be selected by the party making the
4 motion. The defendant shall pay the cost of any second examination
5 ordered unless the court finds the defendant to be indigent in which
6 case the state shall pay the cost.

7 (ii) After receipt of the reports, the court shall consider whether
8 the offender and the community will benefit from use of this special
9 sexual offender sentencing alternative and consider the victim's
10 opinion whether the offender should receive a treatment disposition
11 under this subsection. If the court determines that this special sex
12 offender sentencing alternative is appropriate, the court shall then
13 impose a sentence within the sentence range. If this sentence is less
14 than eight years of confinement, the court may suspend the execution of
15 the sentence and impose the following conditions of suspension:

16 (A) The court shall place the defendant on community supervision
17 for the length of the suspended sentence or three years, whichever is
18 greater; and

19 (B) The court shall order treatment for any period up to three
20 years in duration. The court in its discretion shall order outpatient
21 sex offender treatment or inpatient sex offender treatment, if
22 available. A community mental health center may not be used for such
23 treatment unless it has an appropriate program designed for sex
24 offender treatment. The offender shall not change sex offender
25 treatment providers or treatment conditions without first notifying the
26 prosecutor, the community corrections officer, and the court, and shall
27 not change providers without court approval after a hearing if the
28 prosecutor or community corrections officer object to the change. In
29 addition, as conditions of the suspended sentence, the court may impose
30 other sentence conditions including up to six months of confinement,

1 not to exceed the sentence range of confinement for that offense,
2 crime-related prohibitions, and requirements that the offender perform
3 any one or more of the following:

4 (I) Devote time to a specific employment or occupation;

5 (II) Remain within prescribed geographical boundaries and notify
6 the court or the community corrections officer prior to any change in
7 the offender's address or employment;

8 (III) Report as directed to the court and a community corrections
9 officer;

10 (IV) Pay all court-ordered legal financial obligations as provided
11 in RCW 9.94A.030, perform community service work, or any combination
12 thereof; or

13 (V) Make recoupment to the victim for the cost of any counseling
14 required as a result of the offender's crime.

15 (iii) The sex offender therapist shall submit quarterly reports on
16 the defendant's progress in treatment to the court and the parties.
17 The report shall reference the treatment plan and include at a minimum
18 the following: Dates of attendance, defendant's compliance with
19 requirements, treatment activities, the defendant's relative progress
20 in treatment, and any other material as specified by the court at
21 sentencing.

22 (iv) At the time of sentencing, the court shall set a treatment
23 termination hearing for three months prior to the anticipated date for
24 completion of treatment. Prior to the treatment termination hearing,
25 the treatment professional and community corrections officer shall
26 submit written reports to the court and parties regarding the
27 defendant's compliance with treatment and monitoring requirements, and
28 recommendations regarding termination from treatment, including
29 proposed community supervision conditions. Either party may request
30 and the court may order another evaluation regarding the advisability

1 of termination from treatment. The defendant shall pay the cost of any
2 additional evaluation ordered unless the court finds the defendant to
3 be indigent in which case the state shall pay the cost. At the
4 treatment termination hearing the court may: (A) Modify conditions of
5 community supervision, and either (B) terminate treatment, or (C)
6 extend treatment for up to the remaining period of community
7 supervision.

8 (v) The court may revoke the suspended sentence at any time during
9 the period of community supervision and order execution of the sentence
10 if: (A) The defendant violates the conditions of the suspended
11 sentence, or (B) the court finds that the defendant is failing to make
12 satisfactory progress in treatment. All confinement time served during
13 the period of community supervision shall be credited to the offender
14 if the suspended sentence is revoked.

15 (vi) After July 1, 1991, examinations and treatment ordered
16 pursuant to this subsection shall only be conducted by sex offender
17 treatment providers certified by the department of health pursuant to
18 chapter 18.155 RCW.

19 For purposes of this subsection, "victim" means any person who has
20 sustained emotional, psychological, physical, or financial injury to
21 person or property as a result of the crime charged. "Victim" also
22 means a parent or guardian of a victim who is a minor child unless the
23 parent or guardian is the perpetrator of the offense.

24 (b) When an offender is convicted of any felony sex offense
25 committed before July 1, 1987, and is sentenced to a term of
26 confinement of more than one year but less than six years, the
27 sentencing court may, on its own motion or on the motion of the
28 offender or the state, order the offender committed for up to thirty
29 days to the custody of the secretary of social and health services for
30 evaluation and report to the court on the offender's amenability to

1 treatment at these facilities. If the secretary of social and health
2 services cannot begin the evaluation within thirty days of the court's
3 order of commitment, the offender shall be transferred to the state for
4 confinement pending an opportunity to be evaluated at the appropriate
5 facility. The court shall review the reports and may order that the
6 term of confinement imposed be served in the sexual offender treatment
7 program at the location determined by the secretary of social and
8 health services or the secretary's designee, only if the report
9 indicates that the offender is amenable to the treatment program
10 provided at these facilities. The offender shall be transferred to the
11 state pending placement in the treatment program. Any offender who has
12 escaped from the treatment program shall be referred back to the
13 sentencing court.

14 If the offender does not comply with the conditions of the
15 treatment program, the secretary of social and health services may
16 refer the matter to the sentencing court. The sentencing court shall
17 commit the offender to the department of corrections to serve the
18 balance of the term of confinement.

19 If the offender successfully completes the treatment program before
20 the expiration of the term of confinement, the court may convert the
21 balance of confinement to community supervision and may place
22 conditions on the offender including crime-related prohibitions and
23 requirements that the offender perform any one or more of the
24 following:

25 (i) Devote time to a specific employment or occupation;

26 (ii) Remain within prescribed geographical boundaries and notify
27 the court or the community corrections officer prior to any change in
28 the offender's address or employment;

29 (iii) Report as directed to the court and a community corrections
30 officer;

1 (iv) Undergo available outpatient treatment.

2 If the offender violates any of the terms of community supervision,
3 the court may order the offender to serve out the balance of the
4 community supervision term in confinement in the custody of the
5 department of corrections.

6 After June 30, 1993, this subsection (b) shall cease to have
7 effect.

8 (c) When an offender commits any felony sex offense on or after
9 July 1, 1987, and is sentenced to a term of confinement of more than
10 one year but less than six years, the sentencing court may, on its own
11 motion or on the motion of the offender or the state, request the
12 department of corrections to evaluate whether the offender is amenable
13 to treatment and the department may place the offender in a treatment
14 program within a correctional facility operated by the department.

15 Except for an offender who has been convicted of a
16 violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the
17 treatment program before the expiration of his term of confinement, the
18 department of corrections may request the court to convert the balance
19 of confinement to community supervision and to place conditions on the
20 offender including crime-related prohibitions and requirements that the
21 offender perform any one or more of the following:

22 (i) Devote time to a specific employment or occupation;

23 (ii) Remain within prescribed geographical boundaries and notify
24 the court or the community corrections officer prior to any change in
25 the offender's address or employment;

26 (iii) Report as directed to the court and a community corrections
27 officer;

28 (iv) Undergo available outpatient treatment.

29 If the offender violates any of the terms of his community
30 supervision, the court may order the offender to serve out the balance

1 of his community supervision term in confinement in the custody of the
2 department of corrections.

3 Nothing in (c) of this subsection shall confer eligibility for such
4 programs for offenders convicted and sentenced for a sex offense
5 committed prior to July 1, 1987. This subsection (c) does not apply to
6 any crime committed after July 1, 1990.

7 (d) Offenders convicted and sentenced for a sex offense committed
8 prior to July 1, 1987, may, subject to available funds, request an
9 evaluation by the department of corrections to determine whether they
10 are amenable to treatment. If the offender is determined to be
11 amenable to treatment, the offender may request placement in a
12 treatment program within a correctional facility operated by the
13 department. Placement in such treatment program is subject to
14 available funds.

15 (8)(a) When a court sentences a person to a term of total
16 confinement to the custody of the department of corrections for an
17 offense categorized as a sex offense or a serious violent offense
18 committed after July 1, 1988, but before July 1, 1990, assault in the
19 second degree, any crime against a person where it is determined in
20 accordance with RCW 9.94A.125 that the defendant or an accomplice was
21 armed with a deadly weapon at the time of commission, or any felony
22 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
23 1988, the court shall in addition to the other terms of the sentence,
24 sentence the offender to a one-year term of community placement
25 beginning either upon completion of the term of confinement or at such
26 time as the offender is transferred to community custody in lieu of
27 earned early release in accordance with RCW 9.94A.150 (1) and (2).
28 When the court sentences an offender under this subsection to the
29 statutory maximum period of confinement then the community placement
30 portion of the sentence shall consist entirely of such community

1 custody to which the offender may become eligible, in accordance with
2 RCW 9.94A.150 (1) and (2). Any period of community custody actually
3 served shall be credited against the community placement portion of the
4 sentence.

5 (b) When a court sentences a person to a term of total confinement
6 to the custody of the department of corrections for an offense
7 categorized as a sex offense or serious violent offense committed on or
8 after July 1, 1990, the court shall in addition to other terms of the
9 sentence, sentence the offender to community placement for two years or
10 up to the period of earned early release awarded pursuant to RCW
11 9.94A.150 (1) and (2), whichever is longer. The community placement
12 shall begin either upon completion of the term of confinement or at
13 such time as the offender is transferred to community custody in lieu
14 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
15 When the court sentences an offender under this subsection to the
16 statutory maximum period of confinement then the community placement
17 portion of the sentence shall consist entirely of the community custody
18 to which the offender may become eligible, in accordance with RCW
19 9.94A.150 (1) and (2). Any period of community custody actually served
20 shall be credited against the community placement portion of the
21 sentence. Unless a condition is waived by the court, the terms of
22 community placement for offenders sentenced pursuant to this section
23 shall include the following conditions:

24 (i) The offender shall report to and be available for contact with
25 the assigned community corrections officer as directed;

26 (ii) The offender shall work at department of corrections-approved
27 education, employment, and/or community service;

28 (iii) The offender shall not consume controlled substances except
29 pursuant to lawfully issued prescriptions;

1 (iv) An offender in community custody shall not unlawfully possess
2 controlled substances; and

3 (v) The offender shall pay supervision fees as determined by the
4 department of corrections.

5 (c) The court may also order any of the following special
6 conditions:

7 (i) The offender shall remain within, or outside of, a specified
8 geographical boundary;

9 (ii) The offender shall not have direct or indirect contact with
10 the victim of the crime or a specified class of individuals;

11 (iii) The offender shall participate in crime-related treatment or
12 counseling services;

13 (iv) The offender shall not consume alcohol;

14 (v) The residence location and living arrangements of a sex
15 offender shall be subject to the prior approval of the department of
16 corrections; or

17 (vi) The offender shall comply with any crime-related prohibitions.

18 (d) Prior to transfer to, or during, community placement, any
19 conditions of community placement may be removed or modified so as not
20 to be more restrictive by the sentencing court, upon recommendation of
21 the department of corrections.

22 (9) The court may sentence an offender to life imprisonment without
23 the possibility of release, community custody, or parole when an
24 offender is convicted of a sexually violent offense and the court
25 imposes an exceptional sentence above the standard range for the
26 sexually violent offense pursuant to RCW 9.94A.390 (2)(h) when either
27 (a) the offender committed the current sexually violent offense within
28 twenty-four months of a conviction or convictions for a sexually
29 violent offense or offenses, whether the offender was an adult or a
30 juvenile when the offender committed the prior sexually violent offense

1 or offenses. The twenty-four month period shall be tolled during any
2 time period the offender is confined in jail, prison, a mental
3 institution, or a juvenile detention or correctional facility, and is
4 not in the community; or (b) the offender's criminal history includes
5 two prior convictions for sexually violent offenses, whether the
6 offender was an adult or a juvenile when the offender committed the
7 prior sexually violent offenses.

8 This subsection shall not preclude a court from imposing a term of
9 life imprisonment without the possibility of release, community
10 custody, or parole for a sex offense that is a class A felony pursuant
11 to the standard range for that offense or pursuant to the exceptional
12 sentence provisions of RCW 9.94A.390.

13 (10) If the court imposes a sentence requiring confinement of
14 thirty days or less, the court may, in its discretion, specify that the
15 sentence be served on consecutive or intermittent days. A sentence
16 requiring more than thirty days of confinement shall be served on
17 consecutive days. Local jail administrators may schedule court-ordered
18 intermittent sentences as space permits.

19 ~~((10))~~ (11) If a sentence imposed includes payment of a legal
20 financial obligation, the sentence shall specify the total amount of
21 the legal financial obligation owed, and shall require the offender to
22 pay a specified monthly sum toward that legal financial obligation.
23 Restitution to victims shall be paid prior to any other payments of
24 monetary obligations. Any legal financial obligation that is imposed
25 by the court may be collected by the department, which shall deliver
26 the amount paid to the county clerk for credit. The offender's
27 compliance with payment of legal financial obligations shall be
28 supervised by the department. All monetary payments ordered shall be
29 paid no later than ten years after the last date of release from
30 confinement pursuant to a felony conviction or the date the sentence

1 was entered. Independent of the department, the party or entity to
2 whom the legal financial obligation is owed shall have the authority to
3 utilize any other remedies available to the party or entity to collect
4 the legal financial obligation. Nothing in this section makes the
5 department, the state, or any of its employees, agents, or other
6 persons acting on their behalf liable under any circumstances for the
7 payment of these legal financial obligations. If an order includes
8 restitution as one of the monetary assessments, the county clerk shall
9 make disbursements to victims named in the order.

10 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
11 9.94A.142(1), a court may not impose a sentence providing for a term of
12 confinement or community supervision or community placement which
13 exceeds the statutory maximum for the crime as provided in chapter
14 9A.20 RCW.

15 ~~((12))~~ (13) All offenders sentenced to terms involving community
16 supervision, community service, community placement, or legal financial
17 obligation shall be under the supervision of the secretary of the
18 department of corrections or such person as the secretary may designate
19 and shall follow explicitly the instructions of the secretary including
20 reporting as directed to a community corrections officer, remaining
21 within prescribed geographical boundaries, and notifying the community
22 corrections officer of any change in the offender's address or
23 employment.

24 ~~((13))~~ (14) The sentencing court shall give the offender credit
25 for all confinement time served before the sentencing if that
26 confinement was solely in regard to the offense for which the offender
27 is being sentenced.

28 ~~((14))~~ (15) A departure from the standards in RCW 9.94A.400 (1)
29 and (2) governing whether sentences are to be served consecutively or
30 concurrently is an exceptional sentence subject to the limitations in

1 subsections (2) and (3) of this section, and may be appealed by the
2 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

3 ~~((15))~~ (16) The court shall order restitution whenever the
4 offender is convicted of a felony that results in injury to any person
5 or damage to or loss of property, whether the offender is sentenced to
6 confinement or placed under community supervision, unless extraordinary
7 circumstances exist that make restitution inappropriate in the court's
8 judgment. The court shall set forth the extraordinary circumstances in
9 the record if it does not order restitution.

10 ~~((16))~~ (17) As a part of any sentence, the court may impose and
11 enforce an order that relates directly to the circumstances of the
12 crime for which the offender has been convicted, prohibiting the
13 offender from having any contact with other specified individuals or a
14 specific class of individuals for a period not to exceed the maximum
15 allowable sentence for the crime, regardless of the expiration of the
16 offender's term of community supervision or community placement.

17 ~~((17))~~ (18) In any sentence of partial confinement, the court may
18 require the defendant to serve the partial confinement in work release
19 or in a program of home detention.

20 ~~((18))~~ (19) All court-ordered legal financial obligations
21 collected by the department and remitted to the county clerk shall be
22 credited and paid where restitution is ordered. Restitution shall be
23 paid prior to any other payments of monetary obligations.

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

26 If the sentencing court finds that an exceptional sentence outside
27 the standard range should be imposed in accordance with RCW
28 9.94A.120(2), the sentence is subject to review only as provided for in
29 RCW 9.94A.210(4).

1 The following are illustrative factors which the court may consider
2 in the exercise of its discretion to impose an exceptional sentence.
3 The following are illustrative only and are not intended to be
4 exclusive reasons for exceptional sentences.

5 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

28 (2) Aggravating Circumstances

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

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

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

7 (i) The current offense involved multiple victims or multiple
8 incidents per victim;

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

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

13 (iv) The defendant used his or her position of trust, confidence,
14 or fiduciary responsibility to facilitate the commission of the current
15 offense.

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

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

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

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

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

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

4 (vi) The offender used his or her position or status to facilitate
5 the commission of the current offense, including positions of trust,
6 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
7 other medical professional); or

8 (e) The current offense included a finding of sexual motivation
9 pursuant to RCW 9.94A.127;

10 (f) The offense was part of an ongoing pattern of sexual abuse of
11 the same victim under the age of eighteen years manifested by multiple
12 incidents over a prolonged period of time; (~~or~~)

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

16 (h) The current offense is a sexually violent offense as defined by
17 RCW 9.94A.030 and either:

18 (i) The offender committed the current offense within twenty-four
19 months of a conviction or convictions for a sexually violent offense or
20 offenses, whether the offender was an adult or juvenile, when the
21 offender committed the prior sexually violent offense or offenses. The
22 twenty-four month period shall be tolled during any time period the
23 offender is confined in jail, prison, a mental institution, or a
24 juvenile detention or correctional facility, and is not in the
25 community; or

26 (ii) The offender's criminal history includes two prior convictions
27 for sexually violent offenses, whether the offender was an adult or a
28 juvenile when the offender committed the prior sexually violent
29 offenses.

1 When the court imposes an exceptional sentence under subsection
2 (2)(h)(i) or (ii) of this section, the court may sentence the offender
3 to a prison term up to life imprisonment as provided in RCW 9.94A.120.

4 **Sec. 4.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read
5 as follows:

6 (1) Felony. No person convicted of a classified felony shall be
7 punished by confinement or fine exceeding the following:

8 (a) For a class A felony, by confinement in a state correctional
9 institution for a term of life imprisonment, or by a fine in an amount
10 fixed by the court of fifty thousand dollars, or by both such
11 confinement and fine;

12 (b) For a class B felony, by confinement in a state correctional
13 institution for a term of ten years, or by a fine in an amount fixed by
14 the court of twenty thousand dollars, or by both such confinement and
15 fine;

16 (c) For a class C felony, by confinement in a state correctional
17 institution for five years, or by a fine in an amount fixed by the
18 court of ten thousand dollars, or by both such confinement and fine;

19 (d) For a class A, B, or C felony that is classified as a sexually
20 violent offense as defined by RCW 9.94A.030, by confinement in a state
21 correctional facility for a term of life imprisonment without release,
22 community custody, or parole, when a court imposes a sentence of life
23 imprisonment without the possibility of release, community custody, or
24 parole pursuant to RCW 9.94A.120, or by a fine in an amount fixed by
25 the court of fifty thousand dollars, or by both such confinement and
26 fine. This subsection applies to only those crimes committed on or
27 after the effective date of this act.

28 (2) Gross Misdemeanor. Every person convicted of a gross
29 misdemeanor defined in Title 9A RCW shall be punished by imprisonment

1 in the county jail for a maximum term fixed by the court of not more
2 than one year, or by a fine in an amount fixed by the court of not more
3 than five thousand dollars, or by both such imprisonment and fine.

4 (3) Misdemeanor. Every person convicted of a misdemeanor defined
5 in Title 9A RCW shall be punished by imprisonment in the county jail
6 for a maximum term fixed by the court of not more than ninety days, or
7 by a fine in an amount fixed by the court of not more than one thousand
8 dollars, or by both such imprisonment and fine.

9 (4) Except for subsection (1)(d) of this section, this section
10 applies to only those crimes committed on or after July 1, 1984.

11 **Sec. 5.** RCW 9A.32.050 and 1975-'76 2nd ex.s. c 38 s 4 are each
12 amended to read as follows:

13 (1) A person is guilty of murder in the second degree when:

14 (a) With intent to cause the death of another person but without
15 premeditation, he causes the death of such person or of a third person;
16 or

17 (b) He commits or attempts to commit any felony other than those
18 enumerated in RCW 9A.32.030(1)(c), and, in the course of and in
19 furtherance of such crime or in immediate flight therefrom, he, or
20 another participant, causes the death of a person other than one of the
21 participants; except that in any prosecution under this subdivision
22 (1)(b) in which the defendant was not the only participant in the
23 underlying crime, if established by the defendant by a preponderance of
24 the evidence, it is a defense that the defendant:

25 (i) Did not commit the homicidal act or in any way solicit,
26 request, command, importune, cause, or aid the commission thereof; and

27 (ii) Was not armed with a deadly weapon, or any instrument,
28 article, or substance readily capable of causing death or serious
29 physical injury; and

1 (iii) Had no reasonable grounds to believe that any other
2 participant was armed with such a weapon, instrument, article, or
3 substance; and

4 (iv) Had no reasonable grounds to believe that any other
5 participant intended to engage in conduct likely to result in death or
6 serious physical injury.

7 (2) Murder in the second degree is a class A felony.

8 (3) Notwithstanding subsection (2) of this section, any person
9 convicted of the crime of murder in the second degree, when the crime
10 is classified as a sexually violent offense as defined by RCW
11 9.94A.030, may be sentenced to life imprisonment without the
12 possibility of release, community custody, or parole when the court
13 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
14 subsection applies only to crimes committed on or after the effective
15 date of this act.

16 **Sec. 6.** RCW 9A.36.011 and 1986 c 257 s 4 are each amended to read
17 as follows:

18 (1) A person is guilty of assault in the first degree if he or she,
19 with intent to inflict great bodily harm:

20 (a) Assaults another with a firearm or any deadly weapon or by any
21 force or means likely to produce great bodily harm or death; or

22 (b) Administers to or causes to be taken by another, poison or any
23 other destructive or noxious substance; or

24 (c) Assaults another and inflicts great bodily harm.

25 (2) Assault in the first degree is a class A felony.

26 (3) Notwithstanding subsection (2) of this section, any person
27 convicted of the crime of assault in the first degree, when the crime
28 is classified as a sexually violent offense as defined by RCW
29 9.94A.030, may be sentenced to life imprisonment without the

1 possibility of release, community custody, or parole when the court
2 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
3 subsection applies only to crimes committed on or after the effective
4 date of this act.

5 **Sec. 7.** RCW 9A.36.021 and 1988 c 266 s 2 & 1988 c 206 s 916 are
6 each reenacted and amended to read as follows:

7 (1) A person is guilty of assault in the second degree if he or
8 she, under circumstances not amounting to assault in the first degree:

9 (a) Intentionally assaults another and thereby recklessly inflicts
10 substantial bodily harm; or

11 (b) Intentionally and unlawfully causes substantial bodily harm to
12 an unborn quick child by intentionally and unlawfully inflicting any
13 injury upon the mother of such child; or

14 (c) Assaults another with a deadly weapon; or

15 (d) With intent to inflict bodily harm, administers to or causes to
16 be taken by another, poison, the human immunodeficiency virus as
17 defined in chapter 70.24 RCW, or any other destructive or noxious
18 substance; or

19 (e) With intent to inflict bodily harm, exposes or transmits human
20 immunodeficiency virus as defined in chapter 70.24 RCW; or

21 (f) With intent to commit a felony, assaults another; or

22 (g) Knowingly inflicts bodily harm which by design causes such pain
23 or agony as to be the equivalent of that produced by torture.

24 (2) Assault in the second degree is a class B felony.

25 (3) Notwithstanding subsection (2) of this section, any person
26 convicted of the crime of assault in the second degree, when the crime
27 is classified as a sexually violent offense as defined by RCW
28 9.94A.030, may be sentenced to life imprisonment without the
29 possibility of release, community custody, or parole when the court

1 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
2 subsection applies only to crimes committed on or after the effective
3 date of this act.

4 **Sec. 8.** RCW 9A.40.020 and 1975 1st ex.s. c 260 s 9A.40.020 are
5 each amended to read as follows:

6 (1) A person is guilty of kidnapping in the first degree if he
7 intentionally abducts another person with intent:

8 (a) To hold him for ransom or reward, or as a shield or hostage; or

9 (b) To facilitate commission of any felony or flight thereafter; or

10 (c) To inflict bodily injury on him; or

11 (d) To inflict extreme mental distress on him or a third person; or

12 (e) To interfere with the performance of any governmental function.

13 (2) Kidnapping in the first degree is a class A felony.

14 (3) Notwithstanding subsection (2) of this section, any person
15 convicted of the crime of kidnapping in the first degree, when the
16 crime is classified as a sexually violent offense as defined by RCW
17 9.94A.030, may be sentenced to life imprisonment without the
18 possibility of release, community custody, or parole when the court
19 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
20 subsection applies only to crimes committed on or after the effective
21 date of this act.

22 **Sec. 9.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
23 each amended to read as follows:

24 (1) A person is guilty of kidnapping in the second degree if he
25 intentionally abducts another person under circumstances not amounting
26 to kidnapping in the first degree.

27 (2) In any prosecution for kidnapping in the second degree, it is
28 a defense if established by the defendant by a preponderance of the

1 evidence that (a) the abduction does not include the use of or intent
2 to use or threat to use deadly force, and (b) the actor is a relative
3 of the person abducted, and (c) the actor's sole intent is to assume
4 custody of that person. Nothing contained in this paragraph shall
5 constitute a defense to a prosecution for, or preclude a conviction of,
6 any other crime.

7 (3) Kidnapping in the second degree is a class B felony.

8 (4) Notwithstanding subsection (3) of this section, any person
9 convicted of the crime of kidnapping in the second degree, when the
10 crime is classified as a sexually violent offense as defined by RCW
11 9.94A.030, may be sentenced to life imprisonment without the
12 possibility of release, community custody, or parole when the court
13 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
14 subsection applies only to crimes committed on or after the effective
15 date of this act.

16 **Sec. 10.** RCW 9A.40.040 and 1975 1st ex.s. c 260 s 9A.40.040 are
17 each amended to read as follows:

18 (1) A person is guilty of unlawful imprisonment if he knowingly
19 restrains another person.

20 (2) Unlawful imprisonment is a class C felony.

21 (3) Notwithstanding subsection (2) of this section, any person
22 convicted of the crime of unlawful imprisonment when the crime is
23 classified as a sexually violent offense as defined by RCW 9.94A.030,
24 may be sentenced to life imprisonment without the possibility of
25 release, community custody, or parole when the court imposes a term of
26 life imprisonment pursuant to RCW 9A.20.120. This subsection applies
27 only to crimes committed on or after the effective date of this act.

1 **Sec. 11.** RCW 9A.52.020 and 1975 1st ex.s. c 260 s 9A.52.020 are
2 each amended to read as follows:

3 (1) A person is guilty of burglary in the first degree if, with
4 intent to commit a crime against a person or property therein, he
5 enters or remains unlawfully in a dwelling and if, in entering or while
6 in the dwelling or in immediate flight therefrom, the actor or another
7 participant in the crime (a) is armed with a deadly weapon, or (b)
8 assaults any person therein.

9 (2) Burglary in the first degree is a class A felony.

10 (3) Notwithstanding subsection (2) of this section, any person
11 convicted of the crime of burglary in the first degree, when the crime
12 is classified as a sexually violent offense as defined by RCW
13 9.94A.030, may be sentenced to life imprisonment without the
14 possibility of release, community custody, or parole when the court
15 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
16 subsection applies only to crimes committed on or after the effective
17 date of this act.

18 **Sec. 12.** RCW 9A.52.025 and 1989 2nd ex.s. c 1 s 1 are each amended
19 to read as follows:

20 (1) A person is guilty of residential burglary if, with intent to
21 commit a crime against a person or property therein, the person enters
22 or remains unlawfully in a dwelling other than a vehicle.

23 (2) Residential burglary is a class B felony. In establishing
24 sentencing guidelines and disposition standards, the sentencing
25 guidelines commission and the juvenile disposition standards commission
26 shall consider residential burglary as a more serious offense than
27 second degree burglary.

28 (3) Notwithstanding subsection (2) of this section, any person
29 convicted of the crime of residential burglary when the crime is

1 classified as a sexually violent offense as defined by RCW 9.94A.030,
2 may be sentenced to life imprisonment without the possibility of
3 release, community custody, or parole when the court imposes a term of
4 life imprisonment pursuant to RCW 9A.20.120. This subsection applies
5 only to crimes committed on or after the effective date of this act.

6 **Sec. 13.** RCW 9A.44.040 and 1983 c 118 s 1 & 1983 c 73 s 1 are
7 each reenacted and amended to read as follows:

8 (1) A person is guilty of rape in the first degree when such person
9 engages in sexual intercourse with another person by forcible
10 compulsion where the perpetrator or an accessory:

11 (a) Uses or threatens to use a deadly weapon or what appears to be
12 a deadly weapon; or

13 (b) Kidnaps the victim; or

14 (c) Inflicts serious physical injury; or

15 (d) Feloniously enters into the building or vehicle where the
16 victim is situated.

17 (2) Rape in the first degree is a class A felony.

18 (3) Notwithstanding subsection (2) of this section, any person
19 convicted of the crime of rape in the first degree may be sentenced to
20 life imprisonment without the possibility of release, community
21 custody, or parole when the court imposes a term of life imprisonment
22 pursuant to RCW 9A.20.120. This subsection applies only to crimes
23 committed on or after the effective date of this act.

24 **Sec. 14.** RCW 9A.44.045 and 1982 c 192 s 12 are each amended to
25 read as follows:

26 (1) No person convicted of rape in the first degree shall be
27 granted a deferred or suspended sentence except for the purpose of
28 commitment to an inpatient treatment facility: PROVIDED, That every

1 person convicted of rape in the first degree shall be confined for a
2 minimum of three years: PROVIDED FURTHER, That the ((~~board of prison~~
3 ~~terms and paroles~~)) indeterminate sentence review board shall have
4 authority to set a period of confinement greater than three years but
5 shall never reduce the minimum three-year period of confinement; nor
6 shall the board release the convicted person during the first three
7 years of confinement as a result of any type of good time calculation;
8 nor shall the department of corrections permit the convicted person to
9 participate in any work release program or furlough program during the
10 first three years of confinement. This section applies only to
11 offenses committed prior to July 1, 1984.

12 (2) Any person convicted of rape in the first degree for a crime
13 committed on or after the effective date of this act may be sentenced
14 to life imprisonment without the possibility of release, community
15 custody, or parole when the court imposes a term of life imprisonment
16 pursuant to RCW 9A.20.120.

17 **Sec. 15.** RCW 9A.44.050 and 1990 c 3 s 901 are each amended to read
18 as follows:

19 (1) A person is guilty of rape in the second degree when, under
20 circumstances not constituting rape in the first degree, the person
21 engages in sexual intercourse with another person:

22 (a) By forcible compulsion;

23 (b) When the victim is incapable of consent by reason of being
24 physically helpless or mentally incapacitated; or

25 (c) When the victim is developmentally disabled and the perpetrator
26 is a person who is not married to the victim and who has supervisory
27 authority over the victim.

28 (2) Rape in the second degree is a class A felony.

1 (3) Notwithstanding subsection (2) of this section, any person
2 convicted of the crime of rape in the second degree under subsection
3 (1)(a) of this section may be sentenced to life imprisonment without
4 the possibility of release, community custody, or parole when the court
5 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
6 subsection applies only to crimes committed on or after the effective
7 date of this act.

8 **Sec. 16.** RCW 9A.44.073 and 1988 c 145 s 2 are each amended to read
9 as follows:

10 (1) A person is guilty of rape of a child in the first degree when
11 the person has sexual intercourse with another who is less than twelve
12 years old and not married to the perpetrator and the perpetrator is at
13 least twenty-four months older than the victim.

14 (2) Rape of a child in the first degree is a class A felony.

15 (3) Notwithstanding subsection (2) of this section, any person
16 convicted of the crime of rape of a child in the first degree may be
17 sentenced to life imprisonment without the possibility of release,
18 community custody, or parole when the court imposes a term of life
19 imprisonment pursuant to RCW 9A.20.120. This subsection applies only
20 to crimes committed on or after the effective date of this act.

21 **Sec. 17.** RCW 9A.44.076 and 1990 c 3 s 903 are each amended to read
22 as follows:

23 (1) A person is guilty of rape of a child in the second degree when
24 the person has sexual intercourse with another who is at least twelve
25 years old but less than fourteen years old and not married to the
26 perpetrator and the perpetrator is at least thirty-six months older
27 than the victim.

28 (2) Rape of a child in the second degree is a class A felony.

1 (3) Notwithstanding subsection (2) of this section, any person
2 convicted of the crime of rape of a child in the second degree may be
3 sentenced to life imprisonment without the possibility of release,
4 community custody, or parole when the court imposes a term of life
5 imprisonment pursuant to RCW 9A.20.120. This subsection applies only
6 to crimes committed on or after the effective date of this act.

7 **Sec. 18.** RCW 9A.44.083 and 1990 c 3 s 902 are each amended to read
8 as follows:

9 (1) A person is guilty of child molestation in the first degree
10 when the person has sexual contact with another who is less than twelve
11 years old and not married to the perpetrator and the perpetrator is at
12 least thirty-six months older than the victim.

13 (2) Child molestation in the first degree is a class A felony.

14 (3) Notwithstanding subsection (2) of this section, any person
15 convicted of the crime of child molestation in the first degree may be
16 sentenced to life imprisonment without the possibility of release,
17 community custody, or parole when the court imposes a term of life
18 imprisonment pursuant to RCW 9A.20.120. This subsection applies only
19 to crimes committed on or after the effective date of this act.

20 **Sec. 19.** RCW 9A.44.086 and 1988 c 145 s 6 are each amended to read
21 as follows:

22 (1) A person is guilty of child molestation in the second degree
23 when the person has sexual contact with another who is at least twelve
24 years old but less than fourteen years old and not married to the
25 perpetrator and the perpetrator is at least thirty-six months older
26 than the victim.

27 (2) Child molestation in the second degree is a class B felony.

1 (3) Notwithstanding subsection (2) of this section, any person
2 convicted of the crime of child molestation in the second degree may be
3 sentenced to life imprisonment without the possibility of release,
4 community custody, or parole when the court imposes a term of life
5 imprisonment pursuant to RCW 9A.20.120. This subsection applies only
6 to crimes committed on or after the effective date of this act.

7 **Sec. 20.** RCW 9A.44.100 and 1988 c 146 s 2 are each amended to read
8 as follows:

9 (1) A person is guilty of indecent liberties when he knowingly
10 causes another person who is not his spouse to have sexual contact with
11 him or another:

12 (a) By forcible compulsion; or

13 (b) When the other person is incapable of consent by reason of
14 being mentally defective, mentally incapacitated, or physically
15 helpless; or

16 (c) When the victim is developmentally disabled and the perpetrator
17 is a person who is not married to the victim and who has supervisory
18 authority over the victim.

19 (2) Indecent liberties is a class B felony.

20 (3) Notwithstanding subsection (2) of this section, any person
21 convicted of the crime of indecent liberties under subsection (1)(a) of
22 this section or indecent liberties against a child under fourteen years
23 of age may be sentenced to life imprisonment without the possibility of
24 release, community custody, or parole when the court imposes a term of
25 life imprisonment pursuant to RCW 9A.20.120. This subsection applies
26 only to crimes committed on or after the effective date of this act.

27 **Sec. 21.** RCW 9A.64.020 and 1985 c 53 s 1 are each amended to read
28 as follows:

1 (1) A person is guilty of incest in the first degree if he engages
2 in sexual intercourse with a person whom he knows to be related to him,
3 either legitimately or illegitimately, as an ancestor, descendant,
4 brother, or sister of either the whole or the half blood.

5 (2) A person is guilty of incest in the second degree if he engages
6 in sexual contact with a person whom he knows to be related to him,
7 either legitimately or illegitimately, as an ancestor, descendant,
8 brother, or sister of either the whole or the half blood.

9 (3) As used in this section, "descendant" includes stepchildren and
10 adopted children under eighteen years of age.

11 (4) As used in this section, "sexual contact" has the same meaning
12 as in RCW 9A.44.100(2).

13 (5) As used in this section, "sexual intercourse" has the same
14 meaning as in RCW 9A.44.010(1).

15 (6) Incest in the first degree is a class B felony.

16 (7) Incest in the second degree is a class C felony.

17 (8) Notwithstanding subsections (6) and (7) of this section, any
18 person convicted of the crime of incest against a child under the age
19 of fourteen years of age may be sentenced to life imprisonment without
20 the possibility of release, community custody, or parole when the court
21 imposes a term of life imprisonment pursuant to RCW 9A.20.120. This
22 subsection applies only to crimes committed on or after the effective
23 date of this act.

24 NEW SECTION. Sec. 22. A new section is added to chapter 71.09 RCW
25 to read as follows:

26 If this chapter is held invalid by the Washington supreme court,
27 then the punishment for offenders convicted of a sexually violent
28 offense as defined in RCW 9.94A.030 may be life imprisonment without

1 the possibility of release, community custody, or parole as provided in
2 this act.

3 NEW SECTION. **Sec. 23.** This act shall not take effect unless
4 the supreme court of Washington in a final decision holds that chapter
5 71.09 RCW is invalid. If the Washington supreme court holds in a final
6 decision that chapter 71.09 RCW is invalid, this act shall take effect
7 on the date that the Washington supreme court issues its final decision
8 and shall apply to all crimes committed on or after the effective date
9 of this act.