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**SECOND SUBSTITUTE SENATE BILL 5451**

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**State of Washington****53rd Legislature****1993 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senator Hargrove)

Read first time 04/05/93.

1 AN ACT Relating to persons convicted of felonies; amending RCW  
2 9.94A.390, 9.95.0011, 9.96.050, 9A.20.021, 43.19.534, 72.09.110, and  
3 72.60.160; reenacting and amending RCW 9.94A.030, 9.94A.120, and  
4 9.94A.440; adding new sections to chapter 72.09 RCW; creating new  
5 sections; repealing RCW 72.09.102 and 72.60.190; and prescribing  
6 penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that crowded prisons  
9 are clearly one of the most pressing problems facing the criminal  
10 justice system today. Even the most conservative estimates indicate  
11 that despite our aggressive prison construction plan we will not be  
12 able to build enough prison beds to keep pace with expected growth in  
13 the prison population over the next ten years. The huge increase in  
14 our prison population is not only the result of more individuals  
15 committing serious crimes but also because most offenders released from  
16 prison will return again. Our corrections system has become a high-  
17 cost institution that perpetually recycles inmates without deterring  
18 crime. As a result of these conditions, serious concerns have been  
19 raised about our current corrections philosophy. Attention must be

1 directed towards implementing a long-range corrections strategy that  
2 focuses on inmate responsibility through work training, the development  
3 of mature and marketable job skills, and requiring inmates to pay for  
4 the cost of their incarceration.

5 The combined cost of housing, maintaining, and supervising inmates  
6 in our state corrections facilities is increasing beyond our capability  
7 to pay. The legislature recognizes that the responsibility for  
8 criminal activity must fall squarely on the criminal. Society should  
9 not have to pay the price for crimes twice, once for the criminal act  
10 and then again by feeding, clothing, and housing the offender. The  
11 corrections system must be the first place where criminal offenders are  
12 given the opportunity to be responsible for paying for their criminal  
13 activity, not just through the loss of their freedom, but also by  
14 working while in prison and contributing an appropriate portion of  
15 their wages to the cost of their incarceration. Allowing offenders to  
16 become responsible through working in meaningful jobs for real wages  
17 can be a beneficial opportunity for corrections. Everyone profits from  
18 a successful corrections industry program -- the prison system,  
19 taxpayers, the community, families, and the inmate. Most important, an  
20 inmate who is drug-free and has mature job skills is significantly more  
21 likely not to return to prison.

22 It is the purpose and intent of this act to outline a comprehensive  
23 strategy for reducing upwardly spiraling prison costs through an inmate  
24 work responsibility program, preserving scarce prison cell space for  
25 our most dangerous offenders, and providing judges with alternatives to  
26 incarceration, including drug rehabilitation, that must be used without  
27 jeopardizing public safety.

28 **Sec. 2.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are  
29 each reenacted and amended to read as follows:

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

32 (1) "Collect," or any derivative thereof, "collect and remit," or  
33 "collect and deliver," when used with reference to the department of  
34 corrections, means that the department is responsible for monitoring  
35 and enforcing the offender's sentence with regard to the legal  
36 financial obligation, receiving payment thereof from the offender, and,  
37 consistent with current law, delivering daily the entire payment to the  
38 superior court clerk without depositing it in a departmental account.

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

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

6 (4) "Community custody" means that portion of an inmate's sentence  
7 of confinement in lieu of earned early release time or imposed under  
8 RCW 9.94A.120(7) served in the community subject to controls placed on  
9 the inmate's movement and activities by the department of corrections.

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

17 (6) "Community service" means compulsory service, without compensa-  
18 tion, performed for the benefit of the community by the offender.

19 (7) "Community supervision" means a period of time during which a  
20 convicted offender is subject to crime-related prohibitions and other  
21 sentence conditions imposed by a court pursuant to this chapter or RCW  
22 46.61.524. For first-time offenders, the supervision may include  
23 crime-related prohibitions and other conditions imposed pursuant to RCW  
24 9.94A.120(5). For purposes of the interstate compact for out-of-state  
25 supervision of parolees and probationers, RCW 9.95.270, community  
26 supervision is the functional equivalent of probation and should be  
27 considered the same as probation by other states.

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

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of  
34 money that is ordered by a superior court of the state of Washington  
35 for legal financial obligations which may include restitution to the  
36 victim, statutorily imposed crime victims' compensation fees as  
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
38 drug funds, court-appointed attorneys' fees, and costs of defense,

1 fines, and any other financial obligation that is assessed to the  
2 offender as a result of a felony conviction.

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

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

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

25 (13) "Day fine" means a fine imposed by the sentencing judge that  
26 equals the difference between the offender's net daily income and the  
27 reasonable obligations that the offender has for the support of the  
28 offender and any dependents.

29 (14) "Day reporting" means reporting at least once per day to a  
30 specific location designated by the department or the sentencing judge  
31 together with the requirement that the offender's location throughout  
32 each day be reported to the department.

33 (15) "Department" means the department of corrections.

34 (~~(14)~~) (16) "Determinate sentence" means a sentence that states  
35 with exactitude the number of actual years, months, or days of total  
36 confinement, of partial confinement, of community supervision, the  
37 number of actual hours or days of community service work, or dollars or  
38 terms of a legal financial obligation. The fact that an offender  
39 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a  
2 determinate sentence.

3 ~~((15))~~ (17) "Disposable earnings" means that part of the earnings  
4 of an individual remaining after the deduction from those earnings of  
5 any amount required by law to be withheld. For the purposes of this  
6 definition, "earnings" means compensation paid or payable for personal  
7 services, whether denominated as wages, salary, commission, bonuses, or  
8 otherwise, and, notwithstanding any other provision of law making the  
9 payments exempt from garnishment, attachment, or other process to  
10 satisfy a court-ordered legal financial obligation, specifically  
11 includes periodic payments pursuant to pension or retirement programs,  
12 or insurance policies of any type, but does not include payments made  
13 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
14 or Title 74 RCW.

15 ~~((16))~~ (18) "Drug offense" means:

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

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

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

25 ~~((17))~~ (19) "Escape" means:

26 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
27 second degree (RCW 9A.76.120), willful failure to return from furlough  
28 (RCW 72.66.060), willful failure to return from work release (RCW  
29 72.65.070), or willful failure to be available for supervision by the  
30 department while in community custody (RCW 72.09.310); or

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

34 ~~((18))~~ (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) 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 felony  
3 traffic offense under (a) of this subsection.

4 (~~((19))~~) (21) "Fines" means the requirement that the offender pay  
5 a specific sum of money over a specific period of time to the court.

6 (~~((20))~~) (22)(a) "First-time offender" means any person who is  
7 convicted of a felony (i) not classified as a violent offense or a sex  
8 offense under this chapter, or (ii) that is not the manufacture,  
9 delivery, or possession with intent to manufacture or deliver a  
10 controlled substance classified in schedule I or II that is a narcotic  
11 drug or the selling for profit (~~((of))~~) of any controlled substance or  
12 counterfeit substance classified in schedule I, RCW 69.50.204, except  
13 leaves and flowering tops of marihuana, and except as provided in (b)  
14 of this subsection, who previously has never been convicted of a felony  
15 in this state, federal court, or another state, and who has never  
16 participated in a program of deferred prosecution for a felony offense.

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

20 (~~((21))~~) (23) "Home detention" means a program of partial  
21 confinement available to offenders in which the offender is confined in  
22 a private residence subject to electronic surveillance. Home detention  
23 may not be imposed for offenders convicted of a violent offense, a sex  
24 offense, a drug offense, reckless burning in the first or second degree  
25 as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree  
26 as defined in RCW 9A.36.031, assault of a child in the third degree,  
27 unlawful imprisonment as defined in RCW 9A.40.040, or harassment as  
28 defined in RCW 9A.46.020. Home detention may be imposed for offenders  
29 convicted of possession of a controlled substance (RCW 69.50.401(d)) or  
30 forged prescription for a controlled substance (RCW 69.50.403) if the  
31 offender fulfills the participation conditions set forth in this  
32 subsection and is monitored for drug use by treatment alternatives to  
33 street crime (TASC) or a comparable court or agency-referred program.

34 (a) Home detention may be imposed for offenders convicted of  
35 burglary in the second degree as defined in RCW 9A.52.030 or  
36 residential burglary conditioned upon the offender: (i) Successfully  
37 completing twenty-one days in a work release program, (ii) having no  
38 convictions for burglary in the second degree or residential burglary  
39 during the preceding two years and not more than two prior convictions

1 for burglary or residential burglary, (iii) having no convictions for  
2 a violent felony offense during the preceding two years and not more  
3 than two prior convictions for a violent felony offense, (iv) having no  
4 prior charges of escape, and (v) fulfilling the other conditions of the  
5 home detention program.

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

22 (24) "Inpatient treatment" means participation in a treatment  
23 program certified by the state that requires the offender to be in  
24 residence at the facility.

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

27 ~~((+22+))~~ (26) "Offender" means a person who has committed a felony  
28 established by state law and is eighteen years of age or older or is  
29 less than eighteen years of age but whose case has been transferred by  
30 the appropriate juvenile court to a criminal court pursuant to RCW  
31 13.40.110. Throughout this chapter, the terms "offender" and  
32 "defendant" are used interchangeably.

33 ~~((+23+))~~ (27) "Outpatient treatment" means participation in a  
34 treatment program certified by the state or recommended by the  
35 department that does not require the offender to be present for more  
36 than twelve hours per day.

37 (28) "Partial confinement" means confinement for no more than one  
38 year in a facility or institution operated or utilized under contract  
39 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for  
2 a substantial portion of each day with the balance of the day spent in  
3 the community. Partial confinement includes work release, home  
4 detention, work crew, and a combination of work crew and home detention  
5 as defined in this section.

6 ~~((24))~~ (29) "Postrelease supervision" is that portion of an  
7 offender's community placement that is not community custody.

8 ~~((25))~~ (30) "Restitution" means the requirement that the offender  
9 pay a specific sum of money over a specific period of time to the court  
10 as payment of damages. The sum may include both public and private  
11 costs. The imposition of a restitution order does not preclude civil  
12 redress.

13 ~~((26))~~ (31) "Serious traffic offense" means:

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

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

22 ~~((27))~~ (32) "Serious violent offense" is a subcategory of violent  
23 offense and means:

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

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

32 ~~((28))~~ (33) "Sentence range" means the sentencing court's  
33 discretionary range in imposing a nonappealable sentence.

34 ~~((29))~~ (34) "Sex offense" means:

35 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
36 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
37 attempt, criminal solicitation, or criminal conspiracy to commit such  
38 crimes;

1 (b) A felony with a finding of sexual motivation under RCW  
2 9.94A.127; or

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

6 (~~(30)~~) (35) "Sexual motivation" means that one of the purposes  
7 for which the defendant committed the crime was for the purpose of his  
8 or her sexual gratification.

9 (~~(31)~~) (36) "Total confinement" means confinement inside the  
10 physical boundaries of a facility or institution operated or utilized  
11 under contract by the state or any other unit of government for twenty-  
12 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

13 (~~(32)~~) (37) "Victim" means any person who has sustained  
14 emotional, psychological, physical, or financial injury to person or  
15 property as a direct result of the crime charged.

16 (~~(33)~~) (38) "Violent offense" means:

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

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

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

35 (~~(34)~~) (39) "Work crew" means a program of partial confinement  
36 consisting of civic improvement tasks for the benefit of the community  
37 of not less than thirty-five hours per week that complies with RCW  
38 9.94A.135. The civic improvement tasks shall be performed on public  
39 property or on private property owned or operated by nonprofit

1 entities, except that, for emergency purposes only, work crews may  
2 perform snow removal on any private property. The civic improvement  
3 tasks shall have minimal negative impact on existing private industries  
4 or the labor force in the county where the service or labor is  
5 performed. The civic improvement tasks shall not affect employment  
6 opportunities for people with developmental disabilities contracted  
7 through sheltered workshops as defined in RCW 82.04.385. Only those  
8 offenders sentenced to a facility operated or utilized under contract  
9 by a county are eligible to participate on a work crew. Offenders  
10 sentenced for a sex offense as defined in subsection ~~((29))~~ (34) of  
11 this section are not eligible for the work crew program.

12 ~~((35))~~ (40) "Work release" means a program of partial confinement  
13 available to offenders who are employed or engaged as a student in a  
14 regular course of study at school. Participation in work release shall  
15 be conditioned upon the offender attending work or school at regularly  
16 defined hours and abiding by the rules of the work release facility.

17 ~~((36))~~ "Home detention" means a program of partial confinement  
18 available to offenders wherein the offender is confined in a private  
19 residence subject to electronic surveillance. Home detention may not  
20 be imposed for offenders convicted of a violent offense, any sex  
21 offense, any drug offense, reckless burning in the first or second  
22 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
23 degree as defined in RCW 9A.36.031, assault of a child in the third  
24 degree, unlawful imprisonment as defined in RCW 9A.40.040, or  
25 harassment as defined in RCW 9A.46.020. Home detention may be imposed  
26 for offenders convicted of possession of a controlled substance (RCW  
27 69.50.401(d)) or forged prescription for a controlled substance (RCW  
28 69.50.403) if the offender fulfills the participation conditions set  
29 forth in this subsection and is monitored for drug use by treatment  
30 alternatives to street crime (TASC) or a comparable court or agency-  
31 referred program.

32 (a) Home detention may be imposed for offenders convicted of  
33 burglary in the second degree as defined in RCW 9A.52.030 or  
34 residential burglary conditioned upon the offender: (i) Successfully  
35 completing twenty one days in a work release program, (ii) having no  
36 convictions for burglary in the second degree or residential burglary  
37 during the preceding two years and not more than two prior convictions  
38 for burglary or residential burglary, (iii) having no convictions for  
39 a violent felony offense during the preceding two years and not more

1 ~~than two prior convictions for a violent felony offense, (iv) having no~~  
2 ~~prior charges of escape, and (v) fulfilling the other conditions of the~~  
3 ~~home detention program.~~

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

20 **Sec. 3.** RCW 9.94A.120 and 1992 c 145 s 7 and 1992 c 75 s 2 are  
21 each reenacted and amended to read as follows:

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

24 (1) Except as authorized in subsections (2), (4), (5), ~~((and))~~ (7),  
25 (8), and (21) of this section, the court shall impose a sentence within  
26 the sentence range for the offense.

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

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

35 (4)(a) An offender convicted of the crime of murder in the first  
36 degree shall be sentenced to a term of total confinement not less than  
37 twenty years.

1       **(b)** An offender convicted of the crime of assault in the first  
2 degree or assault of a child in the first degree where the offender  
3 used force or means likely to result in death or intended to kill the  
4 victim shall be sentenced to a term of total confinement not less than  
5 five years.

6       **(c)** An offender convicted of the crime of rape in the first degree  
7 shall be sentenced to a term of total confinement not less than five  
8 years, and shall not be eligible for furlough, work release or other  
9 authorized leave of absence from the correctional facility during such  
10 minimum five-year term except for the purpose of commitment to an  
11 inpatient treatment facility.

12       **(d)** An offender shall be sentenced to a minimum term of confinement  
13 of not less than fifteen years if the offender (i) while committed to  
14 a state correctional facility for murder in the first or second degree,  
15 homicide by abuse, assault in the first or second degree, rape in the  
16 first or second degree, kidnapping in the first degree, robbery in the  
17 first degree, arson in the first degree, or burglary in the first  
18 degree; (ii) commits the crime of murder in the second degree, assault  
19 in the first or second degree, rape in the first or second degree,  
20 arson in the first or second degree, or robbery in the first or second  
21 degree. The sentence shall be served consecutive to any term of  
22 confinement remaining on the offense or offenses for which the offender  
23 was committed to the state institution as provided in RCW 9.94A.400 (2)  
24 and (5). An offender who commits murder in the first degree while  
25 committed to a state institution for the conviction of one of the  
26 offenses listed in (d)(ii) of this subsection shall serve his or her  
27 sentence consecutive to any term of confinement remaining on the  
28 offense or offenses for which the offender was committed to the state  
29 institution. RCW 9A.20.021(1)(b), which provides that the statutory  
30 maximum for class B felonies is ten years, does not apply to the crimes  
31 identified in (d)(ii) of this subsection when committed in a state  
32 correctional facility by an offender who is committed to the state  
33 institution for a crime listed in (d)(i) of this subsection. In these  
34 circumstances, the statutory maximum is a term of life imprisonment.

35       The foregoing minimum terms of total confinement, specified in (a),  
36 (b), (c), and (d) of this subsection, are mandatory and shall not be  
37 varied or modified as provided in subsection (2) of this section.

38       (5) In sentencing a first-time offender the court may waive the  
39 imposition of a sentence within the sentence range and impose a

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

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

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

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

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

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

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

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

29 (7)(a) An offender is eligible for the special drug offender  
30 sentencing alternative if:

31 (i) The offender is convicted of the manufacture, delivery, or  
32 possession with intent to manufacture or deliver a controlled substance  
33 classified in schedule I or II that is a narcotic drug and the  
34 violation does not involve a sentence enhancement under RCW  
35 9.94A.310(3);

36 (ii) The offender has no prior or other current convictions for a  
37 felony in this state, another state, or the United States;

38 (iii) The offender has not previously been sentenced under this  
39 special drug offender sentencing alternative;

1        (iv) The offense involved only a small quantity of the particular  
2 controlled substance, as determined by the sentencing judge upon  
3 consideration of such factors as the weight, purity, packaging, sale  
4 price, and street value of the controlled substance.

5        (b) If the sentencing judge determines that the offender is  
6 eligible for this option and that the offender and the community will  
7 benefit from the use of the special drug offender sentencing  
8 alternative, the judge may waive imposition of a sentence within the  
9 standard range and impose a sentence that must include a period of  
10 total confinement in a state facility for one-half of the midpoint of  
11 the standard range. No more than three months of the sentence may be  
12 served in a work release status. The court shall also impose one year  
13 of community custody that must include crime-related prohibitions, a  
14 condition to not use illegal controlled substances, and to submit to  
15 urinalysis or other testing to monitor that status. In addition, the  
16 court may impose any of the following conditions:

17        (i) Devote time to a specific employment or training;

18        (ii) Participate in outpatient substance abuse treatment;

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

22        (iv) Report as directed to a community corrections officer;

23        (v) Pay all court-ordered legal financial obligations;

24        (vi) Perform community service work;

25        (vii) Pay a day fine;

26        (viii) Stay out of areas designated by the sentencing judge;

27        (ix) Undergo day reporting.

28        (c) If the offender violates any of the sentence conditions in (b)  
29 of this subsection, the department shall impose sanctions  
30 administratively, with notice to the prosecuting attorney and the  
31 sentencing court. Upon motion of the court or the prosecuting  
32 attorney, a violation hearing shall be held by the court. If the court  
33 finds that conditions have been willfully violated, the court may  
34 impose confinement consisting of the remaining one-half of the midpoint  
35 of the standard range. All total confinement served during the period  
36 of community custody shall be credited to the offender, regardless of  
37 whether the total confinement is served as a result of the original  
38 sentence, as a result of a sanction imposed by the department of  
39 corrections, or as a result of a violation found by the court.

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

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

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

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

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

21       (C) Monitoring plans, including any requirements regarding living  
22 conditions, lifestyle requirements, and monitoring by family members  
23 and others;

24       (D) Anticipated length of treatment; and

25       (E) Recommended crime-related prohibitions.

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

32       (ii) After receipt of the reports, the court shall consider whether  
33 the offender and the community will benefit from use of this special  
34 sexual offender sentencing alternative and consider the victim's  
35 opinion whether the offender should receive a treatment disposition  
36 under this subsection. If the court determines that this special sex  
37 offender sentencing alternative is appropriate, the court shall then  
38 impose a sentence within the sentence range. If this sentence is less

1 than eight years of confinement, the court may suspend the execution of  
2 the sentence and impose the following conditions of suspension:

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

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

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

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

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

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

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

32 (iii) The sex offender therapist shall submit quarterly reports on  
33 the defendant's progress in treatment to the court and the parties.  
34 The report shall reference the treatment plan and include at a minimum  
35 the following: Dates of attendance, defendant's compliance with  
36 requirements, treatment activities, the defendant's relative progress  
37 in treatment, and any other material as specified by the court at  
38 sentencing.

1 (iv) At the time of sentencing, the court shall set a treatment  
2 termination hearing for three months prior to the anticipated date for  
3 completion of treatment. Prior to the treatment termination hearing,  
4 the treatment professional and community corrections officer shall  
5 submit written reports to the court and parties regarding the  
6 defendant's compliance with treatment and monitoring requirements, and  
7 recommendations regarding termination from treatment, including  
8 proposed community supervision conditions. Either party may request  
9 and the court may order another evaluation regarding the advisability  
10 of termination from treatment. The defendant shall pay the cost of any  
11 additional evaluation ordered unless the court finds the defendant to  
12 be indigent in which case the state shall pay the cost. At the  
13 treatment termination hearing the court may: (A) Modify conditions of  
14 community supervision, and either (B) terminate treatment, or (C)  
15 extend treatment for up to the remaining period of community  
16 supervision.

17 (v) The court may revoke the suspended sentence at any time during  
18 the period of community supervision and order execution of the sentence  
19 if: (A) The defendant violates the conditions of the suspended  
20 sentence, or (B) the court finds that the defendant is failing to make  
21 satisfactory progress in treatment. All confinement time served during  
22 the period of community supervision shall be credited to the offender  
23 if the suspended sentence is revoked.

24 (vi) Except as provided in (a)(vii) of this subsection, after July  
25 1, 1991, examinations and treatment ordered pursuant to this subsection  
26 shall only be conducted by sex offender treatment providers certified  
27 by the department of health pursuant to chapter 18.155 RCW.

28 (vii) A sex offender therapist who examines or treats a sex  
29 offender pursuant to this subsection (~~((7))~~) (8) does not have to be  
30 certified by the department of health pursuant to chapter 18.155 RCW if  
31 the court finds that: (A) The offender has already moved to another  
32 state or plans to move to another state for reasons other than  
33 circumventing the certification requirements; (B) no certified  
34 providers are available for treatment within a reasonable geographical  
35 distance of the offender's home; and (C) the evaluation and treatment  
36 plan comply with this subsection (~~((7))~~) (8) and the rules adopted by  
37 the department of health.

38 For purposes of this subsection, "victim" means any person who has  
39 sustained emotional, psychological, physical, or financial injury to

1 person or property as a result of the crime charged. "Victim" also  
2 means a parent or guardian of a victim who is a minor child unless the  
3 parent or guardian is the perpetrator of the offense.

4 (b) When an offender is convicted of any felony sex offense  
5 committed before July 1, 1987, and is sentenced to a term of  
6 confinement of more than one year but less than six years, the  
7 sentencing court may, on its own motion or on the motion of the  
8 offender or the state, order the offender committed for up to thirty  
9 days to the custody of the secretary of social and health services for  
10 evaluation and report to the court on the offender's amenability to  
11 treatment at these facilities. If the secretary of social and health  
12 services cannot begin the evaluation within thirty days of the court's  
13 order of commitment, the offender shall be transferred to the state for  
14 confinement pending an opportunity to be evaluated at the appropriate  
15 facility. The court shall review the reports and may order that the  
16 term of confinement imposed be served in the sexual offender treatment  
17 program at the location determined by the secretary of social and  
18 health services or the secretary's designee, only if the report  
19 indicates that the offender is amenable to the treatment program  
20 provided at these facilities. The offender shall be transferred to the  
21 state pending placement in the treatment program. Any offender who has  
22 escaped from the treatment program shall be referred back to the  
23 sentencing court.

24 If the offender does not comply with the conditions of the  
25 treatment program, the secretary of social and health services may  
26 refer the matter to the sentencing court. The sentencing court shall  
27 commit the offender to the department of corrections to serve the  
28 balance of the term of confinement.

29 If the offender successfully completes the treatment program before  
30 the expiration of the term of confinement, the court may convert the  
31 balance of confinement to community supervision and may place  
32 conditions on the offender including crime-related prohibitions and  
33 requirements that the offender perform any one or more of the  
34 following:

- 35 (i) Devote time to a specific employment or occupation;
- 36 (ii) Remain within prescribed geographical boundaries and notify  
37 the court or the community corrections officer prior to any change in  
38 the offender's address or employment;

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

3 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

30 (iv) Undergo available outpatient treatment.

31 If the offender violates any of the terms of his or her community  
32 supervision, the court may order the offender to serve out the balance  
33 of his community supervision term in confinement in the custody of the  
34 department of corrections.

35 Nothing in (c) of this subsection shall confer eligibility for such  
36 programs for offenders convicted and sentenced for a sex offense  
37 committed prior to July 1, 1987. This subsection (c) does not apply to  
38 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))~~ (9)(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, assault of a child in the second degree, any crime  
14 against a person where it is determined in accordance with RCW  
15 9.94A.125 that the defendant or an accomplice was armed with a deadly  
16 weapon at the time of commission, or any felony offense under chapter  
17 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
18 in addition to the other terms of the sentence, sentence the offender  
19 to a one-year term of community placement beginning either upon  
20 completion of the term of confinement or at such time as the offender  
21 is transferred to community custody in lieu of earned early release in  
22 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
23 offender under this subsection to the statutory maximum period of  
24 confinement then the community placement portion of the sentence shall  
25 consist entirely of such community custody to which the offender may  
26 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
27 period of community custody actually served shall be credited against  
28 the community placement portion of the 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  
31 categorized as a sex offense or serious violent offense committed on or  
32 after July 1, 1990, the court shall in addition to other terms of the  
33 sentence, sentence the offender to community placement for two years or  
34 up to the period of earned early release awarded pursuant to RCW  
35 9.94A.150 (1) and (2), whichever is longer. The community placement  
36 shall begin either upon completion of the term of confinement or at  
37 such time as the offender is transferred to community custody in lieu  
38 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
39 When the court sentences an offender under this subsection to the

1 statutory maximum period of confinement then the community placement  
2 portion of the sentence shall consist entirely of the community custody  
3 to which the offender may become eligible, in accordance with RCW  
4 9.94A.150 (1) and (2). Any period of community custody actually served  
5 shall be credited against the community placement portion of the  
6 sentence. Unless a condition is waived by the court, the terms of  
7 community placement for offenders sentenced pursuant to this section  
8 shall include the following conditions:

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

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

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

15 (iv) An offender in community custody shall not unlawfully possess  
16 controlled substances;

17 (v) The offender shall pay supervision fees as determined by the  
18 department of corrections; and

19 (vi) The residence location and living arrangements are subject to  
20 the prior approval of the department of corrections during the period  
21 of community placement.

22 (c) The court may also order any of the following special  
23 conditions:

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

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

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

30 (iv) The offender shall not consume alcohol; or

31 (v) The offender shall comply with any crime-related prohibitions.

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

36 ((+9)) (10) If the court imposes a sentence requiring confinement  
37 of thirty days or less, the court may, in its discretion, specify that  
38 the sentence be served on consecutive or intermittent days. A sentence  
39 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

3 ~~((10))~~ (11) If a sentence imposed includes payment of a legal  
4 financial obligation, the sentence shall specify the total amount of  
5 the legal financial obligation owed, and shall require the offender to  
6 pay a specified monthly sum toward that legal financial obligation.  
7 Restitution to victims shall be paid prior to any other payments of  
8 monetary obligations. Any legal financial obligation that is imposed  
9 by the court may be collected by the department, which shall deliver  
10 the amount paid to the county clerk for credit. The offender's  
11 compliance with payment of legal financial obligations shall be  
12 supervised by the department. All monetary payments ordered shall be  
13 paid no later than ten years after the last date of release from  
14 confinement pursuant to a felony conviction or the date the sentence  
15 was entered. Independent of the department, the party or entity to  
16 whom the legal financial obligation is owed shall have the authority to  
17 utilize any other remedies available to the party or entity to collect  
18 the legal financial obligation. Nothing in this section makes the  
19 department, the state, or any of its employees, agents, or other  
20 persons acting on their behalf liable under any circumstances for the  
21 payment of these legal financial obligations. If an order includes  
22 restitution as one of the monetary assessments, the county clerk shall  
23 make disbursements to victims named in the order.

24 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and  
25 9.94A.142(1), a court may not impose a sentence providing for a term of  
26 confinement or community supervision or community placement which  
27 exceeds the statutory maximum for the crime as provided in chapter  
28 9A.20 RCW.

29 ~~((12))~~ (13) All offenders sentenced to terms involving community  
30 supervision, community service, community placement, or legal financial  
31 obligation shall be under the supervision of the secretary of the  
32 department of corrections or such person as the secretary may designate  
33 and shall follow explicitly the instructions of the secretary including  
34 reporting as directed to a community corrections officer, remaining  
35 within prescribed geographical boundaries, notifying the community  
36 corrections officer of any change in the offender's address or  
37 employment, and paying the supervision fee assessment.

38 ~~((13))~~ (14) All offenders sentenced to terms involving community  
39 supervision, community service, or community placement under the

1 supervision of the department of corrections shall not own, use, or  
2 possess firearms or ammunition. Offenders who own, use, or are found  
3 to be in actual or constructive possession of firearms or ammunition  
4 shall be subject to the appropriate violation process and sanctions.  
5 "Constructive possession" as used in this subsection means the power  
6 and intent to control the firearm or ammunition. "Firearm" as used in  
7 this subsection means a weapon or device from which a projectile may be  
8 fired by an explosive such as gunpowder.

9 ~~((14))~~ (15) The sentencing court shall give the offender credit  
10 for all confinement time served before the sentencing if that  
11 confinement was solely in regard to the offense for which the offender  
12 is being sentenced.

13 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)  
14 and (2) governing whether sentences are to be served consecutively or  
15 concurrently is an exceptional sentence subject to the limitations in  
16 subsections (2) and (3) of this section, and may be appealed by the  
17 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

18 ~~((16))~~ (17) The court shall order restitution whenever the  
19 offender is convicted of a felony that results in injury to any person  
20 or damage to or loss of property, whether the offender is sentenced to  
21 confinement or placed under community supervision, unless extraordinary  
22 circumstances exist that make restitution inappropriate in the court's  
23 judgment. The court shall set forth the extraordinary circumstances in  
24 the record if it does not order restitution.

25 ~~((17))~~ (18) As a part of any sentence, the court may impose and  
26 enforce an order that relates directly to the circumstances of the  
27 crime for which the offender has been convicted, prohibiting the  
28 offender from having any contact with other specified individuals or a  
29 specific class of individuals for a period not to exceed the maximum  
30 allowable sentence for the crime, regardless of the expiration of the  
31 offender's term of community supervision or community placement.

32 ~~((18))~~ (19) In any sentence of partial confinement, the court may  
33 require the defendant to serve the partial confinement in work release,  
34 in a program of home detention, on work crew, or in a combined program  
35 of work crew and home detention.

36 ~~((19))~~ (20) All court-ordered legal financial obligations  
37 collected by the department and remitted to the county clerk shall be  
38 credited and paid where restitution is ordered. Restitution shall be  
39 paid prior to any other payments of monetary obligations.

1       (21) An offender shall be sentenced to a minimum term of  
2 confinement of not less than fifteen years or a determinate term within  
3 the standard range, whichever is greater, if the offender (a) while  
4 committed to a state correctional facility for murder in the first or  
5 second degree, homicide by abuse, assault in the first or second  
6 degree, rape in the first or second degree, kidnapping in the first  
7 degree, robbery in the first degree, arson in the first degree, or  
8 burglary in the first degree; (b) commits the crime of murder in the  
9 second degree, assault in the first or second degree, rape in the first  
10 or second degree, arson in the first or second degree, or robbery in  
11 the first or second degree. The court may impose an exceptional  
12 sentence above the mandatory minimum term or the standard range for the  
13 offense based on the existence of aggravating factors as provided in  
14 RCW 9.94A.390, but may not impose an exceptional sentence below the  
15 mandatory minimum or standard range. The term imposed shall be served  
16 consecutive to any term of confinement remaining on the offense or  
17 offenses for which the offender was committed to the state institution  
18 as provided in RCW 9.94A.400 (2) and (5). An offender who commits  
19 murder in the first degree while committed to a state institution for  
20 the conviction of one of the offenses listed in (b) of this subsection  
21 shall serve his or her sentence consecutive to any term of confinement  
22 remaining on the offense or offenses for which the offender was  
23 committed to the state institution. RCW 9A.20.021(1)(b), which  
24 provides that the statutory maximum for class B felonies is ten years,  
25 does not apply to the crimes identified in (b) of this subsection when  
26 committed in a state correctional facility by an offender who is  
27 committed to the state institution for a crime listed in (a) of this  
28 subsection. In these circumstances, the statutory maximum is a term of  
29 life imprisonment.

30       **Sec. 4.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read  
31 as follows:

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

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

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

3 (1) Mitigating Circumstances

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

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

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

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

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

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

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

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

27 (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (e) The defendant is being sentenced for an offense involving the  
29 use or threatened use of physical violence and poses a future danger of  
30 violent behavior that will not be sufficiently mitigated by a period of  
31 incarceration within the standard range. This finding may be made upon  
32 conviction of any violent offense and must be supported by:

33 (i) A history of similar misconduct. This history may be  
34 established by prior criminal convictions or other competent evidence;  
35 and

36 (ii) A finding that the defendant is not amenable to treatment.  
37 The following are among the factors the court may consider in making  
38 such a finding:

1 (A) The opinion of a mental health professional that the defendant  
2 would likely not be amenable to treatment;

3 (B) The defendant has been refused treatment at all available  
4 facilities;

5 (C) The defendant refuses to cooperate with necessary evaluations  
6 to determine the usefulness of treatment; or

7 (D) The current offense was committed less than six months after  
8 the defendant was released from incarceration for a similar offense.

9 (f) The current offense included a finding of sexual motivation  
10 pursuant to RCW 9.94A.127((+)).

11 ((+)) (g) The offense was part of an ongoing pattern of sexual  
12 abuse of the same victim under the age of eighteen years manifested by  
13 multiple incidents over a prolonged period of time((+or)).

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

17 **Sec. 5.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are  
18 each reenacted and amended to read as follows:

19 (1) Decision not to prosecute.

20 STANDARD: A prosecuting attorney may decline to prosecute, even  
21 though technically sufficient evidence to prosecute exists, in  
22 situations where prosecution would serve no public purpose, would  
23 defeat the underlying purpose of the law in question or would result in  
24 decreased respect for the law.

25 GUIDELINE/COMMENTARY:

26 Examples

27 The following are examples of reasons not to prosecute which could  
28 satisfy the standard.

29 (a) Contrary to Legislative Intent - It may be proper to decline to  
30 charge where the application of criminal sanctions would be clearly  
31 contrary to the intent of the legislature in enacting the particular  
32 statute.

33 (b) Antiquated Statute - It may be proper to decline to charge  
34 where the statute in question is antiquated in that:

35 (i) It has not been enforced for many years; and

36 (ii) Most members of society act as if it were no longer in  
37 existence; and

1 (iii) It serves no deterrent or protective purpose in today's  
2 society; and

3 (iv) The statute has not been recently reconsidered by the  
4 legislature.

5 This reason is not to be construed as the basis for declining cases  
6 because the law in question is unpopular or because it is difficult to  
7 enforce.

8 (c) De Minimus Violation - It may be proper to decline to charge  
9 where the violation of law is only technical or insubstantial and where  
10 no public interest or deterrent purpose would be served by prosecution.

11 (d) Confinement on Other Charges - Except for crimes committed by  
12 prisoners in state correctional facilities as provided in RCW  
13 9.94A.120(21), it may be proper to decline to charge because the  
14 accused has been sentenced on another charge to a lengthy period of  
15 confinement; and

16 (i) Conviction of the new offense would not merit any additional  
17 direct or collateral punishment;

18 (ii) The new offense is either a misdemeanor or a felony which is  
19 not particularly aggravated; and

20 (iii) Conviction of the new offense would not serve any significant  
21 deterrent purpose.

22 (e) Pending Conviction on Another Charge - It may be proper to  
23 decline to charge because the accused is facing a pending prosecution  
24 in the same or another county; and

25 (i) Conviction of the new offense would not merit any additional  
26 direct or collateral punishment;

27 (ii) Conviction in the pending prosecution is imminent;

28 (iii) The new offense is either a misdemeanor or a felony which is  
29 not particularly aggravated; and

30 (iv) Conviction of the new offense would not serve any significant  
31 deterrent purpose.

32 (f) High Disproportionate Cost of Prosecution - It may be proper to  
33 decline to charge where the cost of locating or transporting, or the  
34 burden on, prosecution witnesses is highly disproportionate to the  
35 importance of prosecuting the offense in question. This reason should  
36 be limited to minor cases and should not be relied upon in serious  
37 cases.

38 (g) Improper Motives of Complainant - It may be proper to decline  
39 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying  
2 purpose of the law in question or would result in decreased respect for  
3 the law.

4 (h) Immunity - It may be proper to decline to charge where immunity  
5 is to be given to an accused in order to prosecute another where the  
6 accused's information or testimony will reasonably lead to the  
7 conviction of others who are responsible for more serious criminal  
8 conduct or who represent a greater danger to the public interest.

9 (i) Victim Request - It may be proper to decline to charge because  
10 the victim requests that no criminal charges be filed and the case  
11 involves the following crimes or situations:

12 (i) Assault cases where the victim has suffered little or no  
13 injury;

14 (ii) Crimes against property, not involving violence, where no  
15 major loss was suffered;

16 (iii) Where doing so would not jeopardize the safety of society.

17 Care should be taken to insure that the victim's request is freely  
18 made and is not the product of threats or pressure by the accused.

19 The presence of these factors may also justify the decision to  
20 dismiss a prosecution which has been commenced.

21 Notification

22 The prosecutor is encouraged to notify the victim, when practical,  
23 and the law enforcement personnel, of the decision not to prosecute.

24 (2) Decision to prosecute.

25 STANDARD:

26 Crimes against persons will be filed if sufficient admissible  
27 evidence exists, which, when considered with the most plausible,  
28 reasonably foreseeable defense that could be raised under the evidence,  
29 would justify conviction by a reasonable and objective fact-finder.  
30 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
31 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
32 9A.64.020 the prosecutor should avoid prefiling agreements or  
33 diversions intended to place the accused in a program of treatment or  
34 counseling, so that treatment, if determined to be beneficial, can be  
35 provided pursuant to RCW 9.94A.120(~~(7)~~)(8).

36 Crimes against property/other crimes will be filed if the  
37 admissible evidence is of such convincing force as to make it probable  
38 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could  
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

6 Aggravated Murder  
7 1st Degree Murder  
8 2nd Degree Murder  
9 1st Degree Kidnaping  
10 1st Degree Assault  
11 1st Degree Assault of a Child  
12 1st Degree Rape  
13 1st Degree Robbery  
14 1st Degree Rape of a Child  
15 1st Degree Arson  
16 2nd Degree Kidnaping  
17 2nd Degree Assault  
18 2nd Degree Assault of a Child  
19 2nd Degree Rape  
20 2nd Degree Robbery  
21 1st Degree Burglary  
22 1st Degree Manslaughter  
23 2nd Degree Manslaughter  
24 1st Degree Extortion  
25 Indecent Liberties  
26 Incest  
27 2nd Degree Rape of a Child  
28 Vehicular Homicide  
29 Vehicular Assault  
30 3rd Degree Rape  
31 3rd Degree Rape of a Child  
32 1st Degree Child Molestation  
33 2nd Degree Child Molestation  
34 3rd Degree Child Molestation  
35 2nd Degree Extortion  
36 1st Degree Promoting Prostitution  
37 Intimidating a Juror  
38 Communication with a Minor

1 Intimidating a Witness  
2 Intimidating a Public Servant  
3 Bomb Threat (if against person)  
4 3rd Degree Assault  
5 3rd Degree Assault of a Child  
6 Unlawful Imprisonment  
7 Promoting a Suicide Attempt  
8 Riot (if against person)

9 CRIMES AGAINST PROPERTY/OTHER CRIMES

10 2nd Degree Arson  
11 1st Degree Escape  
12 2nd Degree Burglary  
13 1st Degree Theft  
14 1st Degree Perjury  
15 1st Degree Introducing Contraband  
16 1st Degree Possession of Stolen Property  
17 Bribery  
18 Bribing a Witness  
19 Bribe received by a Witness  
20 Bomb Threat (if against property)  
21 1st Degree Malicious Mischief  
22 2nd Degree Theft  
23 2nd Degree Escape  
24 2nd Degree Introducing Contraband  
25 2nd Degree Possession of Stolen Property  
26 2nd Degree Malicious Mischief  
27 1st Degree Reckless Burning  
28 Taking a Motor Vehicle without Authorization  
29 Forgery  
30 2nd Degree Perjury  
31 2nd Degree Promoting Prostitution  
32 Tampering with a Witness  
33 Trading in Public Office  
34 Trading in Special Influence  
35 Receiving/Granting Unlawful Compensation  
36 Bigamy  
37 Eluding a Pursuing Police Vehicle

1 Willful Failure to Return from Furlough  
2 Escape from Community Custody  
3 Riot (if against property)  
4 Thefts of Livestock

5 ALL OTHER UNCLASSIFIED FELONIES

6 Selection of Charges/Degree of Charge

7 (1) The prosecutor should file charges which adequately describe  
8 the nature of defendant's conduct. Other offenses may be charged only  
9 if they are necessary to ensure that the charges:

10 (a) Will significantly enhance the strength of the state's case at  
11 trial; or

12 (b) Will result in restitution to all victims.

13 (2) The prosecutor should not overcharge to obtain a guilty plea.

14 Overcharging includes:

15 (a) Charging a higher degree;

16 (b) Charging additional counts.

17 This standard is intended to direct prosecutors to charge those  
18 crimes which demonstrate the nature and seriousness of a defendant's  
19 criminal conduct, but to decline to charge crimes which are not  
20 necessary to such an indication. Crimes which do not merge as a matter  
21 of law, but which arise from the same course of conduct, do not all  
22 have to be charged.

23 GUIDELINES/COMMENTARY:

24 Police Investigation

25 A prosecuting attorney is dependent upon law enforcement agencies  
26 to conduct the necessary factual investigation which must precede the  
27 decision to prosecute. The prosecuting attorney shall ensure that a  
28 thorough factual investigation has been conducted before a decision to  
29 prosecute is made. In ordinary circumstances the investigation should  
30 include the following:

31 (1) The interviewing of all material witnesses, together with the  
32 obtaining of written statements whenever possible;

33 (2) The completion of necessary laboratory tests; and

34 (3) The obtaining, in accordance with constitutional requirements,  
35 of the suspect's version of the events.

36 If the initial investigation is incomplete, a prosecuting attorney  
37 should insist upon further investigation before a decision to prosecute  
38 is made, and specify what the investigation needs to include.

1           Exceptions

2           In certain situations, a prosecuting attorney may authorize filing  
3 of a criminal complaint before the investigation is complete if:

- 4           (1) Probable cause exists to believe the suspect is guilty; and  
5           (2) The suspect presents a danger to the community or is likely to  
6 flee if not apprehended; or  
7           (3) The arrest of the suspect is necessary to complete the  
8 investigation of the crime.

9           In the event that the exception to the standard is applied, the  
10 prosecuting attorney shall obtain a commitment from the law enforcement  
11 agency involved to complete the investigation in a timely manner. If  
12 the subsequent investigation does not produce sufficient evidence to  
13 meet the normal charging standard, the complaint should be dismissed.

14           Investigation Techniques

15           The prosecutor should be fully advised of the investigatory  
16 techniques that were used in the case investigation including:

- 17           (1) Polygraph testing;  
18           (2) Hypnosis;  
19           (3) Electronic surveillance;  
20           (4) Use of informants.

21           Pre-Filing Discussions with Defendant

22           Discussions with the defendant or ((his/her)) a representative  
23 regarding the selection or disposition of charges may occur prior to  
24 the filing of charges, and potential agreements can be reached.

25           **Sec. 6.** RCW 9.95.0011 and 1989 c 259 s 4 are each amended to read  
26 as follows:

27           (1) The indeterminate ((sentencing)) sentence review board shall  
28 cease to exist on June 30, 1998. Prior to June 30, 1998, the board  
29 shall review each inmate convicted of crimes committed before July 1,  
30 1984, and prepare a report. This report shall include a recommendation  
31 regarding the offender's suitability for parole, appropriate parole  
32 conditions, and, for those persons committed under a mandatory life  
33 sentence, duration of confinement.

34           (2) ((The governor, through the office of financial management,  
35 shall recommend to the legislature alternatives for carrying out the  
36 duties of)) To facilitate termination of the board on June 30, 1998,  
37 the board shall prepare a detailed plan and recommendations for the  
38 transfer of jurisdiction over inmates and parolees remaining subject to

1 the indeterminate sentencing system. The plan shall consider ex post  
2 facto issues and public safety concerns. In developing  
3 recommendations, the ((office of financial management)) board shall  
4 consult with the ((indeterminate sentence review board)) office of  
5 financial management, the attorney general, the Washington association  
6 of prosecuting attorneys, the Washington defender association, the  
7 department of corrections, and the administrator for the courts.  
8 Recommendations shall include an indication of to whom jurisdiction  
9 over the inmates and parolees should be transferred, a detailed fiscal  
10 analysis, and if necessary, recommended formulas and procedures for the  
11 reimbursement of costs to local governments ((if necessary)). The plan  
12 and recommendations shall be presented to the ((1997)) legislature no  
13 later than December 1, 1995.

14 **Sec. 7.** RCW 9.96.050 and 1980 c 75 s 1 are each amended to read as  
15 follows:

16 When a prisoner on parole has performed the obligations of his or  
17 her release for such time as shall satisfy the indeterminate sentence  
18 review board ((of prison terms and paroles)) that his or her final  
19 release is not incompatible with the best interests of society and the  
20 welfare of the paroled individual, the board may make a final order of  
21 discharge and issue a certificate of discharge to the prisoner. The  
22 board retains the jurisdiction to issue a certificate of discharge  
23 after the expiration of the prisoner's or parolee's maximum statutory  
24 sentence((: PROVIDED, That no such order of discharge shall be made in  
25 any case within a period of less than one year from the date on which  
26 the board has conditionally discharged the parolee from active  
27 supervision by a probation and parole officer, except where the  
28 parolee's maximum statutory sentence expires earlier)). If not granted  
29 earlier, the board shall make a final order of discharge three years  
30 from the date of parole unless the parolee is on suspended or revoked  
31 status at the expiration of the three years. Such discharge,  
32 regardless of when issued, shall have the effect of restoring all civil  
33 rights lost by operation of law upon conviction, and the certification  
34 of discharge shall so state. This restoration of civil rights does not  
35 restore the right to receive, possess, own, or transport firearms.

36 The discharge provided for in this section shall be considered as  
37 a part of the sentence of the convicted person and shall not in any

1 manner be construed as affecting the powers of the governor to pardon  
2 any such person.

3 **Sec. 8.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read  
4 as follows:

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

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

11 (b) Except as provided in RCW 9.94A.120(4)(d) and (21) for a class  
12 B felony, by confinement in a state correctional institution for a term  
13 of ten years, or by a fine in an amount fixed by the court of twenty  
14 thousand dollars, or by both such confinement and fine;

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

18 (2) Gross Misdemeanor. Every person convicted of a gross  
19 misdemeanor defined in Title 9A RCW shall be punished by imprisonment  
20 in the county jail for a maximum term fixed by the court of not more  
21 than one year, or by a fine in an amount fixed by the court of not more  
22 than five thousand dollars, or by both such imprisonment and fine.

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

28 (4) This section applies to only those crimes committed on or after  
29 July 1, 1984.

30 **Sec. 9.** RCW 43.19.534 and 1986 c 94 s 2 are each amended to read  
31 as follows:

32 State agencies, the legislature, and departments shall purchase for  
33 their use all ((articles or products)) goods and services required by  
34 the legislature, agencies, or departments ((which)) that are produced  
35 or provided in whole or in part from class II inmate work programs  
36 operated by the department of corrections through state contract.  
37 These ((articles and products)) goods and services shall not be

1 purchased from any other source (~~((unless, upon application by the~~  
2 ~~department or agency: (1) The department of general administration~~  
3 ~~finds that the articles or products do not meet the reasonable~~  
4 ~~requirements of the agency or department, (2) are not of equal or~~  
5 ~~better quality, or (3) the price of the product or service is higher~~  
6 ~~than that produced by the private sector)) except as allowed by rules~~  
7 adopted under section 10 of this act.

8 NEW SECTION. Sec. 10. A new section is added to chapter 72.09 RCW  
9 to read as follows:

10 The department of corrections and the department of general  
11 administration shall jointly:

12 (1) Adopt administrative rules that assure the preferential  
13 purchase of goods and services provided by class II inmate work  
14 programs required through state contract to the maximum extent feasible  
15 as provided in RCW 43.19.534;

16 (2) Develop an annual report on the purchase of all correctional  
17 industries goods and services through state contract during the prior  
18 fiscal year. They shall provide the report to the chairs of the  
19 appropriate committees of the legislature by December 12th of each  
20 year.

21 NEW SECTION. Sec. 11. A new section is added to chapter 72.09 RCW  
22 to read as follows:

23 (1) The secretary shall increase inmate participation in class I  
24 and class II correctional industries work programs incrementally until  
25 a combined total of fifteen percent of all eligible physically and  
26 mentally able inmates are employed in class I and class II programs by  
27 December 30, 1998, and thirty percent by December 30, 2001. "Eligible  
28 physically and mentally able inmates" includes all inmates in  
29 department facilities except inmates determined to be incapable of  
30 working in correctional industries work programs due to one of the  
31 following reasons only:

32 (a) The inmate has a chronic mental deficiency or is mentally  
33 retarded and participation in work programs is impossible;

34 (b) The inmate has a physical disability or illness making  
35 participation in work programs impossible;

36 (c) The inmate is housed in an intensive management unit.

1 (2) The department shall deduct at least fifty percent from the  
2 gross wages of each inmate working in correctional industries. This  
3 amount shall be first used to pay any court-ordered legal financial  
4 obligations the defendant is required to pay. Upon full payment of  
5 legal financial obligations, the deduction shall be deposited into a  
6 department personal inmate savings account until the account reaches at  
7 least two hundred fifty dollars. Thereafter, all inmates working in  
8 class I, class II, class III, and class IV correctional industries  
9 programs shall pay fifty percent of their gross wages earned, up to six  
10 dollars per hour, toward the cost of incarceration so long as the  
11 inmate has retained at least two hundred fifty dollars in a department  
12 personal inmate savings account.

13 (3) The department shall explore other methods of recovering a  
14 portion of the cost of the inmate's incarceration and for encouraging  
15 participation in work programs, including development of incentive  
16 programs that offer inmates benefits and amenities paid for only from  
17 wages earned while working in a correctional industries work program.

18 (4) The department shall develop the necessary administrative  
19 structure to recover inmates' wages and keep records of the amount  
20 inmates pay for the costs of incarceration and amenities. All funds  
21 gained from this section shall be deposited in a dedicated fund with  
22 the department and shall be used only for the purpose of enhancing and  
23 maintaining the correctional industries program until December 31,  
24 2000, and thereafter all funds shall be deposited in the general fund.

25 (5) The expansion of inmate employment in class I and class II  
26 correctional industries shall be limited to the expanded use of  
27 existing correctional industry facilities and any new facilities funded  
28 in the 1993-95 budget, and any expansions funded from the recovery of  
29 inmate wages described in subsection (4) of this section. The  
30 department shall maximize the use of existing facilities to the fullest  
31 possible extent, including the addition of second and third shifts of  
32 workers where possible.

33 **Sec. 12.** RCW 72.09.110 and 1991 c 133 s 1 are each amended to read  
34 as follows:

35 All inmates working in prison industries shall participate in the  
36 cost of corrections, including costs to develop and implement  
37 correctional industries programs(~~(. The secretary shall develop a~~  
38 ~~formula which can be used to determine the extent to which the wages of~~

1 ~~these inmates will be deducted for this purpose. The amount so~~  
2 ~~deducted shall be placed in the general fund and shall be a reasonable~~  
3 ~~amount which will not unduly discourage the incentive to work)), by~~  
4 means of deductions from their gross wages. The secretary may direct  
5 the state treasurer to deposit a portion of these moneys in the crime  
6 victims compensation account. ~~((Except))~~ The secretary shall direct  
7 that all moneys received by an inmate((~~7~~)) for testifying in any  
8 judicial proceeding((~~7-90~~)) shall be deposited into the crime victims  
9 compensation account.

10 When the secretary finds it appropriate and not unduly destructive  
11 of the work incentive, the secretary ~~((shall))~~ may also provide  
12 deductions for ~~((restitution~~7~~))~~ savings~~((~~7~~))~~ and family support.

13 **Sec. 13.** RCW 72.60.160 and 1981 c 136 s 103 are each amended to  
14 read as follows:

15 All articles, materials, services, and supplies ~~((herein))~~  
16 authorized by this chapter to be produced or manufactured in  
17 correctional institutions ~~((may))~~ shall be purchased from the  
18 institution producing or manufacturing the same by any state agency  
19 ~~((or political subdivision of the state))~~ through state contract as set  
20 forth in RCW 43.19.534, and the secretary shall require those  
21 institutions under his direction to give preference to the purchasing  
22 of their needs of such articles as are so produced.

23 NEW SECTION. **Sec. 14.** By January 1, 1994, the secretary of  
24 corrections shall submit a report to the chief clerk of the house of  
25 representatives and secretary of the senate containing an  
26 identification and description of any impediments which the secretary  
27 believes might prevent the department from achieving compliance with  
28 the inmate work participation percentages specified in section 11 of  
29 this act. The secretary also shall include, in the report, alternative  
30 ways to remove any identified impediments. The chief clerk and  
31 secretary shall distribute the report to the appropriate standing  
32 committees.

33 NEW SECTION. **Sec. 15.** The following acts or parts of acts are  
34 each repealed:

35 (1) RCW 72.09.102 and 1986 c 94 s 1; and

1 (2) RCW 72.60.190 and 1981 c 136 s 104, 1979 ex.s. c 160 s 4, &  
2 1959 c 28 s 72.60.190.

3 NEW SECTION. **Sec. 16.** If any provision of this act or its  
4 application to any person or circumstance is held invalid, the  
5 remainder of the act or the application of the provision to other  
6 persons or circumstances is not affected.

--- END ---