
SECOND SUBSTITUTE SENATE BILL 5623

State of Washington 52nd Legislature 1991 Regular Session

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

Read first time March 7, 1991.

1 AN ACT Relating to sentencing of offenders; amending RCW 7.69.020,
2 7.69.030, 9.94A.110, 9.94A.150, 9.94A.390, 13.40.150, 13.40.190,
3 9.94A.030, 9.94A.040, and 72.09.050; reenacting and amending RCW
4 9.94A.380; adding a new section to chapter 9.94A RCW; adding a new
5 section to chapter 13.40 RCW; adding a new section to chapter 72.09
6 RCW; creating a new section; providing an effective date; and declaring
7 an emergency.

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

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

1 protection to the public at a cost less than that associated with total
2 confinement.

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

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

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

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

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

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

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

1 includes an individual representative of a business, organization,
2 governmental agency, or the state against whom a crime has been
3 committed.

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

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

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

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

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

25 There shall be a reasonable effort made to ensure that victims,
26 survivors of victims, and witnesses of crimes have the following
27 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.150 and 1990 c 3 s 202 are each amended to read
2 as follows:

3 No person serving a sentence imposed pursuant to this chapter and
4 committed to the custody of the department shall leave the confines of
5 the correctional facility or be released prior to the expiration of the
6 sentence except as follows:

7 (1) Except as otherwise provided for in subsection (2) of this
8 section, the term of the sentence of an offender committed to a
9 correctional facility operated by the department, may be reduced by
10 earned early release time in accordance with procedures that shall be
11 developed and promulgated by the correctional agency having
12 jurisdiction in which the offender is confined. The earned early
13 release time shall be for good behavior and good performance, as
14 determined by the correctional agency having jurisdiction. The
15 correctional agency shall not credit the offender with earned early
16 release credits in advance of the offender actually earning the
17 credits. Any program established pursuant to this section shall allow
18 an offender to earn early release credits for presentence
19 incarceration. If an offender is transferred from a county jail to the
20 department of corrections, the county jail facility shall certify to
21 the department the amount of time spent in custody at the facility and
22 the amount of earned early release time. In the case of an offender
23 convicted of a serious violent offense or a sex offense that is a class
24 A felony committed on or after July 1, 1990, the aggregate earned early
25 release time may not exceed fifteen percent of the sentence. In no
26 other case shall the aggregate earned early release time exceed one-
27 third of the total sentence;

28 (2) A person convicted of a sex offense or an offense categorized
29 as a serious violent offense, assault in the second degree, any crime
30 against a person where it is determined in accordance with RCW

1 9.94A.125 that the defendant or an accomplice was armed with a deadly
2 weapon at the time of commission, or any felony offense under chapter
3 69.50 or 69.52 RCW may become eligible, in accordance with a program
4 developed by the department, for transfer to community custody status
5 in lieu of earned early release time pursuant to subsection (1) of this
6 section;

7 (3) An offender may leave a correctional facility pursuant to an
8 authorized furlough or leave of absence. In addition, offenders may
9 leave a correctional facility when in the custody of a corrections
10 officer or officers;

11 (4) The governor, upon recommendation from the clemency and pardons
12 board, may grant an extraordinary release for reasons of serious health
13 problems, senility, advanced age, extraordinary meritorious acts, or
14 other extraordinary circumstances;

15 (5) No more than the final six months of the sentence may be served
16 in partial confinement designed to aid the offender in finding work and
17 reestablishing him or herself in the community unless sentenced under
18 RCW 9.94A.380, in which case the final sixteen months of the sentence
19 may be served in partial confinement;

20 (6) The governor may pardon any offender;

21 (7) The department of corrections may release an offender from
22 confinement any time within ten days before a release date calculated
23 under this section; and

24 (8) An offender may leave a correctional facility prior to
25 completion of his sentence if the sentence has been reduced as provided
26 in RCW 9.94A.160.

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

1 Alternatives to total confinement are available for offenders with
2 sentences of ~~((one))~~ two years or less. These alternatives include the
3 following sentence conditions that the court may order as substitutes
4 for total confinement: (1) One day of partial confinement may be
5 substituted for one day of total confinement; (2) in addition, for
6 offenders convicted of nonviolent offenses only, eight hours of
7 community service may be substituted for one day of total confinement,
8 with a maximum conversion limit of ~~((two))~~ four hundred ~~((forty))~~
9 eighty hours or ~~((thirty))~~ sixty days. Community service hours must be
10 completed within the period of community supervision or a time period
11 specified by the court, which shall not exceed twenty-four months,
12 pursuant to a schedule determined by the department.

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

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

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

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

23 (d) Refrain from crime-related activities;

24 (e) Pay any legal financial obligation that results from a felony
25 conviction;

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

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

1 (h) Pursue a prescribed, secular course of study or vocational
2 training;

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

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

6 The court may establish such other conditions as the court deems
7 appropriate to the offender and the offense, including the sanctions
8 that will be imposed for violations of the terms of the sentence as
9 provided for in RCW 9.94A.200.

10 When imposing alternatives to total confinement pursuant to this
11 section in such cases where total confinement would otherwise exceed
12 twelve months under the sentencing guidelines, the court shall require
13 that the alternative provide for adequate security for the public
14 through the department's supervision of the offender at the offender's
15 highest level of supervision, or by the use of electronically monitored
16 house arrest or by such other means as may be developed to protect the
17 general public. The court shall also make written findings that the
18 use of such alternative does not impose an unreasonable risk to the
19 safety of the general public.

20 For sentences of nonviolent offenders for ~~((one))~~ two years or
21 less, the court shall consider and give priority to available
22 alternatives to total confinement and shall state its reasons in
23 writing on the judgment and sentence form if the alternatives are not
24 used.

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

27 If the sentencing court finds that an exceptional sentence outside
28 the standard range should be imposed in accordance with RCW

1 9.94A.120(2), the sentence is subject to review only as provided for in
2 RCW 9.94A.210(4).

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

7 (1) Mitigating Circumstances

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

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

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

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

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

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

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

1 (~~(g)~~) (h) The operation of the multiple offense policy of RCW
2 9.94A.400 results in a presumptive sentence that is clearly excessive
3 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

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

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

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

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

14 (2) Aggravating Circumstances

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

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

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

23 (i) The current offense involved multiple victims or multiple
24 incidents per victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (1) When a probation counselor receives a request for a
7 predisposition study, he or she shall refer the case to a victim-
8 offender mediation program or, if such a program is not available in
9 the county, a dispute resolution center. However, such a referral need
10 be made only if the current offense is one involving the property of a
11 victim, and referral need not be made if: (a) The offender is a
12 serious offender as defined in RCW 13.40.020, (b) the current offense
13 would, if committed by an adult, be a sex offense or a violent offense
14 as defined in RCW 9.94A.030, or (c) a meeting between victim and
15 offender would be clearly impractical or not feasible.

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

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

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

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

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

3 (1) In disposition hearings all relevant and material evidence,
4 including oral and written reports, may be received by the court and
5 may be relied upon to the extent of its probative value, even though
6 such evidence may not be admissible in a hearing on the information.
7 The youth or the youth's counsel and the prosecuting attorney shall be
8 afforded an opportunity to examine and controvert written reports so
9 received and to cross-examine individuals making reports when such
10 individuals are reasonably available, but sources of confidential
11 information need not be disclosed. The prosecutor and counsel for the
12 juvenile may submit recommendations for disposition.

13 (2) For purposes of disposition:

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

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

17 (c) In no event may a disposition for a violation include
18 confinement.

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

22 (a) Consider the facts supporting the allegations of criminal
23 conduct by the respondent;

24 (b) Consider information and arguments offered by parties and their
25 counsel;

26 (c) Consider any predisposition reports;

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

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

1 (f) Consider any restitution agreement reached pursuant to section
2 9 of this act;

3 (g) Determine the amount of restitution owing to the victim, if
4 any;

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

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

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

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

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

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

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

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

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

28 (i) In the commission of the offense, or in flight therefrom, the
29 respondent inflicted or attempted to inflict serious bodily injury to
30 another;

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

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

4 (iv) The respondent has a recent criminal history or has failed to
5 comply with conditions of a recent dispositional order or diversion
6 agreement;

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

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

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

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

16 (a) The sex of the respondent;

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

18 (c) The creed or religion of the respondent or the respondent's
19 family;

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

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

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

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

1 (1) In its dispositional order, the court shall require the
2 respondent to make restitution to any persons who have suffered loss or
3 damage as a result of the offense committed by the respondent. In
4 addition, restitution may be ordered for loss or damage if the offender
5 pleads guilty to a lesser offense or fewer offenses and agrees with the
6 prosecutor's recommendation that the offender be required to pay
7 restitution to a victim of an offense or offenses which, pursuant to a
8 plea agreement, are not prosecuted. The payment of restitution shall
9 be in addition to any punishment which is imposed pursuant to the other
10 provisions of this chapter. The court may determine the amount, terms,
11 and conditions of the restitution. The court shall consider any
12 restitution agreement reached pursuant to section 9 of this act.
13 Restitution may include the costs of counseling reasonably related to
14 the offense. If the respondent participated in the crime with another
15 person or other persons, all such participants shall be jointly and
16 severally responsible for the payment of restitution. The court may
17 not require the respondent to pay full or partial restitution if the
18 respondent reasonably satisfies the court that he or she does not have
19 the means to make full or partial restitution and could not reasonably
20 acquire the means to pay such restitution. In cases where an offender
21 has been committed to the department for a period of confinement
22 exceeding fifteen weeks, restitution may be waived.

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

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

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

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

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

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

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

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

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

28 (6) "Community service" means compulsory service, without
29 compensation, performed for the benefit of the community by the
30 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed pursuant to this chapter by a court. For
4 first-time offenders, the supervision may include crime-related
5 prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5).
6 For purposes of the interstate compact for out-of-state supervision of
7 parolees and probationers, RCW 9.95.270, community supervision is the
8 functional equivalent of probation and should be considered the same as
9 probation by other states.

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

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

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

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

29 (12) (a) "Criminal history" means the list of a defendant's prior
30 convictions, whether in this state, in federal court, or elsewhere.

1 The history shall include, where known, for each conviction (i) whether
2 the defendant has been placed on probation and the length and terms
3 thereof; and (ii) whether the defendant has been incarcerated and the
4 length of incarceration.

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

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

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

24 (15) "Disposable earnings" means that part of the earnings of an
25 individual remaining after the deduction from those earnings of any
26 amount required by law to be withheld. For the purposes of this
27 definition, "earnings" means compensation paid or payable for personal
28 services, whether denominated as wages, salary, commission, bonuses, or
29 otherwise, and, notwithstanding any other provision of law making the
30 payments exempt from garnishment, attachment, or other process to

1 satisfy a court-ordered legal financial obligation, specifically
2 includes periodic payments pursuant to pension or retirement programs,
3 or insurance policies of any type, but does not include payments made
4 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
5 or Title 74 RCW.

6 (16) "Drug offense" means:

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

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

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

16 (17) "Escape" means:

17 (a) Escape in the first degree (RCW 9A.76.110), escape in the
18 second degree (RCW 9A.76.120), willful failure to return from furlough
19 (RCW 72.66.060), willful failure to return from work release (RCW
20 72.65.070), or willful failure to comply with any limitations on the
21 inmate's movements while in community custody (RCW 72.09.310); or

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

25 (18) "Felony traffic offense" means:

26 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
27 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
28 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) "Fines" means the requirement that the offender pay a specific
5 sum of money over a specific period of time to the court.

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

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

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

20 (22) "Offender" means a person who has committed a felony
21 established by state law and is eighteen years of age or older or is
22 less than eighteen years of age but whose case has been transferred by
23 the appropriate juvenile court to a criminal court pursuant to RCW
24 13.40.110. Throughout this chapter, the terms "offender" and
25 "defendant" are used interchangeably.

26 (23) "Partial confinement" means confinement for no more than
27 (~~one~~) two years in a facility or institution operated or utilized
28 under contract by the state or any other unit of government, or, if
29 home detention has been ordered by the court, in the residence of
30 either the defendant or a member of the defendant's immediate family,

1 for a substantial portion of each day with the balance of the day spent
2 in the community. Partial confinement includes work release and home
3 detention as defined in this section.

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

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

10 (26) "Serious traffic offense" means:

11 (a) Driving while intoxicated (RCW 46.61.502), actual physical
12 control while intoxicated (RCW 46.61.504), reckless driving (RCW
13 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

17 (27) "Serious violent offense" is a subcategory of violent offense
18 and means:

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

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

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

29 (29) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
2 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
3 attempt, criminal solicitation, or criminal conspiracy to commit such
4 crimes;

5 (b) A felony with a finding of sexual motivation under RCW
6 9.94A.127; or

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

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

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

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

20 (33) "Violent offense" means:

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

1 or any drug as defined by RCW 46.61.502, or by the operation of any
2 vehicle in a reckless manner;

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

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

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

14 (35) "Home detention" means a program of partial confinement
15 available to offenders wherein the offender is confined in a private
16 residence subject to electronic surveillance. Home detention may not
17 be imposed for offenders convicted of a violent offense, any sex
18 offense, any drug offense, reckless burning in the first or second
19 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
20 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
21 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
22 detention may be imposed for offenders convicted of possession of a
23 controlled substance (RCW 69.50.401(d)) or forged prescription for a
24 controlled substance (RCW 69.50.403) if the offender fulfills the
25 participation conditions set forth in this subsection and is monitored
26 for drug use by treatment alternatives to street crime (TASC) or a
27 comparable court or agency-referred program. Home detention may be
28 imposed for offenders convicted of burglary in the second degree as
29 defined in RCW 9A.52.030 or residential burglary conditioned upon the
30 offender: (a) Successfully completing twenty-one days in a work

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

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

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

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

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

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

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

9 (3) Each of the commission's recommended standard sentence ranges
10 shall include one or more of the following: Total confinement, partial
11 confinement, community supervision, community service, and a fine.

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

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

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

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

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

1 confinement for the violent offender and alternatives to total
2 confinement for the nonviolent offender.

3 (6) This commission shall conduct a study to determine the capacity
4 of correctional facilities and programs which are or will be available.
5 While the commission need not consider such capacity in arriving at its
6 recommendations, the commission shall project whether the
7 implementation of its recommendations would result in exceeding such
8 capacity. If the commission finds that this result would probably
9 occur, then the commission shall prepare an additional list of standard
10 sentences which shall be consistent with such capacity.

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

17 (a) Review the experiences of other jurisdictions with this type of
18 sanction;

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

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

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

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

27 (8) The commission may recommend to the legislature revisions or
28 modifications to the standard sentence ranges and other standards. If
29 implementation of the revisions or modifications would result in
30 exceeding the capacity of correctional facilities, then the commission

1 shall accompany its recommendation with an additional list of standard
2 sentence ranges which are consistent with correction capacity.

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

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

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

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

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

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

1 community corrections plan pursuant to RCW 72.09.300. The agreements
2 may provide for joint operation or operation by the department of
3 corrections, alone, or by any of the other governmental entities,
4 alone. The secretary may employ persons to aid in performing the
5 functions and duties of the department. The secretary may delegate any
6 of his functions or duties to department employees. The secretary is
7 authorized to promulgate standards for the department of corrections
8 within appropriation levels authorized by the legislature.

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

1 partial confinement, home detention, work release, community
2 supervision, or other status under the jurisdiction of the department.

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

7 NEW SECTION. Sec. 16. (1) This act is necessary for the
8 immediate preservation of the public peace, health, or safety, or
9 support of the state government and its existing public institutions,
10 and shall take effect July 1, 1991.

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