
SENATE BILL 5623

State of Washington 52nd Legislature 1991 Regular Session

By Senators Thorsness, Niemi, Talmadge, Metcalf and Sutherland.

Read first time February 12, 1991. Referred to Committee on Law & Justice.

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, and 72.09.050; reenacting and amending RCW
4 9.94A.380; adding new sections 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 new sections; 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.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), and
6 (8) of this section, the court shall impose a sentence within the
7 sentence range 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 an offender is convicted of a drug offense, or was
14 under the influence of drugs or alcohol at the time of the offense, or
15 a finding is made that the offense was motivated by substance usage,
16 and the offender has no current or past felony convictions for:

17 (i) A sex offense;

18 (ii) A violent offense as defined by RCW 9.94A.030(33);

19 (iii) A violation of RCW 69.50.415, controlled substances homicide;

20 (iv) A violation of RCW 69.52.030(2), distribution of imitation
21 controlled substance to a person under eighteen years of age;

22 (v) A violation of RCW 69.50.401(a)(1)(i), manufacturing,
23 delivering, or possessing with intent to manufacture or deliver a
24 Schedule I or II narcotic drug, committed within one thousand feet of
25 the perimeter of any school grounds or as a second or subsequent drug
26 offense;

27 (vi) A violation of RCW 69.50.401(a)(1)(ii), manufacturing,
28 delivering, or possessing with intent to manufacture or deliver a
29 Schedule I, II, or III controlled substance, when the violation

1 involves substances listed in RCW 69.50.204(d) (1) through (7)
2 (methamphetamines);

3 (vii) A violation of RCW 69.50.401(f), involving a person under
4 eighteen years of age in the manufacture, sale, or delivery of a
5 controlled substance;

6 (viii) A violation of RCW 69.50.406, adult distributing a
7 controlled substance to a person under eighteen years of age; or

8 (ix) A violation of RCW 69.50.410(1), selling for profit any
9 Schedule I controlled or counterfeit substance except leaves and
10 flowering tops of marihuana;

11 the sentencing court, on its own motion or on the motion of the state
12 or the defendant, may consider imposing a sentence under this
13 subsection. If this sentencing option is used, the department shall
14 prepare a presentence report. If the court is considering making
15 treatment a condition of this option, the court may order a substance
16 abuse evaluation. For the purposes of this subsection, "motivated by
17 substance usage" means that one of the purposes for which the offender
18 committed the crime was for the purpose of continuing the offender's
19 abuse of controlled substances or alcoholic beverages.

20 (b) If the court determines that both the offender and the
21 community will benefit from use of the sentencing alternative provided
22 for by this subsection, the court shall then impose a sentence within
23 the sentence range. If this original sentence is more than one year
24 and up to three years of confinement, the judge may allow the sentence
25 to be two years of community custody. If this sentence is one year or
26 less, the community custody sentence imposed shall be for one year. If
27 the offender successfully completes the conditions of community
28 custody, the department may request from the court a discharge from
29 supervision for the offender. As conditions of this sentencing
30 alternative, the court shall require payment of supervision fees,

1 supervision by the department at an intensive level of supervision as
2 defined by the department, and that the offender obey all laws. The
3 court shall also impose at least one of the following: Breathalyzers,
4 urinalysis, or other forensic analyses. The court may, as a condition
5 of the sentence, require the offender to:

6 (i) Serve up to ninety days of confinement in the county jail, such
7 time may be served on weekends;

8 (ii) Receive treatment, either inpatient or outpatient which
9 treatment may include the use of acupuncture as part of a
10 detoxification process;

11 (iii) Stay out of areas with high drug usage and/or distribution;

12 (iv) Refrain from crime-related activities;

13 (v) Pay any legal financial obligation that results from a felony
14 conviction;

15 (vi) Pay the actual costs of urinalysis testing, breathalyzers, and
16 other forensic analysis, unless indigent;

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

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

22 (ix) Devote time to specific employment or occupation;

23 (x) Make recoupment to the victim for the cost of any counseling
24 required as a result of the offender's crime; or

25 (xi) Undergo home detention.

26 (c) If a violation of the conditions of the sentence is found to
27 have occurred, the maximum sanction ordered shall be total confinement
28 not to exceed the original sentence imposed, less time served, or sixty
29 days for each violation, whichever is greater. Any confinement time
30 ordered as a result of a violation shall be served in a department of

1 corrections facility or a facility operated or utilized under contract
2 by the state. The department shall establish a sanctioning grid to be
3 imposed when sanctioning a violation. Violations shall be handled in
4 accordance with policies and procedures developed by the department.

5 If inpatient treatment is ordered as a condition of the sentence,
6 and the offender leaves the program without permission, it shall be
7 considered an escape in the second degree under RCW 9A.76.120.

8 (d) Any substance abuse evaluations or treatment obtained under
9 this subsection must be provided by treatment evaluators and providers
10 who meet the requirements of chapter 70.96A RCW. If an offender is
11 determined by the department to be indigent, or unable to pay the full
12 costs of treatment, the treatment ordered by the court may be purchased
13 by the department. The department may establish a variable rate for
14 reimbursement from the offender for the treatment purchased. Offenders
15 who are determined to be no longer indigent will reimburse the
16 department for the costs of treatment at a rate to be determined by the
17 department.

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

1 When the court sentences an offender under this subsection to the
2 statutory maximum period of confinement then the community placement
3 portion of the sentence shall consist entirely of such community
4 custody to which the offender may become eligible, in accordance with
5 RCW 9.94A.150 (1) and (2). Any period of community custody actually
6 served shall be credited against the community placement portion of the
7 sentence.

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

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

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

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

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

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

7 (c) The court may also order any of the following special
8 conditions:

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

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

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

15 (iv) The offender shall not consume alcohol;

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

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

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

24 (~~(9)~~) (10) If the court imposes a sentence requiring confinement
25 of thirty days or less, the court may, in its discretion, specify that
26 the sentence be served on consecutive or intermittent days. A sentence
27 requiring more than thirty days of confinement shall be served on
28 consecutive days. Local jail administrators may schedule court-ordered
29 intermittent sentences as space permits.

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

22 (~~(11)~~) (12) Except as provided under RCW 9.94A.140(1) and
23 9.94A.142(1), a court may not impose a sentence providing for a term of
24 confinement or community supervision or community placement which
25 exceeds the statutory maximum for the crime as provided in chapter
26 9A.20 RCW.

27 (~~(12)~~) (13) All offenders sentenced to terms involving community
28 supervision, community service, community placement, or legal financial
29 obligation shall be under the supervision of the secretary of the
30 department of corrections or such person as the secretary may designate

1 and shall follow explicitly the instructions of the secretary including
2 reporting as directed to a community corrections officer, remaining
3 within prescribed geographical boundaries, and notifying the community
4 corrections officer of any change in the offender's address or
5 employment.

6 ~~((13))~~ (14) The sentencing court shall give the offender credit
7 for all confinement time served before the sentencing if that
8 confinement was solely in regard to the offense for which the offender
9 is being sentenced.

10 ~~((14))~~ (15) A departure from the standards in RCW 9.94A.400 (1)
11 and (2) governing whether sentences are to be served consecutively or
12 concurrently is an exceptional sentence subject to the limitations in
13 subsections (2) and (3) of this section, and may be appealed by the
14 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

15 ~~((15))~~ (16) The court shall order restitution whenever the
16 offender is convicted of a felony that results in injury to any person
17 or damage to or loss of property, whether the offender is sentenced to
18 confinement or placed under community supervision, unless extraordinary
19 circumstances exist that make restitution inappropriate in the court's
20 judgment. The court shall set forth the extraordinary circumstances in
21 the record if it does not order restitution. In ordering restitution,
22 the court shall consider any restitution agreement reached under
23 section 4 of this act and any victim impact statement.

24 ~~((16))~~ (17) As a part of any sentence, the court may impose and
25 enforce an order that relates directly to the circumstances of the
26 crime for which the offender has been convicted, prohibiting the
27 offender from having any contact with other specified individuals or a
28 specific class of individuals for a period not to exceed the maximum
29 allowable sentence for the crime, regardless of the expiration of the
30 offender's term of community supervision or community placement.

1 (~~(17)~~) (18) In any sentence of partial confinement, the court may
2 require the defendant to serve the partial confinement in work release
3 or in a program of home detention.

4 (~~(18)~~) (19) All court-ordered legal financial obligations
5 collected by the department and remitted to the county clerk shall be
6 credited and paid where restitution is ordered. Restitution shall be
7 paid prior to any other payments of monetary obligations.

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

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

22 When imposing alternatives to total confinement, the court shall
23 incorporate appropriate provisions for restitution and shall consider
24 any negotiated restitution agreement resulting from a victim-offender
25 mediation program.

26 When imposing alternatives to total confinement pursuant to this
27 section in such cases where total confinement would otherwise exceed
28 twelve months under the sentencing guidelines, the court shall require
29 that the alternative provide for adequate security for the public

1 through intensive supervision of the offender by community corrections
2 officers or by the use of electronically monitored house arrest or by
3 such other means as may be developed to protect the general public.
4 The court shall also make written findings that the use of such
5 alternative does not impose an unreasonable risk to the safety of the
6 general public.

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

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

14 If the sentencing court finds that an exceptional sentence outside
15 the standard range should be imposed in accordance with RCW
16 9.94A.120(2), the sentence is subject to review only as provided for in
17 RCW 9.94A.210(4).

18 The following are illustrative factors which the court may consider
19 in the exercise of its discretion to impose an exceptional sentence.
20 The following are illustrative only and are not intended to be
21 exclusive reasons for exceptional sentences.

22 (1) Mitigating Circumstances

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

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

28 (c) Since his or her detection, the respondent has met the victim
29 and negotiated a restitution agreement pursuant to section 4 of this

1 act, provided that this mitigating factor is insufficient, by itself,
2 to justify a sentence less severe than one within the standard range.

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

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

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

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

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

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

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

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

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

28 (2) Aggravating Circumstances

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) When a probation counselor receives a request for a
19 predisposition study, he or she shall refer the case to a victim-
20 offender mediation program or, if such a program is not available in
21 the county, a dispute resolution center. However, such a referral need
22 be made only if the current offense is one involving the property of a
23 victim, and referral need not be made if: (a) The offender is a
24 serious offender as defined in RCW 13.40.020, (b) the current offense
25 would, if committed by an adult, be a sex offense or a violent offense
26 as defined in RCW 9.94A.030, or (c) a meeting between victim and
27 offender would be clearly impractical or not feasible.

28 (2) Neither the victim nor the offender may be required to
29 participate in the program but, if both are willing to participate,

1 and, in the case of a victim under the age of eighteen, a parent or
2 legal guardian of the victim is also willing to participate, the
3 victim-offender mediation program or dispute resolution center shall
4 provide an opportunity for the victim to:

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

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

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

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

14 (1) In disposition hearings all relevant and material evidence,
15 including oral and written reports, may be received by the court and
16 may be relied upon to the extent of its probative value, even though
17 such evidence may not be admissible in a hearing on the information.
18 The youth or the youth's counsel and the prosecuting attorney shall be
19 afforded an opportunity to examine and controvert written reports so
20 received and to cross-examine individuals making reports when such
21 individuals are reasonably available, but sources of confidential
22 information need not be disclosed. The prosecutor and counsel for the
23 juvenile may submit recommendations for disposition.

24 (2) For purposes of disposition:

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

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

28 (c) In no event may a disposition for a violation include
29 confinement.

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

4 (a) Consider the facts supporting the allegations of criminal
5 conduct by the respondent;

6 (b) Consider information and arguments offered by parties and their
7 counsel;

8 (c) Consider any predisposition reports;

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

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

13 (f) Consider any restitution agreement reached pursuant to section
14 9 of this act;

15 (g) Determine the amount of restitution owing to the victim, if
16 any;

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

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

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

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

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

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

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

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

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

10 (i) In the commission of the offense, or in flight therefrom, the
11 respondent inflicted or attempted to inflict serious bodily injury to
12 another;

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

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

16 (iv) The respondent has a recent criminal history or has failed to
17 comply with conditions of a recent dispositional order or diversion
18 agreement;

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

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

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

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

28 (a) The sex of the respondent;

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

1 (c) The creed or religion of the respondent or the respondent's
2 family;

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

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

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

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

12 (1) In its dispositional order, the court shall require the
13 respondent to make restitution to any persons who have suffered loss or
14 damage as a result of the offense committed by the respondent. In
15 addition, restitution may be ordered for loss or damage if the offender
16 pleads guilty to a lesser offense or fewer offenses and agrees with the
17 prosecutor's recommendation that the offender be required to pay
18 restitution to a victim of an offense or offenses which, pursuant to a
19 plea agreement, are not prosecuted. The payment of restitution shall
20 be in addition to any punishment which is imposed pursuant to the other
21 provisions of this chapter. The court may determine the amount, terms,
22 and conditions of the restitution. The court shall consider any
23 restitution agreement reached pursuant to section 9 of this act.
24 Restitution may include the costs of counseling reasonably related to
25 the offense. If the respondent participated in the crime with another
26 person or other persons, all such participants shall be jointly and
27 severally responsible for the payment of restitution. The court may
28 not require the respondent to pay full or partial restitution if the
29 respondent reasonably satisfies the court that he or she does not have

1 the means to make full or partial restitution and could not reasonably
2 acquire the means to pay such restitution. In cases where an offender
3 has been committed to the department for a period of confinement
4 exceeding fifteen weeks, restitution may be waived.

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

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

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

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

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

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

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

27 (4) "Community custody" means that portion of an inmate's sentence
28 of confinement served in the community. Such confinement served in the
29 community is imposed in lieu of earned early release time (~~served in~~

1 ~~the community))~~ or under the drug offender sentencing alternative
2 provided for in RCW 9.94A.120(8). Such confinement is subject to
3 controls placed on the inmate's movement and activities by the
4 department of corrections.

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

12 (6) "Community service" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender.

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

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

26 (9) "Conviction" means an adjudication of guilt pursuant to Titles
27 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
28 acceptance of a plea of guilty.

29 (10) "Court-ordered legal financial obligation" means a sum of
30 money that is ordered by a superior court of the state of Washington

1 for legal financial obligations which may include restitution to the
2 victim, statutorily imposed crime victims' compensation fees as
3 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
4 drug funds, court-appointed attorneys' fees, and costs of defense,
5 fines, and any other financial obligation that is assessed to the
6 offender as a result of a felony conviction.

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

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

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

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

1 (14) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community service work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through "earned early release" can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

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

21 (16) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
24 controlled substance (RCW 69.50.403);

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

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

1 (17) "Escape" means:

2 (a) Escape in the first degree (RCW 9A.76.110), escape in the
3 second degree (RCW 9A.76.120), willful failure to return from furlough
4 (RCW 72.66.060), willful failure to return from work release (RCW
5 72.65.070), or willful failure to comply with any limitations on the
6 inmate's movements while in community custody (RCW 72.09.310); or

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

10 (18) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
13 and-run injury-accident (RCW 46.52.020(4)); or

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

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

19 (20) (a) "First-time offender" means any person who is convicted of
20 a felony (i) not classified as a violent offense or a sex offense under
21 this chapter, or (ii) that is not the manufacture, delivery, or
22 possession with intent to manufacture or deliver a controlled substance
23 classified in schedule I or II that is a narcotic drug, and except as
24 provided in (b) of this subsection, who previously has never been
25 convicted of a felony in this state, federal court, or another state,
26 and who has never participated in a program of deferred prosecution for
27 a felony offense.

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

1 (21) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (22) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case has been transferred by
6 the appropriate juvenile court to a criminal court pursuant to RCW
7 13.40.110. Throughout this chapter, the terms "offender" and
8 "defendant" are used interchangeably.

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

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

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

23 (26) "Serious traffic offense" means:

24 (a) Driving while intoxicated (RCW 46.61.502), actual physical
25 control while intoxicated (RCW 46.61.504), reckless driving (RCW
26 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

1 (27) "Serious violent offense" is a subcategory of violent offense
2 and means:

3 (a) Murder in the first degree, homicide by abuse, murder in the
4 second degree, assault in the first degree, kidnapping in the first
5 degree, or rape in the first degree, or an attempt, criminal
6 solicitation, or criminal conspiracy to commit one of these felonies;
7 or

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

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

13 (29) "Sex offense" means:

14 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
15 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
16 attempt, criminal solicitation, or criminal conspiracy to commit such
17 crimes;

18 (b) A felony with a finding of sexual motivation under RCW
19 9.94A.127; or

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

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

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

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

4 (33) "Violent offense" means:

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

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

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

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

28 (35) "Home detention" means a program of partial confinement
29 available to offenders wherein the offender is confined in a private
30 residence subject to electronic surveillance. Home detention may not

1 be imposed for offenders convicted of a violent offense, any sex
2 offense, any drug offense except as provided by the drug offender
3 sentencing alternative provided for in RCW 9.94A.120(8), reckless
4 burning in the first or second degree as defined in RCW 9A.48.040 or
5 9A.48.050, assault in the third degree as defined in RCW 9A.36.031,
6 unlawful imprisonment as defined in RCW 9A.40.040, or harassment as
7 defined in RCW 9A.46.020. Home detention may be imposed for offenders
8 convicted of possession of a controlled substance (RCW 69.50.401(d)) or
9 forged prescription for a controlled substance (RCW 69.50.403) if the
10 offender fulfills the participation conditions set forth in this
11 subsection and is monitored for drug use by treatment alternatives to
12 street crime (TASC) or a comparable court or agency-referred program.
13 Home detention may be imposed for offenders convicted of burglary in
14 the second degree as defined in RCW 9A.52.030 or residential burglary
15 conditioned upon the offender: (a) Successfully completing twenty-one
16 days in a work release program, (b) having no convictions for burglary
17 in the second degree or residential burglary during the preceding two
18 years and not more than two prior convictions for burglary or
19 residential burglary, (c) having no convictions for a violent felony
20 offense during the preceding two years and not more than two prior
21 convictions for a violent felony offense, (d) having no prior charges
22 of escape, and (e) fulfilling the other conditions of the home
23 detention program. Participation in a home detention program shall be
24 conditioned upon: ~~((a))~~ The offender obtaining or maintaining
25 current employment or attending a regular course of school study at
26 regularly defined hours, or the offender performing parental duties to
27 offspring or minors normally in the custody of the offender ~~((b))~~;
28 abiding by the rules of the home detention program ~~((c))~~ and ~~((e))~~
29 compliance with court-ordered legal financial obligations. The home
30 detention program may also be made available to offenders whose charges

1 and convictions do not otherwise disqualify them if medical or health-
2 related conditions, concerns or treatment would be better addressed
3 under the home detention program, or where the health and welfare of
4 the offender, other inmates, or staff would be jeopardized by the
5 offender's incarceration. Participation in the home detention program
6 for medical or health-related reasons is conditioned on the offender
7 abiding by the rules of the home detention program and complying with
8 court-ordered restitution.

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

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

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

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

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

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

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

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

1 (a) If the maximum term in the range is one year or less, the
2 minimum term in the range shall be no less than one-third of the
3 maximum term in the range, except that if the maximum term in the range
4 is ninety days or less, the minimum term may be less than one-third of
5 the maximum;

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

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

11 (5) In carrying out its duties under subsection (2) of this
12 section, the commission shall give consideration to the existing
13 guidelines adopted by the association of superior court judges and the
14 Washington association of prosecuting attorneys and the experience
15 gained through use of those guidelines. The commission shall emphasize
16 confinement for the violent offender and alternatives to total
17 confinement for the nonviolent offender.

18 (6) This commission shall conduct a study to determine the capacity
19 of correctional facilities and programs which are or will be available.
20 While the commission need not consider such capacity in arriving at its
21 recommendations, the commission shall project whether the
22 implementation of its recommendations would result in exceeding such
23 capacity. If the commission finds that this result would probably
24 occur, then the commission shall prepare an additional list of standard
25 sentences which shall be consistent with such capacity.

26 (7) The commission shall in conjunction with the department of
27 corrections conduct a study and make a report to the legislature no
28 later than December 1, 1991, on the feasibility of establishing a
29 system of monetary fines based upon both the seriousness of the offense

1 and the financial resources of the offender as sanctions. This study
2 and report shall:

3 (a) Review the experiences of other jurisdictions with this type of
4 sanction;

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

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

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

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

13 (8) The commission may recommend to the legislature revisions or
14 modifications to the standard sentence ranges and other standards. If
15 implementation of the revisions or modifications would result in
16 exceeding the capacity of correctional facilities, then the commission
17 shall accompany its recommendation with an additional list of standard
18 sentence ranges which are consistent with correction capacity.

19 ~~((8))~~ (9) The commission shall study the existing criminal code
20 and from time to time make recommendations to the legislature for
21 modification.

22 ~~((9))~~ (10) The commission shall exercise its duties under this
23 section in conformity with chapter 34.05 RCW, as now existing or
24 hereafter amended.

25 NEW SECTION. Sec. 14. A new section is added to chapter 72.09 RCW
26 to read as follows:

27 The secretary shall manage a pilot monetary fines program in a
28 minimum of two jurisdictions. The secretary shall consult with the
29 sentencing guidelines commission, in the design of the pilot program.

1 The secretary shall establish a separate account to pay for the
2 operation of the pilot program and shall place a portion of supervision
3 fees and/or monetary fines collected into the account.

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

6 The secretary shall manage the department of corrections and shall
7 be responsible for the administration of adult correctional programs,
8 including but not limited to the operation of all state correctional
9 institutions or facilities used for the confinement of convicted
10 felons. In addition, the secretary shall have broad powers to enter
11 into agreements with any federal agency, or any other state, or any
12 Washington state agency or local government providing for the operation
13 of any correctional facility or program for persons convicted of
14 felonies or misdemeanors or for juvenile offenders. Such agreements
15 for counties with community corrections boards shall be required in the
16 community corrections plan pursuant to RCW 72.09.300. The agreements
17 may provide for joint operation or operation by the department of
18 corrections, alone, or by any of the other governmental entities,
19 alone. The secretary may employ persons to aid in performing the
20 functions and duties of the department. The secretary may delegate any
21 of his functions or duties to department employees. The secretary is
22 authorized to promulgate standards for the department of corrections
23 within appropriation levels authorized by the legislature.

24 The secretary shall file with the legislature no later than
25 December 1 of each year beginning with December 1, 1992, a report on
26 recidivism. This report shall cover the preceding calendar year and
27 shall include: (1) The total number of offenders under the
28 jurisdiction of the department as of the first day of the year that is
29 the subject of the report, reflecting subtotals in the aggregate by

1 type of sanction and under each type of sanction by type of crime; (2)
2 the same information as reported under subsection (1) of this section
3 as of the first day of the year following the year that is the subject
4 of the report; (3) the number of offenders released from the
5 jurisdiction of the department by the categories indicated under
6 subsection (1) of this section during the subject year; (4) the number
7 of offenders who have come under the jurisdiction of the department by
8 the categories indicated under subsection (1) of this section during
9 the subject year; (5) for those offenders reported under subsection (4)
10 of this section, the report shall indicate (a) whether they have ever
11 previously been under the jurisdiction of the department or any similar
12 department or agency in any other state or nation, (b) the type of
13 prior crime or crimes and prior sanctions for each such offender, and
14 (c) the duration of time since they had previously been released.
15 "Type of sanction" as used in this section means total confinement,
16 partial confinement, home detention, work release, community
17 supervision, or other status under the jurisdiction of the department.

18 Pursuant to the authority granted in chapter 34.05 RCW, the
19 secretary shall adopt rules providing for inmate restitution when
20 restitution is determined appropriate as a result of a disciplinary
21 action.

22 NEW SECTION. Sec. 16. A new section is added to chapter 9.94A RCW
23 to read as follows:

24 The department of corrections may, in its discretion, substitute
25 appropriate partial confinement for any sentence of total confinement
26 under the following circumstances:

27 (1) The offender is not serving a sentence for conviction of a
28 violent offense or sex offense as defined in RCW 9.94A.030;

1 (2) The offender has served at least one-half of the sentence of
2 total confinement imposed;

3 (3) When an offender is convicted of a drug offense, or was under
4 the influence of drugs or alcohol at the time of the offense, or a
5 finding has been made that the offense was motivated by substance
6 usage, the offender has successfully completed a drug or substance
7 abuse treatment program;

8 (4) The offender either has received a high school diploma, has
9 received a high school equivalency certificate, or can read and write
10 at an eighth grade level of proficiency;

11 (5) The offender has successfully completed any vocational training
12 required by the department and has satisfied any other conditions
13 imposed by the sentencing court or the department;

14 (6) The offender remains under the jurisdiction of the department
15 for the full duration of the sentence and may be returned to total
16 confinement at the discretion of the department for violation of any
17 conditions imposed in the original sentence by the court or by the
18 department as a condition of transfer to partial confinement or in the
19 event the department believes that the offender has become a risk to
20 public safety; and

21 (7) The department makes a written finding that transfer to partial
22 confinement will not impose a risk to public safety. Such finding
23 shall state the facts in its support, including any relevant facts
24 about the offense, any relevant history prior to the offense, and the
25 offender's behavior while under the jurisdiction of the department.

26 Time served under partial confinement pursuant to this section
27 shall be considered as time served under total confinement.

28 NEW SECTION. **Sec. 17.** The department of corrections shall
29 adopt procedures to implement the drug offender sentencing alternative

1 created by section 6, chapter ____, Laws of 1991 (section 6 of this act)
2 by October 1, 1991.

3 NEW SECTION. **Sec. 18.** (1) This act is necessary for the
4 immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and shall take effect July 1, 1991.

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