
SUBSTITUTE SENATE BILL 5623

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Thorsness, Niemi, Talmadge, Metcalf and Sutherland).

Read first time February 27, 1991.

1 AN ACT Relating to sentencing of offenders; amending RCW 7.69.020,
2 7.69.030, 9.94A.110, 9.94A.120, 9.94A.390, 13.40.150, 13.40.190,
3 9.94A.030, 9.94A.040, 72.09.050, and 72.02.200; reenacting and amending
4 RCW 9.94A.380; adding new sections to chapter 9.94A RCW; adding new
5 sections to chapter 13.16 RCW; adding a new section to chapter 13.40
6 RCW; adding a new section to chapter 72.09 RCW; creating a new section;
7 making an appropriation; providing an effective date; and declaring an
8 emergency.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that the prison
11 population of the state has grown by twenty-three percent from 1988 to
12 1990 and from 1990 to 1996 it is expected to more than double. The
13 state's jails experienced an average daily population growth of nearly
14 fifty percent between 1984 and 1989. Many states and nations have, in
15 an effort to stem the growth in incarceration, established intermediate

1 sentencing practices which provide punishment to offenders and
2 protection to the public at a cost less than that associated with total
3 confinement.

4 The legislature further finds that a large percentage of the growth
5 in the state's correctional population has been due to increased
6 incarceration of drug offenders and that drug abuse is a societal
7 problem that will not be resolved solely through incarceration of drug
8 offenders.

9 The legislature further finds that, because there are few
10 alternatives to imprisonment explicitly provided for in the state's
11 sentencing scheme, courts infrequently employ intermediate or
12 alternative sentences. Offenders who may not be career criminals are
13 thus being placed in facilities with career criminals, to the ultimate
14 detriment of society when the offenders are released.

15 It is the intent of the legislature in adopting this act to
16 encourage the state's judiciary to, when sentencing offenders, employ
17 alternatives to total confinement in a manner that protects the general
18 public.

19 **Sec. 2.** RCW 7.69.020 and 1985 c 443 s 2 are each amended to read
20 as follows:

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

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

26 (2) "Survivor" or "survivors" of a victim of crime means a spouse,
27 child, parent, legal guardian, sibling, or grandparent. If there is
28 more than one survivor of a victim of crime, one survivor shall be
29 designated by the prosecutor to represent all survivors for purposes of

1 providing the notice to survivors required by this chapter. It
2 includes an individual representative of a business, organization,
3 governmental agency, or the state against whom a crime has been
4 committed.

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

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

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

21 (6) "Community treatment" means residential or outpatient treatment
22 provided by a person or program approved by the secretary of social and
23 health services pursuant to Title 69 or 71 RCW.

24 **Sec. 3.** RCW 7.69.030 and 1985 c 443 s 3 are each amended to read
25 as follows:

26 There shall be a reasonable effort made to ensure that victims,
27 survivors of victims, and witnesses of crimes have the following
28 rights:

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

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

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

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

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

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

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

26 (8) To access to immediate medical assistance and not to be
27 detained for an unreasonable length of time by a law enforcement agency
28 before having such assistance administered. However, an employee of
29 the law enforcement agency may, if necessary, accompany the person to
30 a medical facility to question the person about the criminal incident

1 if the questioning does not hinder the administration of medical
2 assistance;

3 (9) With respect to victims and survivors of victims, to be
4 physically present in court during trial, or if subpoenaed to testify,
5 to be scheduled as early as practical in the proceedings in order to be
6 physically present during trial after testifying and not to be excluded
7 solely because they have testified;

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

12 (11) To volunteer to participate in mediation with the offender in
13 the presence of an independent, trained mediator, consistent with
14 section 4 of this act;

15 (12) To submit a victim impact statement or report to the court,
16 with the assistance of the prosecuting attorney if requested, and to
17 submit to the court any restitution agreement entered into in
18 connection with a mediation program conducted pursuant to section 4 of
19 this act, which in either case shall be included in all presentence
20 reports and permanently included in the files and records accompanying
21 the offender committed to the custody of a state agency or institution;

22 (~~(12)~~) (13) With respect to victims and survivors of victims, to
23 present a statement personally or by representation, at the sentencing
24 hearing for felony convictions; and

25 (~~(13)~~) (14) With respect to victims and survivors of victims, to
26 entry of an order of restitution by the court in all felony cases, even
27 when the offender is sentenced to confinement, unless extraordinary
28 circumstances exist which make restitution inappropriate in the court's
29 judgment.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.94A RCW
2 to read as follows:

3 (1) When an offender pleads guilty or is found guilty, the court
4 shall refer the case to a victim-offender mediation program or, if such
5 a program is not available in the county, a dispute resolution center,
6 except that no referral shall be made in the following circumstances:

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

8 (b) The offense is a violent offense as defined in RCW
9 9.94A.030(33);

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

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

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

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

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

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

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

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

1 **Sec. 5.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read
2 as follows:

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

1 **Sec. 6.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

14 (c) Pursue a prescribed, secular course of study or vocational
15 training;

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

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

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

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

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

1 ordered unless the court finds the defendant to be indigent in which
2 case the state shall pay the cost.

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

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

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

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

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

5 (III) Report as directed to the court and a community corrections
6 officer;

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

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

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

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

1 treatment termination hearing the court may: (A) Modify conditions of
2 community supervision, and either (B) terminate treatment, or (C)
3 extend treatment for up to the remaining period of community
4 supervision.

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

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

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

21 (b) When an offender is convicted of any felony sex offense
22 committed before July 1, 1987, and is sentenced to a term of
23 confinement of more than one year but less than six years, the
24 sentencing court may, on its own motion or on the motion of the
25 offender or the state, order the offender committed for up to thirty
26 days to the custody of the secretary of social and health services for
27 evaluation and report to the court on the offender's amenability to
28 treatment at these facilities. If the secretary of social and health
29 services cannot begin the evaluation within thirty days of the court's
30 order of commitment, the offender shall be transferred to the state for

1 confinement pending an opportunity to be evaluated at the appropriate
2 facility. The court shall review the reports and may order that the
3 term of confinement imposed be served in the (~~sexual~~) sex offender
4 treatment program at the location determined by the secretary of social
5 and health services or the secretary's designee, only if the report
6 indicates that the offender is amenable to the treatment program
7 provided at these facilities. The offender shall be transferred to the
8 state pending placement in the treatment program. Any offender who has
9 escaped from the treatment program shall be referred back to the
10 sentencing court.

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

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

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

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

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

28 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

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

25 (iv) Undergo available outpatient treatment.

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

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

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

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

1 served shall be credited against the community placement portion of the
2 sentence.

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

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

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

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

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

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

3 (c) The court may also order any of the following special
4 conditions:

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

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

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

11 (iv) The offender shall not consume alcohol;

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

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

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

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

26 (10) If a sentence imposed includes payment of a legal financial
27 obligation, the sentence shall specify the total amount of the legal
28 financial obligation owed, and shall require the offender to pay a
29 specified monthly sum toward that legal financial obligation.
30 Restitution to victims shall be paid prior to any other payments of

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

17 (11) Except as provided under RCW 9.94A.140(1) ~~((and))~~,
18 9.94A.142(1), and section 16 of this act, a court may not impose a
19 sentence providing for a term of confinement or community supervision
20 or community placement which exceeds the statutory maximum for the
21 crime as provided in chapter 9A.20 RCW.

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

1 (13) The sentencing court shall give the offender credit for all
2 confinement time served before the sentencing if that confinement was
3 solely in regard to the offense for which the offender is being
4 sentenced.

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

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

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

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

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

1 (19)(a) In sentencing an offender meeting the eligibility
2 requirements listed in section 16 of this act, the court may recommend
3 that the offender be assigned to the intensive rehabilitation program.
4 Acceptance into this program shall be contingent on the secretary of
5 the department of corrections finding that the offender has been
6 recommended by the judge, that he or she does not suffer from any
7 mental or physical problem that could endanger his or her health or
8 drastically affect his or her performance in the program, and that
9 there is room in the program.

10 (b) At the time of sentencing, the court shall provide for an
11 alternative sentence in the event that the secretary determines that
12 the offender is not eligible for the intensive rehabilitation program.
13 If the offender is not eligible, then he or she shall immediately
14 comply with the alternate sentence.

15 (c) The court may also provide for a term of postrelease
16 supervision to follow the offender's release from the intensive
17 rehabilitation program. The court may order that this postrelease
18 supervision term be served in jail or prison if the department of
19 corrections declares the offender to be unmanageable.

20 **Sec. 7.** RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are
21 each reenacted and amended to read as follows:

22 Alternatives to total confinement are available for offenders with
23 sentences of ~~((one))~~ two years or less. These alternatives include the
24 following sentence conditions that the court may order as substitutes
25 for total confinement: (1) One day of partial confinement may be
26 substituted for one day of total confinement; (2) in addition, for
27 offenders convicted of nonviolent offenses only, eight hours of
28 community service may be substituted for one day of total confinement,
29 with a maximum conversion limit of ~~((two))~~ four hundred ~~((forty))~~

1 eighty hours or (~~thirty~~) sixty days. Community service hours must be
2 completed within the period of community supervision or a time period
3 specified by the court, which shall not exceed twenty-four months,
4 pursuant to a schedule determined by the department.

5 When imposing alternatives to total confinement, the court shall
6 incorporate appropriate provisions for restitution and shall consider
7 any negotiated restitution agreement resulting from a victim-offender
8 mediation program. The court may require the offender to:

9 (a) Serve a period of confinement in the county jail, such time may
10 be served on weekends;

11 (b) Receive treatment, either inpatient or outpatient, that meets
12 the requirements of chapter 70.96A RCW, such treatment may include the
13 use of acupuncture as part of a detoxification process;

14 (c) Stay out of areas with high drug usage and/or distribution;

15 (d) Refrain from crime-related activities;

16 (e) Pay any legal financial obligation that results from a felony
17 conviction;

18 (f) Pay the actual costs of urinalysis testing, breathalyzers, and
19 other forensic analysis, unless indigent;

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

23 (h) Pursue a prescribed, secular course of study or vocational
24 training;

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

26 (j) Make recoupment to the victim for the cost of any counseling
27 required as a result of the offender's crime.

28 The court may establish such other conditions as the court deems
29 appropriate to the offender and the offense, including the sanctions
30 that will be imposed for violations of the terms of the sentence.

1 When imposing alternatives to total confinement pursuant to this
2 section in such cases where total confinement would otherwise exceed
3 twelve months under the sentencing guidelines, the court shall require
4 that the alternative provide for adequate security for the public
5 through intensive supervision of the offender by community corrections
6 officers or by the use of electronically monitored house arrest or by
7 such other means as may be developed to protect the general public.
8 The court shall also make written findings that the use of such
9 alternative does not impose an unreasonable risk to the safety of the
10 general public.

11 For sentences of nonviolent offenders for ((one)) two years or
12 less, the court shall consider and give priority to available
13 alternatives to total confinement and shall state its reasons in
14 writing on the judgment and sentence form if the alternatives are not
15 used.

16 **Sec. 8.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
17 as follows:

18 If the sentencing court finds that an exceptional sentence outside
19 the standard range should be imposed in accordance with RCW
20 9.94A.120(2), the sentence is subject to review only as provided for in
21 RCW 9.94A.210(4).

22 The following are illustrative factors which the court may consider
23 in the exercise of its discretion to impose an exceptional sentence.
24 The following are illustrative only and are not intended to be
25 exclusive reasons for exceptional sentences.

26 (1) Mitigating Circumstances

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

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

4 (c) Since his or her detection, the respondent has met the victim
5 and negotiated a restitution agreement pursuant to section 4 of this
6 act, provided that this mitigating factor is insufficient, by itself,
7 to justify a sentence less severe than one within the standard range.

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

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

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

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

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

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

26 (j) The offense was a violation of the uniform controlled
27 substances act, chapter 69.50 RCW, and

28 (i) The offense involved a single transaction in which a controlled
29 substance was sold, transferred, or possessed with intent to do so; or

1 (ii) The offense did not involve a high degree of sophistication or
2 significant planning and did not occur over a lengthy period of time or
3 involve a broad geographic area of disbursement.

4 (2) Aggravating Circumstances

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

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

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

13 (i) The current offense involved multiple victims or multiple
14 incidents per victim;

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

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

19 (iv) The defendant used his or her position of trust, confidence,
20 or fiduciary responsibility to facilitate the commission of the current
21 offense.

22 (d) The current offense was a major violation of the uniform
23 controlled substances act, chapter 69.50 RCW (VUCSA), related to
24 trafficking in controlled substances, which was more onerous than the
25 typical offense of its statutory definition: The presence of ANY of
26 the following may identify a current offense as a major VUCSA:

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

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

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

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

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

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

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

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

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

23 NEW SECTION. **Sec. 9.** A new section is added to chapter 13.40 RCW
24 to read as follows:

25 (1) When a probation counselor receives a request for a
26 predisposition study, he or she shall refer the case to a victim-
27 offender mediation program or, if such a program is not available in
28 the county, a dispute resolution center. However, such a referral need
29 be made only if the current offense is one involving the property of a

1 victim, and referral need not be made if: (a) The offender is a
2 serious offender as defined in RCW 13.40.020, (b) the current offense
3 would, if committed by an adult, be a sex offense or a violent offense
4 as defined in RCW 9.94A.030, or (c) a meeting between victim and
5 offender would be clearly impractical or not feasible.

6 (2) Neither the victim nor the offender may be required to
7 participate in the program but, if both are willing to participate,
8 and, in the case of a victim under the age of eighteen, a parent or
9 legal guardian of the victim is also willing to participate, the
10 victim-offender mediation program or dispute resolution center shall
11 provide an opportunity for the victim to:

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

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

16 (c) Negotiate a restitution agreement for the damages incurred by
17 the victim as a result of the offense. The agreement may be submitted
18 to the court for its consideration at the time of disposition.

19 **Sec. 10.** RCW 13.40.150 and 1990 c 3 s 605 are each amended to read
20 as follows:

21 (1) In disposition hearings all relevant and material evidence,
22 including oral and written reports, may be received by the court and
23 may be relied upon to the extent of its probative value, even though
24 such evidence may not be admissible in a hearing on the information.
25 The youth or the youth's counsel and the prosecuting attorney shall be
26 afforded an opportunity to examine and controvert written reports so
27 received and to cross-examine individuals making reports when such
28 individuals are reasonably available, but sources of confidential

1 information need not be disclosed. The prosecutor and counsel for the
2 juvenile may submit recommendations for disposition.

3 (2) For purposes of disposition:

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

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

7 (c) In no event may a disposition for a violation include
8 confinement.

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

12 (a) Consider the facts supporting the allegations of criminal
13 conduct by the respondent;

14 (b) Consider information and arguments offered by parties and their
15 counsel;

16 (c) Consider any predisposition reports;

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

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

21 (f) Consider any restitution agreement reached pursuant to section
22 9 of this act;

23 (g) Determine the amount of restitution owing to the victim, if
24 any;

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

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

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

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

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

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

11 (v) Since his or her detection, the respondent has met the victim
12 and negotiated a restitution agreement pursuant to section 9 of this
13 act, provided that this mitigating factor is insufficient, by itself,
14 to justify a sentence less severe than one within the standard range;
15 and

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

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

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

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

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

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

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

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

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

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

8 (a) The sex of the respondent;

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

10 (c) The creed or religion of the respondent or the respondent's
11 family;

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

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

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

19 **Sec. 11.** RCW 13.40.190 and 1987 c 281 s 5 are each amended to read
20 as follows:

21 (1) In its dispositional order, the court shall require the
22 respondent to make restitution to any persons who have suffered loss or
23 damage as a result of the offense committed by the respondent. In
24 addition, restitution may be ordered for loss or damage if the offender
25 pleads guilty to a lesser offense or fewer offenses and agrees with the
26 prosecutor's recommendation that the offender be required to pay
27 restitution to a victim of an offense or offenses which, pursuant to a
28 plea agreement, are not prosecuted. The payment of restitution shall
29 be in addition to any punishment which is imposed pursuant to the other

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

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

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

20 **Sec. 12.** RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
21 as follows:

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

24 (1) "Collect," or any derivative thereof, "collect and remit," or
25 "collect and deliver," when used with reference to the department of
26 corrections, means that the department is responsible for monitoring
27 and enforcing the offender's sentence with regard to the legal
28 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

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

8 (4) "Community custody" means that portion of an inmate's sentence
9 of confinement served in the community. Such confinement served in the
10 community is imposed in lieu of earned early release time (~~served in~~
11 ~~the community~~) or under the drug offender sentencing alternative
12 provided for in RCW 9.94A.120(8). Such confinement is subject to
13 controls placed on the inmate's movement and activities by the
14 department of corrections.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (16) "Drug offense" means:

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

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

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

10 (17) "Escape" means:

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

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

19 (18) "Felony traffic offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

3 (26) "Serious traffic offense" means:

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

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

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

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

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

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

22 (29) "Sex offense" means:

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

27 (b) A felony with a finding of sexual motivation under RCW
28 9.94A.127; or

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

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

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

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

14 (33) "Violent offense" means:

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

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

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

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

9 (35) "Home detention" means a program of partial confinement
10 available to offenders wherein the offender is confined in a private
11 residence subject to electronic surveillance. Home detention may not
12 be imposed for offenders convicted of a violent offense, any sex
13 offense, any drug offense except as provided by the drug offender
14 sentencing alternative provided for in RCW 9.94A.120(8), reckless
15 burning in the first or second degree as defined in RCW 9A.48.040 or
16 9A.48.050, assault in the third degree as defined in RCW 9A.36.031,
17 unlawful imprisonment as defined in RCW 9A.40.040, or harassment as
18 defined in RCW 9A.46.020. Home detention may be imposed for offenders
19 convicted of possession of a controlled substance (RCW 69.50.401(d)) or
20 forged prescription for a controlled substance (RCW 69.50.403) if the
21 offender fulfills the participation conditions set forth in this
22 subsection and is monitored for drug use by treatment alternatives to
23 street crime (TASC) or a comparable court or agency-referred program.
24 Home detention may be imposed for offenders convicted of burglary in
25 the second degree as defined in RCW 9A.52.030 or residential burglary
26 conditioned upon the offender: (a) Successfully completing twenty-one
27 days in a work release program, (b) having no convictions for burglary
28 in the second degree or residential burglary during the preceding two
29 years and not more than two prior convictions for burglary or
30 residential burglary, (c) having no convictions for a violent felony

1 offense during the preceding two years and not more than two prior
2 convictions for a violent felony offense, (d) having no prior charges
3 of escape, and (e) fulfilling the other conditions of the home
4 detention program. Participation in a home detention program shall be
5 conditioned upon: ~~((a))~~ The offender obtaining or maintaining
6 current employment or attending a regular course of school study at
7 regularly defined hours, or the offender performing parental duties to
8 offspring or minors normally in the custody of the offender~~((b))~~; i
9 abiding by the rules of the home detention program~~((c))~~; i and ~~((e))~~
10 compliance with court-ordered legal financial obligations. The home
11 detention program may also be made available to offenders whose charges
12 and convictions do not otherwise disqualify them if medical or health-
13 related conditions, concerns or treatment would be better addressed
14 under the home detention program, or where the health and welfare of
15 the offender, other inmates, or staff would be jeopardized by the
16 offender's incarceration. Participation in the home detention program
17 for medical or health-related reasons is conditioned on the offender
18 abiding by the rules of the home detention program and complying with
19 court-ordered restitution.

20 **Sec. 13.** RCW 9.94A.040 and 1986 c 257 s 18 are each amended to
21 read as follows:

22 (1) A sentencing guidelines commission is established as an agency
23 of state government.

24 (2) The commission shall, following a public hearing or hearings:

25 (a) Devise a series of recommended standard sentence ranges for all
26 felony offenses and a system for determining which range of punishment
27 applies to each offender based on the extent and nature of the
28 offender's criminal history, if any;

1 (b) Devise recommended prosecuting standards in respect to charging
2 of offenses and plea agreements; and

3 (c) Devise recommended standards to govern whether sentences are to
4 be served consecutively or concurrently.

5 (3) Each of the commission's recommended standard sentence ranges
6 shall include one or more of the following: Total confinement, partial
7 confinement, community custody, community supervision, community
8 service, and a fine.

9 (4) In devising the standard sentence ranges of total and partial
10 confinement under this section, the commission is subject to the
11 following limitations:

12 (a) If the maximum term in the range is one year or less, the
13 minimum term in the range shall be no less than one-third of the
14 maximum term in the range, except that if the maximum term in the range
15 is ninety days or less, the minimum term may be less than one-third of
16 the maximum;

17 (b) If the maximum term in the range is greater than one year, the
18 minimum term in the range shall be no less than seventy-five percent of
19 the maximum term in the range; and

20 (c) The maximum term of confinement in a range may not exceed the
21 statutory maximum for the crime as provided in RCW 9A.20.020.

22 (5) In carrying out its duties under subsection (2) of this
23 section, the commission shall give consideration to the existing
24 guidelines adopted by the association of superior court judges and the
25 Washington association of prosecuting attorneys and the experience
26 gained through use of those guidelines. The commission shall emphasize
27 confinement for the violent offender and alternatives to total
28 confinement for the nonviolent offender.

29 (6) This commission shall conduct a study to determine the capacity
30 of correctional facilities and programs which are or will be available.

1 While the commission need not consider such capacity in arriving at its
2 recommendations, the commission shall project whether the
3 implementation of its recommendations would result in exceeding such
4 capacity. If the commission finds that this result would probably
5 occur, then the commission shall prepare an additional list of standard
6 sentences which shall be consistent with such capacity.

7 (7) The commission shall in conjunction with the department of
8 corrections conduct a study and make a report to the legislature no
9 later than December 1, 1991, on the feasibility of establishing a
10 system of monetary fines based upon both the seriousness of the offense
11 and the financial resources of the offender as sanctions. This study
12 and report shall:

13 (a) Review the experiences of other jurisdictions with this type of
14 sanction;

15 (b) Evaluate the types of offenses for which this type of sanction
16 might be appropriate;

17 (c) Evaluate the impact this type of sanction might have on levels
18 of incarceration, both in jail and prison facilities in the state of
19 Washington;

20 (d) Estimate the potential revenues which could be obtained from
21 such a system; and

22 (e) Propose appropriate legislation to implement such a system.

23 (8) The commission may recommend to the legislature revisions or
24 modifications to the standard sentence ranges and other standards. If
25 implementation of the revisions or modifications would result in
26 exceeding the capacity of correctional facilities, then the commission
27 shall accompany its recommendation with an additional list of standard
28 sentence ranges which are consistent with correction capacity.

1 (~~(8)~~) (9) The commission shall study the existing criminal code
2 and from time to time make recommendations to the legislature for
3 modification.

4 (~~(9)~~) (10) The commission shall exercise its duties under this
5 section in conformity with chapter 34.05 RCW, as now existing or
6 hereafter amended.

7 NEW SECTION. **Sec. 14.** A new section is added to chapter 72.09 RCW
8 to read as follows:

9 The secretary shall manage a pilot monetary fines program in a
10 minimum of two jurisdictions. The secretary shall consult with the
11 sentencing guidelines commission, in the design of the pilot program.
12 The secretary shall establish a separate account to pay for the
13 operation of the pilot program and shall place a portion of supervision
14 fees and/or monetary fines collected into the account.

15 **Sec. 15.** RCW 72.09.050 and 1987 c 312 s 4 are each amended to read
16 as follows:

17 The secretary shall manage the department of corrections and shall
18 be responsible for the administration of adult correctional programs,
19 including but not limited to the operation of all state correctional
20 institutions or facilities used for the confinement of convicted
21 felons. In addition, the secretary shall have broad powers to enter
22 into agreements with any federal agency, or any other state, or any
23 Washington state agency or local government providing for the operation
24 of any correctional facility or program for persons convicted of
25 felonies or misdemeanors or for juvenile offenders. Such agreements
26 for counties with community corrections boards shall be required in the
27 community corrections plan pursuant to RCW 72.09.300. The agreements
28 may provide for joint operation or operation by the department of

1 corrections, alone, or by any of the other governmental entities,
2 alone. The secretary may employ persons to aid in performing the
3 functions and duties of the department. The secretary may delegate any
4 of his functions or duties to department employees. The secretary is
5 authorized to promulgate standards for the department of corrections
6 within appropriation levels authorized by the legislature.

7 The secretary shall file with the legislature no later than
8 December 1 of each year beginning with December 1, 1992, a report on
9 recidivism. This report shall cover the preceding calendar year and
10 shall include: (1) The total number of offenders under the
11 jurisdiction of the department as of the first day of the year that is
12 the subject of the report, reflecting subtotals in the aggregate by
13 type of sanction and under each type of sanction by type of crime; (2)
14 the same information as reported under subsection (1) of this section
15 as of the first day of the year following the year that is the subject
16 of the report; (3) the number of offenders released from the
17 jurisdiction of the department by the categories indicated under
18 subsection (1) of this section during the subject year; (4) the number
19 of offenders who have come under the jurisdiction of the department by
20 the categories indicated under subsection (1) of this section during
21 the subject year; (5) for those offenders reported under subsection (4)
22 of this section, the report shall indicate (a) whether they have ever
23 previously been under the jurisdiction of the department or any similar
24 department or agency in any other state or nation, (b) the type of
25 prior crime or crimes and prior sanctions for each such offender, and
26 (c) the duration of time since they had previously been released.
27 "Type of sanction" as used in this section means total confinement,
28 partial confinement, home detention, work release, community
29 supervision, or other status under the jurisdiction of the department.

1 Pursuant to the authority granted in chapter 34.05 RCW, the
2 secretary shall adopt rules providing for inmate restitution when
3 restitution is determined appropriate as a result of a disciplinary
4 action.

5 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW
6 to read as follows:

7 (1) It is the intent of the legislature that the program
8 established pursuant to this chapter shall benefit: The state by
9 reducing prison crowding; the counties by reducing jail overcrowding;
10 and both the communities and the offenders by promoting the offenders'
11 personal development and self-discipline, thereby making them more
12 effective participants in society.

13 (2) The department of corrections shall establish and operate an
14 intensive rehabilitation program to provide an intensive basic training
15 and rehabilitative program for criminal offenders serving sentences as
16 provided in this chapter. The program shall be designed after the
17 United States marine corps boot camps, but include an education program
18 that requires a participant to work toward obtaining his or her GED if
19 he or she has not yet done so. The department shall adopt rules for
20 the operation and successful completion of the program.

21 (3) The intensive rehabilitation program shall last ninety days for
22 any offender; however, the secretary may extend the time limit to one
23 hundred twenty days if the offender has not adequately completed the
24 program within ninety days as determined by the secretary according to
25 rules adopted by the department.

26 (4) The sentencing judge may sentence criminal offenders who have
27 not served in a state or federal correctional institution to the
28 intensive rehabilitation program provided they are at least eighteen
29 years of age, are not sex offenders, and have not been convicted of a

1 criminal offense involving the death of another human being. The judge
2 may also order a term of postrelease supervision to follow the
3 intensive rehabilitation program.

4 (5) The department shall screen offenders sent to the intensive
5 rehabilitation program and shall assign offenders the judge has
6 recommended to the intensive rehabilitation program so long as the
7 offender does not suffer from any mental or physical problem which
8 could endanger his or her health or drastically affect his or her
9 performance in the program and there is room in the program.

10 (6) The department shall provide a post program completion
11 component near the end of the ninety days for monitoring and assisting
12 the release of intensive rehabilitation program participants into the
13 community. They shall also provide for postrelease supervision of
14 offenders for the term ordered by the sentencing court.

15 (7) The department shall keep records and monitor criminal activity
16 and employment placement of intensive rehabilitation program
17 participants after their release from the program. An outcome
18 evaluation study shall be published no later than December 31, 1994,
19 which shall include a comparison of criminal activity and employment
20 placements of offenders completing the intensive rehabilitation program
21 with the criminal activity and employment records of criminal offenders
22 completing other sentencing programs.

23 (8) If a person in the intensive rehabilitation program becomes
24 unmanageable or medically ineligible, the department shall remove him
25 or her from the intensive rehabilitation program. An unmanageable
26 offender shall be defined under department of corrections rules. These
27 offenders may be placed in secure detention until they are transferred
28 to a jail or prison to serve the remainder of their sentences,
29 including the term ordered by the court for postrelease supervision.

1 (9) Criminal offenders may be sentenced to the intensive
2 rehabilitation program only once.

3 (10) The department may contract with private companies for the
4 operation of the intensive rehabilitation program.

5 (11) The department shall either establish criteria for training
6 contract staff or provide a special training program for department
7 staff selected for the intensive rehabilitation program.

8 (12) This section is not intended to supplant community
9 supervision.

10 **Sec. 17.** RCW 72.02.200 and 1988 c 143 s 7 are each amended to read
11 as follows:

12 There shall be units known as reception and classification centers
13 which, subject to the rules and regulations of the department, shall be
14 charged with the function of receiving and classifying all persons
15 committed or transferred to the institution, taking into consideration
16 age, type of crime for which committed, physical condition, behavior,
17 attitude and prospects for reformation for the purposes of confinement
18 and treatment of offenders convicted of offenses punishable by
19 imprisonment, except offenders convicted of crime and sentenced to
20 death.

21 There shall be established within each reception and classification
22 center a separate program for assessing those offenders who have been
23 recommended by the courts for the intensive rehabilitation program and
24 who otherwise meet the eligibility requirements under RCW 9.94A.120.
25 The program for assessing these offenders shall be developed by the
26 secretary of corrections in keeping with chapter 72.09 RCW.

27 NEW SECTION. **Sec. 18.** (1) The counties are expressly
28 authorized to implement and operate an intensive rehabilitation program

1 to provide an intensive educational and physical training and
2 rehabilitative program for appropriate children.

3 (2) A child may be placed in a intensive rehabilitation program if
4 he or she is at least fourteen years of age but less than eighteen
5 years of age at the time of adjudication and has been committed to the
6 department as:

7 (a) A serious offender, as defined in RCW 13.40.020(1); or

8 (b) A minor or first offender, as defined in RCW 13.40.020(14).

9 NEW SECTION. Sec. 19. (1) Each county establishing an
10 intensive rehabilitation program for children shall screen children
11 sent to the program, so that only those children who have medical and
12 psychological profiles conducive to successfully completing an
13 intensive work, educational, and disciplinary program may be admitted
14 to the program. A participating county shall adopt rules for screening
15 such admissions.

16 (2) The program shall include educational assignments, work
17 assignments, and physical training exercises. Children shall be
18 required to participate in educational, vocational, and substance abuse
19 programs and to receive additional training in techniques of
20 appropriate decision making, as well as in life skills and job skills.

21 NEW SECTION. Sec. 20. Each county establishing an intensive
22 rehabilitation program for children shall:

23 (1) Provide an aftercare component for monitoring and assisting the
24 release of program participants into the community;

25 (2) Adopt rules for the program and aftercare which provide for at
26 least six months of participation in the program and aftercare for
27 successful completion and which also provide disciplinary sanctions and

1 restrictions on the privileges of the general population of children in
2 the program; and

3 (3) Keep records and monitor criminal activity, educational
4 progress, and employment placement of program participants after their
5 release from the program. An outcome evaluation study shall be
6 published no later than eighteen months after the program becomes
7 operational, which includes a comparison of criminal activity,
8 educational progress, and employment placements of children completing
9 the program with the criminal activity, educational progress, and
10 employment records of children completing other types of programs.

11 NEW SECTION. **Sec. 21.** A participating county may also contract
12 with private organizations for the operation of the intensive
13 rehabilitation program and aftercare.

14 NEW SECTION. **Sec. 22.** (1) If a child in the intensive
15 rehabilitation program becomes unmanageable or medically or
16 psychologically ineligible, the participating county shall remove the
17 child from the program.

18 (2) A participating county shall either establish criteria for
19 training contract staff or provide a special training program for
20 county personnel selected for the intensive rehabilitation program,
21 which shall include appropriate methods of dealing with children who
22 have been placed in such a stringent program.

23 NEW SECTION. **Sec. 23.** Sections 18 through 22 of this act are
24 each added to chapter 13.16 RCW.

25 NEW SECTION. **Sec. 24.** The sum of dollars, or
26 as much thereof as may be necessary, is appropriated from the general

1 fund to the department of corrections for the biennium ending June 30,
2 1993, to implement the intensive rehabilitation program created in
3 section 16 of this act.

4 NEW SECTION. **Sec. 25.** (1) This act is necessary for the
5 immediate preservation of the public peace, health, or safety, or
6 support of the state government and its existing public institutions,
7 and shall take effect July 1, 1991.

8 (2) This act applies prospectively to crimes committed on or after
9 July 1, 1991.