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HOUSE BILL 2130

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State of Washington                      52nd Legislature                      1991 Regular Session

By Representatives Wineberry, Appelwick, Phillips and Brekke.

Read first time February 27, 1991. Referred to Committee on Judiciary.

1            AN ACT Relating to victim-offender mediation; amending RCW  
2 7.69.020, 7.69.030, 9.94A.110, 9.94A.120, 9.94A.390, 13.40.150, and  
3 13.40.190; adding a new section to chapter 9.94A RCW; and adding a new  
4 section to chapter 13.40 RCW.

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

6            **Sec. 1.** RCW 7.69.020 and 1985 c 443 s 2 are each amended to read  
7 as follows:

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

10           (1) "Crime" means an act punishable as a felony, gross misdemeanor,  
11 or misdemeanor under the laws of this state or equivalent federal or  
12 local law.

13           (2) "Survivor" or "survivors" of a victim of crime means a spouse,  
14 child, parent, legal guardian, sibling, or grandparent. If there is  
15 more than one survivor of a victim of crime, one survivor shall be

1 designated by the prosecutor to represent all survivors for purposes of  
2 providing the notice to survivors required by this chapter.

3 (3) "Victim" means a person against whom a crime has been committed  
4 or the representative of a person against whom a crime has been  
5 committed. It includes an individual representative of a business,  
6 organization, governmental agency, or the state against whom a crime  
7 has been committed.

8 (4) "Victim impact statement" means a statement submitted to the  
9 court by the victim or a survivor, individually or with the assistance  
10 of the prosecuting attorney if assistance is requested by the victim or  
11 survivor, which may include but is not limited to information assessing  
12 the financial, medical, social, and psychological impact of the offense  
13 upon the victim or survivors.

14 (5) "Witness" means a person who has been or is expected to be  
15 summoned to testify for the prosecution in a criminal action, or who by  
16 reason of having relevant information is subject to call or likely to  
17 be called as a witness for the prosecution, whether or not an action or  
18 proceeding has been commenced.

19 **Sec. 2.** RCW 7.69.030 and 1985 c 443 s 3 are each amended to read  
20 as follows:

21 There shall be a reasonable effort made to ensure that victims,  
22 survivors of victims, and witnesses of crimes have the following  
23 rights:

24 (1) To be informed by local law enforcement agencies or the  
25 prosecuting attorney of the final disposition of the case in which the  
26 victim, survivor, or witness is involved;

27 (2) To be notified by the party who issued the subpoena that a  
28 court proceeding to which they have been subpoenaed will not occur as  
29 scheduled, in order to save the person an unnecessary trip to court;

1 (3) To receive protection from harm and threats of harm arising out  
2 of cooperation with law enforcement and prosecution efforts, and to be  
3 provided with information as to the level of protection available;

4 (4) To be informed of the procedure to be followed to apply for and  
5 receive any witness fees to which they are entitled;

6 (5) To be provided, whenever practical, a secure waiting area  
7 during court proceedings that does not require them to be in close  
8 proximity to defendants and families or friends of defendants;

9 (6) To have any stolen or other personal property expeditiously  
10 returned by law enforcement agencies or the superior court when no  
11 longer needed as evidence. When feasible, all such property, except  
12 weapons, currency, contraband, property subject to evidentiary  
13 analysis, and property of which ownership is disputed, shall be  
14 photographed and returned to the owner within ten days of being taken;

15 (7) To be provided with appropriate employer intercession services  
16 to ensure that employers of victims, survivors of victims, and  
17 witnesses of crime will cooperate with the criminal justice process in  
18 order to minimize an employee's loss of pay and other benefits  
19 resulting from court appearance;

20 (8) To access to immediate medical assistance and not to be  
21 detained for an unreasonable length of time by a law enforcement agency  
22 before having such assistance administered. However, an employee of  
23 the law enforcement agency may, if necessary, accompany the person to  
24 a medical facility to question the person about the criminal incident  
25 if the questioning does not hinder the administration of medical  
26 assistance;

27 (9) With respect to victims and survivors of victims, to be  
28 physically present in court during trial, or if subpoenaed to testify,  
29 to be scheduled as early as practical in the proceedings in order to be

1 physically present during trial after testifying and not to be excluded  
2 solely because they have testified;

3 (10) With respect to victims and survivors of victims, to be  
4 informed by the prosecuting attorney of the date, time, and place of  
5 the trial and of the sentencing hearing for felony convictions upon  
6 request by a victim or survivor;

7 (11) To volunteer to participate in mediation with the offender in  
8 the presence of an independent, trained mediator consistent with  
9 section 3 of this act;

10 (12) To submit a victim impact statement or report to the court,  
11 with the assistance of the prosecuting attorney if requested, and to  
12 submit to the court any restitution agreement entered into in  
13 connection with a mediation conducted pursuant to section 3 of this  
14 act, which in either case shall be included in all presentence reports  
15 and permanently included in the files and records accompanying the  
16 offender committed to the custody of a state agency or institution;

17 (~~(12)~~) (13) With respect to victims and survivors of victims, to  
18 present a statement personally or by representation, at the sentencing  
19 hearing for felony convictions; and

20 (~~(13)~~) (14) With respect to victims and survivors of victims, to  
21 entry of an order of restitution by the court in all felony cases, even  
22 when the offender is sentenced to confinement, unless extraordinary  
23 circumstances exist which make restitution inappropriate in the court's  
24 judgment.

25 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW  
26 to read as follows:

27 (1) When an offender pleads guilty or is found guilty, the court  
28 may refer the case to a victim-offender mediation program or, if such

1 a program is not available in the county, a dispute resolution center,  
2 except that no referral shall be made in the following circumstances:

3 (a) The offense is a sex offense as defined in RCW 9.94A.030(29);

4 (b) The offense is a violent offense as defined in RCW  
5 9.94A.030(33);

6 (c) The offense involves acts of domestic violence as defined in  
7 RCW 26.50.010(1);

8 (d) The offender has a history of domestic violence as defined in  
9 RCW 26.50.010(1), involving the victim or a member of the victim's  
10 family or household as defined in RCW 26.50.010(2); or

11 (e) A meeting between the victim and offender would be clearly  
12 impractical or not feasible.

13 (2) Neither the victim nor the offender shall be required to  
14 participate in mediation, but, if both are willing to participate, and,  
15 in the case of a victim under the age of eighteen, a parent or legal  
16 guardian of the victim is also willing to participate, the victim-  
17 offender mediation program or dispute resolution center shall provide  
18 an opportunity for the victim to:

19 (a) Meet with the offender in a safe, controlled environment;

20 (b) Give the offender, either orally or in writing, a summary of  
21 the financial, emotional, and physical effects of the offense on the  
22 victim and the victim's family; and

23 (c) Negotiate a restitution agreement for the damages incurred by  
24 the victim as a result of the offense.

25 (3) A negotiated restitution agreement may be submitted to the  
26 court for its consideration at the time of disposition.

27 **Sec. 4.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read  
28 as follows:

1 Before imposing a sentence upon a defendant, the court shall  
2 conduct a sentencing hearing. The sentencing hearing shall be held  
3 within forty court days following conviction. Upon the motion of  
4 either party for good cause shown, or on its own motion, the court may  
5 extend the time period for conducting the sentencing hearing. The  
6 court shall order the department to complete a presentence report  
7 before imposing a sentence upon a defendant who has been convicted of  
8 a felony sexual offense. The department of corrections shall give  
9 priority to presentence investigations for sexual offenders. The court  
10 shall consider the presentence reports and restitution agreement  
11 reached pursuant to section 3 of this act, if any, including any victim  
12 impact statement and criminal history, and allow arguments from the  
13 prosecutor, the defense counsel, the offender, the victim, the survivor  
14 of the victim, or a representative of the victim or survivor, and an  
15 investigative law enforcement officer as to the sentence to be imposed.  
16 If the court is satisfied by a preponderance of the evidence that the  
17 defendant has a criminal history, the court shall specify the  
18 convictions it has found to exist. All of this information shall be  
19 part of the record. Copies of all presentence reports presented to the  
20 sentencing court and all written findings of facts and conclusions of  
21 law as to sentencing entered by the court shall be sent to the  
22 department by the clerk of the court at the conclusion of the  
23 sentencing and shall accompany the offender if the offender is  
24 committed to the custody of the department. Court clerks shall  
25 provide, without charge, certified copies of documents relating to  
26 criminal convictions requested by prosecuting attorneys.

27 **Sec. 5.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read  
28 as follows:

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

3       (1) Except as authorized in subsections (2), (5), and (7) of this  
4 section, the court shall impose a sentence within the sentence range  
5 for the offense.

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

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

14       (4) An offender convicted of the crime of murder in the first  
15 degree shall be sentenced to a term of total confinement not less than  
16 twenty years. An offender convicted of the crime of assault in the  
17 first degree where the offender used force or means likely to result in  
18 death or intended to kill the victim shall be sentenced to a term of  
19 total confinement not less than five years. An offender convicted of  
20 the crime of rape in the first degree shall be sentenced to a term of  
21 total confinement not less than five years, and shall not be eligible  
22 for furlough, work release or other authorized leave of absence from  
23 the correctional facility during such minimum five-year term except for  
24 the purpose of commitment to an inpatient treatment facility. The  
25 foregoing minimum terms of total confinement are mandatory and shall  
26 not be varied or modified as provided in subsection (2) of this  
27 section.

28       (5) In sentencing a first-time offender the court may waive the  
29 imposition of a sentence within the sentence range and impose a  
30 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a  
2 requirement that the offender refrain from committing new offenses.  
3 The sentence may also include up to two years of community supervision,  
4 which, in addition to crime-related prohibitions, may include  
5 requirements that the offender perform any one or more of the  
6 following:

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

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

11 (c) Pursue a prescribed, secular course of study or vocational  
12 training;

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

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

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

20 (6) If a sentence range has not been established for the  
21 defendant's crime, the court shall impose a determinate sentence which  
22 may include not more than one year of confinement, community service  
23 work, a term of community supervision not to exceed one year, and/or  
24 other legal financial obligations. The court may impose a sentence  
25 which provides more than one year of confinement if the court finds,  
26 considering the purpose of this chapter, that there are substantial and  
27 compelling reasons justifying an exceptional sentence.

28 (7)(a)(i) When an offender is convicted of a sex offense other than  
29 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
30 violent offense and has no prior convictions for a sex offense or any

1 other felony sex offenses in this or any other state, the sentencing  
2 court, on its own motion or the motion of the state or the defendant,  
3 may order an examination to determine whether the defendant is amenable  
4 to treatment.

5 The report of the examination shall include at a minimum the  
6 following: The defendant's version of the facts and the official  
7 version of the facts, the defendant's offense history, an assessment of  
8 problems in addition to alleged deviant behaviors, the offender's  
9 social and employment situation, and other evaluation measures used.  
10 The report shall set forth the sources of the evaluator's information.

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

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

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

18 (C) Monitoring plans, including any requirements regarding living  
19 conditions, lifestyle requirements, and monitoring by family members  
20 and others;

21 (D) Anticipated length of treatment; and

22 (E) Recommended crime-related prohibitions.

23 The court on its own motion may order, or on a motion by the state  
24 shall order, a second examination regarding the offender's amenability  
25 to treatment. The evaluator shall be selected by the party making the  
26 motion. The defendant shall pay the cost of any second examination  
27 ordered unless the court finds the defendant to be indigent in which  
28 case the state shall pay the cost.

29 (ii) After receipt of the reports, the court shall consider whether  
30 the offender and the community will benefit from use of this special

1 sexual offender sentencing alternative and consider the victim's  
2 opinion whether the offender should receive a treatment disposition  
3 under this subsection. If the court determines that this special sex  
4 offender sentencing alternative is appropriate, the court shall then  
5 impose a sentence within the sentence range. If this sentence is less  
6 than eight years of confinement, the court may suspend the execution of  
7 the sentence and impose the following conditions of suspension:

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

11 (B) The court shall order treatment for any period up to three  
12 years in duration. The court in its discretion shall order outpatient  
13 sex offender treatment or inpatient sex offender treatment, if  
14 available. A community mental health center may not be used for such  
15 treatment unless it has an appropriate program designed for sex  
16 offender treatment. The offender shall not change sex offender  
17 treatment providers or treatment conditions without first notifying the  
18 prosecutor, the community corrections officer, and the court, and shall  
19 not change providers without court approval after a hearing if the  
20 prosecutor or community corrections officer object to the change. In  
21 addition, as conditions of the suspended sentence, the court may impose  
22 other sentence conditions including up to six months of confinement,  
23 not to exceed the sentence range of confinement for that offense,  
24 crime-related prohibitions, and requirements that the offender perform  
25 any one or more of the following:

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

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

1 (III) Report as directed to the court and a community corrections  
2 officer;

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

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

8 (iii) The sex offender therapist shall submit quarterly reports on  
9 the defendant's progress in treatment to the court and the parties.  
10 The report shall reference the treatment plan and include at a minimum  
11 the following: Dates of attendance, defendant's compliance with  
12 requirements, treatment activities, the defendant's relative progress  
13 in treatment, and any other material as specified by the court at  
14 sentencing.

15 (iv) At the time of sentencing, the court shall set a treatment  
16 termination hearing for three months prior to the anticipated date for  
17 completion of treatment. Prior to the treatment termination hearing,  
18 the treatment professional and community corrections officer shall  
19 submit written reports to the court and parties regarding the  
20 defendant's compliance with treatment and monitoring requirements, and  
21 recommendations regarding termination from treatment, including  
22 proposed community supervision conditions. Either party may request  
23 and the court may order another evaluation regarding the advisability  
24 of termination from treatment. The defendant shall pay the cost of any  
25 additional evaluation ordered unless the court finds the defendant to  
26 be indigent in which case the state shall pay the cost. At the  
27 treatment termination hearing the court may: (A) Modify conditions of  
28 community supervision, and either (B) terminate treatment, or (C)  
29 extend treatment for up to the remaining period of community  
30 supervision.

1 (v) The court may revoke the suspended sentence at any time during  
2 the period of community supervision and order execution of the sentence  
3 if: (A) The defendant violates the conditions of the suspended  
4 sentence, or (B) the court finds that the defendant is failing to make  
5 satisfactory progress in treatment. All confinement time served during  
6 the period of community supervision shall be credited to the offender  
7 if the suspended sentence is revoked.

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

12 For purposes of this subsection, "victim" means any person who has  
13 sustained emotional, psychological, physical, or financial injury to  
14 person or property as a result of the crime charged. "Victim" also  
15 means a parent or guardian of a victim who is a minor child unless the  
16 parent or guardian is the perpetrator of the offense.

17 (b) When an offender is convicted of any felony sex offense  
18 committed before July 1, 1987, and is sentenced to a term of  
19 confinement of more than one year but less than six years, the  
20 sentencing court may, on its own motion or on the motion of the  
21 offender or the state, order the offender committed for up to thirty  
22 days to the custody of the secretary of social and health services for  
23 evaluation and report to the court on the offender's amenability to  
24 treatment at these facilities. If the secretary of social and health  
25 services cannot begin the evaluation within thirty days of the court's  
26 order of commitment, the offender shall be transferred to the state for  
27 confinement pending an opportunity to be evaluated at the appropriate  
28 facility. The court shall review the reports and may order that the  
29 term of confinement imposed be served in the sexual offender treatment  
30 program at the location determined by the secretary of social and

1 health services or the secretary's designee, only if the report  
2 indicates that the offender is amenable to the treatment program  
3 provided at these facilities. The offender shall be transferred to the  
4 state pending placement in the treatment program. Any offender who has  
5 escaped from the treatment program shall be referred back to the  
6 sentencing court.

7 If the offender does not comply with the conditions of the  
8 treatment program, the secretary of social and health services may  
9 refer the matter to the sentencing court. The sentencing court shall  
10 commit the offender to the department of corrections to serve the  
11 balance of the term of confinement.

12 If the offender successfully completes the treatment program before  
13 the expiration of the term of confinement, the court may convert the  
14 balance of confinement to community supervision and may place  
15 conditions on the offender including crime-related prohibitions and  
16 requirements that the offender perform any one or more of the  
17 following:

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

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

22 (iii) Report as directed to the court and a community corrections  
23 officer;

24 (iv) Undergo available outpatient treatment.

25 If the offender violates any of the terms of community supervision,  
26 the court may order the offender to serve out the balance of the  
27 community supervision term in confinement in the custody of the  
28 department of corrections.

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

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

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

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

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

19 (iii) Report as directed to the court and a community corrections  
20 officer;

21 (iv) Undergo available outpatient treatment.

22 If the offender violates any of the terms of his community  
23 supervision, the court may order the offender to serve out the balance  
24 of his community supervision term in confinement in the custody of the  
25 department of corrections.

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

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

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

29 (b) When a court sentences a person to a term of total confinement  
30 to the custody of the department of corrections for an offense

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

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

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

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

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

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

28 (c) The court may also order any of the following special  
29 conditions:

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

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

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

7 (iv) The offender shall not consume alcohol;

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

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

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

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

22 (10) If a sentence imposed includes payment of a legal financial  
23 obligation, the sentence shall specify the total amount of the legal  
24 financial obligation owed, and shall require the offender to pay a  
25 specified monthly sum toward that legal financial obligation.  
26 Restitution to victims shall be paid prior to any other payments of  
27 monetary obligations. Any legal financial obligation that is imposed  
28 by the court may be collected by the department, which shall deliver  
29 the amount paid to the county clerk for credit. The offender's  
30 compliance with payment of legal financial obligations shall be

1 supervised by the department. All monetary payments ordered shall be  
2 paid no later than ten years after the last date of release from  
3 confinement pursuant to a felony conviction or the date the sentence  
4 was entered. Independent of the department, the party or entity to  
5 whom the legal financial obligation is owed shall have the authority to  
6 utilize any other remedies available to the party or entity to collect  
7 the legal financial obligation. Nothing in this section makes the  
8 department, the state, or any of its employees, agents, or other  
9 persons acting on their behalf liable under any circumstances for the  
10 payment of these legal financial obligations. If an order includes  
11 restitution as one of the monetary assessments, the county clerk shall  
12 make disbursements to victims named in the order.

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

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

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

1 (14) A departure from the standards in RCW 9.94A.400 (1) and (2)  
2 governing whether sentences are to be served consecutively or  
3 concurrently is an exceptional sentence subject to the limitations in  
4 subsections (2) and (3) of this section, and may be appealed by the  
5 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

6 (15) The court shall order restitution whenever the offender is  
7 convicted of a felony that results in injury to any person or damage to  
8 or loss of property, whether the offender is sentenced to confinement  
9 or placed under community supervision, unless extraordinary  
10 circumstances exist that make restitution inappropriate in the court's  
11 judgment. The court shall set forth the extraordinary circumstances in  
12 the record if it does not order restitution. In ordering restitution,  
13 the court shall consider any restitution agreement reached under  
14 section 3 of this act and any victim impact statement.

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

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

25 (18) All court-ordered legal financial obligations collected by the  
26 department and remitted to the county clerk shall be credited and paid  
27 where restitution is ordered. Restitution shall be paid prior to any  
28 other payments of monetary obligations.

1       **Sec. 6.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read  
2 as follows:

3       If the sentencing court finds that an exceptional sentence outside  
4 the standard range should be imposed in accordance with RCW  
5 9.94A.120(2), the sentence is subject to review only as provided for in  
6 RCW 9.94A.210(4).

7       The following are illustrative factors which the court may consider  
8 in the exercise of its discretion to impose an exceptional sentence.  
9 The following are illustrative only and are not intended to be  
10 exclusive reasons for exceptional sentences.

11       (1) Mitigating Circumstances

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

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

17       (c) Since his or her detection, the respondent has met the victim  
18 and negotiated a restitution agreement pursuant to section 3 of this  
19 act. This mitigating factor is insufficient by itself to justify a  
20 sentence less severe than one within the standard range.

21       (d) The defendant committed the crime under duress, coercion,  
22 threat, or compulsion insufficient to constitute a complete defense but  
23 which significantly affected his or her conduct.

24       (~~(d)~~) (e) The defendant, with no apparent predisposition to do  
25 so, was induced by others to participate in the crime.

26       (~~(e)~~) (f) The defendant's capacity to appreciate the wrongfulness  
27 of his conduct or to conform his conduct to the requirements of the  
28 law, was significantly impaired (voluntary use of drugs or alcohol is  
29 excluded).

1       (~~(f)~~) (g) The offense was principally accomplished by another  
2 person and the defendant manifested extreme caution or sincere concern  
3 for the safety or well-being of the victim.

4       (~~(g)~~) (h) The operation of the multiple offense policy of RCW  
5 9.94A.400 results in a presumptive sentence that is clearly excessive  
6 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

7       (~~(h)~~) (i) The defendant or the defendant's children suffered a  
8 continuing pattern of physical or sexual abuse by the victim of the  
9 offense and the offense is a response to that abuse.

10       (2) Aggravating Circumstances

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

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

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

19       (i) The current offense involved multiple victims or multiple  
20 incidents per victim;

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

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

25       (iv) The defendant used his or her position of trust, confidence,  
26 or fiduciary responsibility to facilitate the commission of the current  
27 offense.

28       (d) The current offense was a major violation of the Uniform  
29 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
30 trafficking in controlled substances, which was more onerous than the

1 typical offense of its statutory definition: The presence of ANY of  
2 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

28 NEW SECTION. **Sec. 7.** A new section is added to chapter 13.40 RCW  
29 to read as follows:

1       When a probation counselor receives a request for a predisposition  
2 study, he or she shall refer the case to a victim-offender mediation  
3 program or, if such a program is not available in the county, a dispute  
4 resolution center. However, such a referral shall be made only if the  
5 current offense is one involving the property of a victim, and referral  
6 shall not be made: (1) If the offender is a serious offender as  
7 defined in RCW 13.40.020; (2) if the current offense would, if  
8 committed by an adult, be a sex offense or a violent offense as defined  
9 in RCW 9.94A.030; or (3) if a meeting between victim and offender would  
10 be clearly impractical or not feasible. Neither the victim nor the  
11 offender shall be required to participate in the program but, if both  
12 are willing to participate, and, in the case of a victim under the age  
13 of eighteen, a parent or legal guardian of the victim is also willing  
14 to participate, the victim-offender mediation program or dispute  
15 resolution center shall provide an opportunity for the victim to:

- 16       (a) Meet with the offender in a safe, controlled environment;  
17       (b) Give the offender, either orally or in writing, a summary of  
18 the financial, emotional, and physical effects of the offense on the  
19 victim and the victim's family; and  
20       (c) Negotiate a restitution agreement for the damages incurred by  
21 the victim as a result of the offense. The agreement may be submitted  
22 to the court for its consideration at the time of disposition.

23       **Sec. 8.** RCW 13.40.150 and 1990 c 3 s 605 are each amended to read  
24 as follows:

- 25       (1) In disposition hearings all relevant and material evidence,  
26 including oral and written reports, may be received by the court and  
27 may be relied upon to the extent of its probative value, even though  
28 such evidence may not be admissible in a hearing on the information.  
29 The youth or the youth's counsel and the prosecuting attorney shall be

1 afforded an opportunity to examine and controvert written reports so  
2 received and to cross-examine individuals making reports when such  
3 individuals are reasonably available, but sources of confidential  
4 information need not be disclosed. The prosecutor and counsel for the  
5 juvenile may submit recommendations for disposition.

6 (2) For purposes of disposition:

7 (a) Violations which are current offenses count as misdemeanors;

8 (b) Violations may not count as part of the offender's criminal  
9 history;

10 (c) In no event may a disposition for a violation include  
11 confinement.

12 (3) Before entering a dispositional order as to a respondent found  
13 to have committed an offense, the court shall hold a disposition  
14 hearing, at which the court shall:

15 (a) Consider the facts supporting the allegations of criminal  
16 conduct by the respondent;

17 (b) Consider information and arguments offered by parties and their  
18 counsel;

19 (c) Consider any predisposition reports;

20 (d) Afford the respondent and the respondent's parent, guardian, or  
21 custodian an opportunity to speak in the respondent's behalf;

22 (e) Allow the victim or a representative of the victim and an  
23 investigative law enforcement officer to speak;

24 (f) Consider any restitution agreement reached pursuant to section  
25 7 of this act;

26 (g) Determine the amount of restitution owing to the victim, if  
27 any;

28 ~~((g))~~ (h) Determine whether the respondent is a serious offender,  
29 a middle offender, or a minor or first offender;

1       (~~(h)~~) (i) Consider whether or not any of the following mitigating  
2 factors exist:

3       (i) The respondent's conduct neither caused nor threatened serious  
4 bodily injury or the respondent did not contemplate that his or her  
5 conduct would cause or threaten serious bodily injury;

6       (ii) The respondent acted under strong and immediate provocation;

7       (iii) The respondent was suffering from a mental or physical  
8 condition that significantly reduced his or her culpability for the  
9 offense though failing to establish a defense;

10       (iv) Prior to his or her detection, the respondent compensated or  
11 made a good faith attempt to compensate the victim for the injury or  
12 loss sustained; (~~and~~)

13       (v) Since his or her detection, the respondent has met the victim  
14 and negotiated a restitution agreement pursuant to section 7 of this  
15 act. This mitigating factor is insufficient by itself to justify a  
16 sentence less severe than one within the standard range; and

17       (vi) There has been at least one year between the respondent's  
18 current offense and any prior criminal offense;

19       (~~(i)~~) (j) Consider whether or not any of the following  
20 aggravating factors exist:

21       (i) In the commission of the offense, or in flight therefrom, the  
22 respondent inflicted or attempted to inflict serious bodily injury to  
23 another;

24       (ii) The offense was committed in an especially heinous, cruel, or  
25 depraved manner;

26       (iii) The victim or victims were particularly vulnerable;

27       (iv) The respondent has a recent criminal history or has failed to  
28 comply with conditions of a recent dispositional order or diversion  
29 agreement;

1 (v) The current offense included a finding of sexual motivation  
2 pursuant to RCW 9.94A.127;

3 (vi) The respondent was the leader of a criminal enterprise  
4 involving several persons; and

5 (vii) There are other complaints which have resulted in diversion  
6 or a finding or plea of guilty but which are not included as criminal  
7 history.

8 (4) The following factors may not be considered in determining the  
9 punishment to be imposed:

10 (a) The sex of the respondent;

11 (b) The race or color of the respondent or the respondent's family;

12 (c) The creed or religion of the respondent or the respondent's  
13 family;

14 (d) The economic or social class of the respondent or the  
15 respondent's family; and

16 (e) Factors indicating that the respondent may be or is a dependent  
17 child within the meaning of this chapter.

18 (5) A court may not commit a juvenile to a state institution solely  
19 because of the lack of facilities, including treatment facilities,  
20 existing in the community.

21 **Sec. 9.** RCW 13.40.190 and 1987 c 281 s 5 are each amended to read  
22 as follows:

23 (1) In its dispositional order, the court shall require the  
24 respondent to make restitution to any persons who have suffered loss or  
25 damage as a result of the offense committed by the respondent. In  
26 addition, restitution may be ordered for loss or damage if the offender  
27 pleads guilty to a lesser offense or fewer offenses and agrees with the  
28 prosecutor's recommendation that the offender be required to pay  
29 restitution to a victim of an offense or offenses which, pursuant to a

1 plea agreement, are not prosecuted. The payment of restitution shall  
2 be in addition to any punishment which is imposed pursuant to the other  
3 provisions of this chapter. The court may determine the amount, terms,  
4 and conditions of the restitution. The court shall consider any  
5 restitution agreement reached pursuant to section 7 of this act.  
6 Restitution may include the costs of counseling reasonably related to  
7 the offense. If the respondent participated in the crime with another  
8 person or other persons, all such participants shall be jointly and  
9 severally responsible for the payment of restitution. The court may  
10 not require the respondent to pay full or partial restitution if the  
11 respondent reasonably satisfies the court that he or she does not have  
12 the means to make full or partial restitution and could not reasonably  
13 acquire the means to pay such restitution. In cases where an offender  
14 has been committed to the department for a period of confinement  
15 exceeding fifteen weeks, restitution may be waived.

16 (2) If an order includes restitution as one of the monetary  
17 assessments, the county clerk shall make disbursements to victims named  
18 in the order. The restitution to victims named in the order shall be  
19 paid prior to any payment for other penalties or monetary assessments.

20 (3) A respondent under obligation to pay restitution may petition  
21 the court for modification of the restitution order.