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SENATE BILL 5852

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Nelson and Thorsness; by request of Sentencing Guidelines Commission.

Read first time February 26, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to work crews for offenders; amending RCW  
2 9.94A.030, 9.94A.120, 9.94A.180, 9.94A.190, and 9A.76.010; and adding  
3 a new section to chapter 9.94A RCW.

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

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

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

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

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

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

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

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

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

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

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

1 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
2 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
3 acceptance of a plea of guilty.

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

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

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

24 (b) "Criminal history" shall always include juvenile convictions  
25 for sex offenses and shall also include a defendant's other prior  
26 convictions in juvenile court if: (i) The conviction was for an offense  
27 which is a felony or a serious traffic offense and is criminal history  
28 as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years  
29 of age or older at the time the offense was committed; and (iii) with  
30 respect to prior juvenile class B and C felonies or serious traffic

1 offenses, the defendant was less than twenty-three years of age at the  
2 time the offense for which he or she is being sentenced was committed.

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

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

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

24 (16) "Drug offense" means:

25 (a) Any felony violation of chapter 69.50 RCW except possession of  
26 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
27 controlled substance (RCW 69.50.403);

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

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

4 (17) "Escape" means:

5 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
6 second degree (RCW 9A.76.120), willful failure to return from furlough  
7 (RCW 72.66.060), willful failure to return from work release (RCW  
8 72.65.070), or willful failure to comply with any limitations on the  
9 inmate's movements while in community custody (RCW 72.09.310); or

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

13 (18) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
16 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

4 (21) "Nonviolent offense" means an offense which is not a violent  
5 offense.

6 (22) "Offender" means a person who has committed a felony  
7 established by state law and is eighteen years of age or older or is  
8 less than eighteen years of age but whose case has been transferred by  
9 the appropriate juvenile court to a criminal court pursuant to RCW  
10 13.40.110. Throughout this chapter, the terms "offender" and  
11 "defendant" are used interchangeably.

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

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

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

27 (26) "Serious traffic offense" means:

28 (a) Driving while intoxicated (RCW 46.61.502), actual physical  
29 control while intoxicated (RCW 46.61.504), reckless driving (RCW  
30 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

4 (27) "Serious violent offense" is a subcategory of violent offense  
5 and means:

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

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

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

16 (29) "Sex offense" means:

17 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
18 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
19 attempt, criminal solicitation, or criminal conspiracy to commit such  
20 crimes;

21 (b) A felony with a finding of sexual motivation under RCW  
22 9.94A.127; or

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

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

29 (31) "Total confinement" means confinement inside the physical  
30 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four  
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

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

6 (33) "Violent offense" means:

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

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

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

25 (34) "Work crew" means a program of partial confinement consisting  
26 of public works labor of not less than seven hours per day, five days  
27 per week that complies with section 2 of this act.

28 (35) "Work release" means a program of partial confinement  
29 available to offenders who are employed or engaged as a student in a  
30 regular course of study at school. Participation in work release shall

1 be conditioned upon the offender attending work or school at regularly  
2 defined hours and abiding by the rules of the work release facility.

3 ~~((35))~~ (36) "Home detention" means a program of partial  
4 confinement available to offenders wherein the offender is confined in  
5 a private residence subject to electronic surveillance. Home detention  
6 may not be imposed for offenders convicted of a violent offense, any  
7 sex offense, any drug offense, reckless burning in the first or second  
8 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
9 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in  
10 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home  
11 detention may be imposed for offenders convicted of possession of a  
12 controlled substance (RCW 69.50.401(d)) or forged prescription for a  
13 controlled substance (RCW 69.50.403) if the offender fulfills the  
14 participation conditions set forth in this subsection and is monitored  
15 for drug use by treatment alternatives to street crime (TASC) or a  
16 comparable court or agency-referred program. Home detention may be  
17 imposed for offenders convicted of burglary in the second degree as  
18 defined in RCW 9A.52.030 or residential burglary conditioned upon the  
19 offender: (a) Successfully completing twenty-one days in a work  
20 release program, (b) having no convictions for burglary in the second  
21 degree or residential burglary during the preceding two years and not  
22 more than two prior convictions for burglary or residential burglary,  
23 (c) having no convictions for a violent felony offense during the  
24 preceding two years and not more than two prior convictions for a  
25 violent felony offense, (d) having no prior charges of escape, and (e)  
26 fulfilling the other conditions of the home detention program.

27 Participation in a home detention program shall be conditioned  
28 upon: ~~((a))~~ (i) The offender obtaining or maintaining current  
29 employment or attending a regular course of school study at regularly  
30 defined hours, or the offender performing parental duties to offspring

1 or minors normally in the custody of the offender, ~~((b))~~ (ii) abiding  
2 by the rules of the home detention program, and ~~((e))~~ (iii)  
3 compliance with court-ordered legal financial obligations. The home  
4 detention program may also be made available to offenders whose charges  
5 and convictions do not otherwise disqualify them if medical or health-  
6 related conditions, concerns or treatment would be better addressed  
7 under the home detention program, or where the health and welfare of  
8 the offender, other inmates, or staff would be jeopardized by the  
9 offender's incarceration. Participation in the home detention program  
10 for medical or health-related reasons is conditioned on the offender  
11 abiding by the rules of the home detention program and complying with  
12 court-ordered restitution.

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

15 Participation in a work crew is conditioned upon the offender's  
16 abstinence from alcohol and controlled substances as demonstrated by  
17 urinalysis and breathalyzer monitoring, with the cost of monitoring to  
18 be paid by the offender, unless indigent; and upon compliance with the  
19 rules of the program, which rules shall include the requirements that  
20 the offender work to the best of his or her abilities and that he or  
21 she provide the program with accurate, verified residence information.  
22 Work crew may be imposed simultaneously with electronic home detention.

23 Where work crew is imposed as part of a sentence of nine months or  
24 more, the offender must serve a minimum of thirty days of total  
25 confinement before being eligible for work crew.

26 An offender who serves thirty days of work crew shall thereafter  
27 receive credit toward the work crew sentence of up to three days per  
28 week for each seven-hour day of approved, verified employment,  
29 provided, however, that every such offender shall complete not less

1 than two days per week of work crew in addition to any credit for  
2 approved, verified employment.

3 The seven hours per day of work crew may include substance abuse  
4 counseling and/or job skills training.

5 The public works labor performed by offenders on work crew shall be  
6 unskilled labor for the benefit of the community as determined by the  
7 head of the county executive branch or his or her designee. Public  
8 works labor shall not be done on private property.

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

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

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

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

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

24 (4) An offender convicted of the crime of murder in the first  
25 degree shall be sentenced to a term of total confinement not less than  
26 twenty years. An offender convicted of the crime of assault in the  
27 first degree where the offender used force or means likely to result in  
28 death or intended to kill the victim shall be sentenced to a term of  
29 total confinement not less than five years. An offender convicted of

1 the crime of rape in the first degree shall be sentenced to a term of  
2 total confinement not less than five years, and shall not be eligible  
3 for furlough, work release or other authorized leave of absence from  
4 the correctional facility during such minimum five-year term except for  
5 the purpose of commitment to an inpatient treatment facility. The  
6 foregoing minimum terms of total confinement are mandatory and shall  
7 not be varied or modified as provided in subsection (2) of this  
8 section.

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

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

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

22 (c) Pursue a prescribed, secular course of study or vocational  
23 training;

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

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

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

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

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

16 The report of the examination shall include at a minimum the  
17 following: The defendant's version of the facts and the official  
18 version of the facts, the defendant's offense history, an assessment of  
19 problems in addition to alleged deviant behaviors, the offender's  
20 social and employment situation, and other evaluation measures used.  
21 The report shall set forth the sources of the evaluator's information.

22 The examiner shall assess and report regarding the defendant's  
23 amenability to treatment and relative risk to the community. A  
24 proposed treatment plan shall be provided and shall include, at a  
25 minimum:

- 26 (A) Frequency and type of contact between offender and therapist;  
27 (B) Specific issues to be addressed in the treatment and  
28 description of planned treatment modalities;

1 (C) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

6 The court on its own motion may order, or on a motion by the state  
7 shall order, a second examination regarding the offender's amenability  
8 to treatment. The evaluator shall be selected by the party making the  
9 motion. The defendant shall pay the cost of any second examination  
10 ordered unless the court finds the defendant to be indigent in which  
11 case the state shall pay the cost.

12 (ii) After receipt of the reports, the court shall consider whether  
13 the offender and the community will benefit from use of this special  
14 sexual offender sentencing alternative and consider the victim's  
15 opinion whether the offender should receive a treatment disposition  
16 under this subsection. If the court determines that this special sex  
17 offender sentencing alternative is appropriate, the court shall then  
18 impose a sentence within the sentence range. If this sentence is less  
19 than eight years of confinement, the court may suspend the execution of  
20 the sentence and impose the following conditions of suspension:

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

24 (B) The court shall order treatment for any period up to three  
25 years in duration. The court in its discretion shall order outpatient  
26 sex offender treatment or inpatient sex offender treatment, if  
27 available. A community mental health center may not be used for such  
28 treatment unless it has an appropriate program designed for sex  
29 offender treatment. The offender shall not change sex offender  
30 treatment providers or treatment conditions without first notifying the

1 prosecutor, the community corrections officer, and the court, and shall  
2 not change providers without court approval after a hearing if the  
3 prosecutor or community corrections officer object to the change. In  
4 addition, as conditions of the suspended sentence, the court may impose  
5 other sentence conditions including up to six months of confinement,  
6 not to exceed the sentence range of confinement for that offense,  
7 crime-related prohibitions, and requirements that the offender perform  
8 any one or more of the following:

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

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

13 (III) Report as directed to the court and a community corrections  
14 officer;

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

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

20 (iii) The sex offender therapist shall submit quarterly reports on  
21 the defendant's progress in treatment to the court and the parties.  
22 The report shall reference the treatment plan and include at a minimum  
23 the following: Dates of attendance, defendant's compliance with  
24 requirements, treatment activities, the defendant's relative progress  
25 in treatment, and any other material as specified by the court at  
26 sentencing.

27 (iv) At the time of sentencing, the court shall set a treatment  
28 termination hearing for three months prior to the anticipated date for  
29 completion of treatment. Prior to the treatment termination hearing,  
30 the treatment professional and community corrections officer shall

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

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

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

24 For purposes of this subsection, "victim" means any person who has  
25 sustained emotional, psychological, physical, or financial injury to  
26 person or property as a result of the crime charged. "Victim" also  
27 means a parent or guardian of a victim who is a minor child unless the  
28 parent or guardian is the perpetrator of the offense.

29 (b) When an offender is convicted of any felony sex offense  
30 committed before July 1, 1987, and is sentenced to a term of

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

19 If the offender does not comply with the conditions of the  
20 treatment program, the secretary of social and health services may  
21 refer the matter to the sentencing court. The sentencing court shall  
22 commit the offender to the department of corrections to serve the  
23 balance of the term of confinement.

24 If the offender successfully completes the treatment program before  
25 the expiration of the term of confinement, the court may convert the  
26 balance of confinement to community supervision and may place  
27 conditions on the offender including crime-related prohibitions and  
28 requirements that the offender perform any one or more of the  
29 following:

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

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

4 (iii) Report as directed to the court and a community corrections  
5 officer;

6 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

3 (iv) Undergo available outpatient treatment.

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

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

12 (d) Offenders convicted and sentenced for a sex offense committed  
13 prior to July 1, 1987, may, subject to available funds, request an  
14 evaluation by the department of corrections to determine whether they  
15 are amenable to treatment. If the offender is determined to be  
16 amenable to treatment, the offender may request placement in a  
17 treatment program within a correctional facility operated by the  
18 department. Placement in such treatment program is subject to  
19 available funds.

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

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

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

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

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

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

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

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

9 (c) The court may also order any of the following special  
10 conditions:

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

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

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

17 (iv) The offender shall not consume alcohol;

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

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

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

26 (9) If the court imposes a sentence requiring confinement of thirty  
27 days or less, the court may, in its discretion, specify that the  
28 sentence be served on consecutive or intermittent days. A sentence  
29 requiring more than thirty days of confinement shall be served on

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

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

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

28 (12) All offenders sentenced to terms involving community  
29 supervision, community service, community placement, or legal financial  
30 obligation shall be under the supervision of the secretary of the

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

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

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

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

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

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

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

9 **Sec. 4.** RCW 9.94A.180 and 1988 c 154 s 4 are each amended to read  
10 as follows:

11 (1) An offender sentenced to a term of partial confinement shall be  
12 confined in the facility for at least eight hours per day. The  
13 offender shall be required as a condition of partial confinement to  
14 report to the facility at designated times. An offender may be  
15 required to comply with crime-related prohibitions during the period of  
16 partial confinement.

17 (2) An offender in a county jail ordered to serve all or part of a  
18 term of less than one year in work release, work crew, or a program of  
19 home detention who violates the rules of the work release facility,  
20 work crew, or program of home detention or fails to remain employed or  
21 enrolled in school may be transferred to the appropriate county  
22 detention facility without further court order but shall, upon request,  
23 be notified of the right to request an administrative hearing on the  
24 issue of whether or not the offender failed to comply with the order  
25 and relevant conditions. Pending such hearing, or in the absence of a  
26 request for the hearing, the offender shall serve the remainder of the  
27 term of confinement as total confinement. This subsection shall not  
28 affect transfer or placement of offenders committed to the state  
29 department of corrections.

1       **Sec. 5.** RCW 9.94A.190 and 1988 c 154 s 5 are each amended to read  
2 as follows:

3       (1) A sentence that includes a term or terms of confinement  
4 totaling more than one year shall be served in a facility or  
5 institution operated, or utilized under contract, by the state. Except  
6 as provided for in subsection (3) of this section, a sentence of not  
7 more than one year of confinement shall be served in a facility  
8 operated, licensed, or utilized under contract, by the county, or if  
9 home detention or work crew has been ordered by the court, in the  
10 residence of either the defendant or a member of the defendant's  
11 immediate family.

12       (2) If a county uses a state partial confinement facility for the  
13 partial confinement of a person sentenced to confinement for not more  
14 than one year, the county shall reimburse the state for the use of the  
15 facility as provided for in this subsection. The office of financial  
16 management shall set the rate of reimbursement based upon the average  
17 per diem cost per offender in the facility. The office of financial  
18 management shall determine to what extent, if any, reimbursement shall  
19 be reduced or eliminated because of funds provided by the legislature  
20 to the department of corrections for the purpose of covering the cost  
21 of county use of state partial confinement facilities. The office of  
22 financial management shall reestablish reimbursement rates each even-  
23 numbered year.

24       (3) A person who is sentenced for a felony to a term of not more  
25 than one year, and who is committed or returned to incarceration in a  
26 state facility on another felony conviction, either under the  
27 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter  
28 shall serve all terms of confinement, including a sentence of not more  
29 than one year, in a facility or institution operated, or utilized under

1 contract, by the state, consistent with the provisions of RCW  
2 9.94A.400.

3 **Sec. 6.** RCW 9A.76.010 and 1979 c 155 s 35 are each amended to read  
4 as follows:

5 The following definitions are applicable in this chapter unless the  
6 context otherwise requires:

7 (1) "Custody" means restraint pursuant to a lawful arrest or an  
8 order of a court, or any period of service on a work crew: PROVIDED,  
9 That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and  
10 74.13.031 and chapter 13.32A RCW shall not be deemed custody for  
11 purposes of this chapter;

12 (2) "Detention facility" means any place used for the confinement  
13 of a person (a) arrested for, charged with or convicted of an offense,  
14 or (b) charged with being or adjudicated to be a juvenile offender as  
15 defined in RCW 13.40.020 as now existing or hereafter amended, or (c)  
16 held for extradition or as a material witness, or (d) otherwise  
17 confined pursuant to an order of a court, except an order under chapter  
18 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough,  
19 or other such facility or program;

20 (3) "Contraband" means any article or thing which a person confined  
21 in a detention facility is prohibited from obtaining or possessing by  
22 statute, rule, regulation, or order of a court.