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SECOND SUBSTITUTE SENATE BILL 6210

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State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Thorsness, Niemi, Nelson, Erwin, Newhouse and M. Kreidler)

Read first time 02/11/92.

1 AN ACT Relating to sentencing options for select nonviolent  
2 offenders; amending RCW 9.94A.150 and 9.94A.210; reenacting and  
3 amending RCW 9.94A.030 and 9.94A.120; creating a new section; and  
4 prescribing penalties.

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

6 **Sec. 1.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and 1991  
7 c 181 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

23 (7) "Community supervision" means a period of time during which a  
24 convicted offender is subject to crime-related prohibitions and other  
25 sentence conditions imposed by a court pursuant to this chapter or RCW  
26 46.61.524. For first-time offenders and others sentenced under RCW  
27 9.94A.120(5), the supervision may include crime-related prohibitions  
28 and other conditions imposed pursuant to RCW 9.94A.120(5). For  
29 purposes of the interstate compact for out-of-state supervision of  
30 parolees and probationers, RCW 9.95.270, community supervision is the

1 functional equivalent of probation and should be considered the same as  
2 probation by other states.

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

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

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

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

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

28 (b) "Criminal history" shall always include juvenile convictions  
29 for sex offenses and shall also include a defendant's other prior  
30 convictions in juvenile court if: (i) The conviction was for an

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

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

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

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

29 (16) "Drug offense" means:

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

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

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

10 (17) "Escape" means:

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

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

19 (18) "Felony traffic offense" means:

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

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

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

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

1 possession with intent to manufacture or deliver a controlled substance  
2 classified in schedule I or II that is a narcotic drug or the selling  
3 for profit (~~{of}~~) of any controlled substance or counterfeit  
4 substance classified in schedule I, RCW 69.50.204, except leaves and  
5 flowering tops of marihuana, and except as provided in (b) of this  
6 subsection, who previously has never been convicted of a felony in this  
7 state, federal court, or another state, and who has never participated  
8 in a program of deferred prosecution for a felony offense.

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

12 (21) "Nonviolent offense" means an offense which is not a violent  
13 offense.

14 (22) "Offender" means a person who has committed a felony  
15 established by state law and is eighteen years of age or older or is  
16 less than eighteen years of age but whose case has been transferred by  
17 the appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. Throughout this chapter, the terms "offender" and  
19 "defendant" are used interchangeably.

20 (23) "Partial confinement" means confinement for no more than one  
21 year in a facility or institution operated or utilized under contract  
22 by the state or any other unit of government, or, if home detention or  
23 work crew has been ordered by the court, in an approved residence, for  
24 a substantial portion of each day with the balance of the day spent in  
25 the community. Partial confinement includes work release, home  
26 detention, work crew, and a combination of work crew and home detention  
27 as defined in this section.

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

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

5 (26) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any  
7 drug (RCW 46.61.502), actual physical control while under the influence  
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
10 or

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

14 (27) "Serious violent offense" is a subcategory of violent offense  
15 and means:

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

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

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

26 (29) "Sex offense" means:

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

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

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

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

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

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

16 (33) "Violent offense" means:

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



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

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

7 (34) "Work crew" means a program of partial confinement consisting  
8 of civic improvement tasks for the benefit of the community of not less  
9 than thirty-five hours per week that complies with RCW 9.94A.135. The  
10 civic improvement tasks shall be performed on public property or on  
11 private property owned or operated by nonprofit entities, except that,  
12 for emergency purposes only, work crews may perform snow removal on any  
13 private property. The civic improvement tasks shall have minimal  
14 negative impact on existing private industries or the labor force in  
15 the county where the service or labor is performed. The civic  
16 improvement tasks shall not affect employment opportunities for people  
17 with developmental disabilities contracted through sheltered workshops  
18 as defined in RCW 82.04.385. Only those offenders sentenced to a  
19 facility operated or utilized under contract by a county are eligible  
20 to participate on a work crew. Offenders sentenced for a sex offense  
21 as defined in subsection (29) of this section are not eligible for the  
22 work crew program.

23 (35) "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 (36) "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, reckless burning in the first or second  
3 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
4 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in  
5 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home  
6 detention may be imposed for offenders convicted of possession of a  
7 controlled substance (RCW 69.50.401(d)) or forged prescription for a  
8 controlled substance (RCW 69.50.403) if the offender fulfills the  
9 participation conditions set forth in this subsection and is monitored  
10 for drug use by treatment alternatives to street crime (TASC) or a  
11 comparable court or agency-referred program.

12 (a) Home detention may be imposed for offenders convicted of  
13 burglary in the second degree as defined in RCW 9A.52.030 or  
14 residential burglary conditioned upon the offender: (i) Successfully  
15 completing twenty-one days in a work release program, (ii) having no  
16 convictions for burglary in the second degree or residential burglary  
17 during the preceding two years and not more than two prior convictions  
18 for burglary or residential burglary, (iii) having no convictions for  
19 a violent felony offense during the preceding two years and not more  
20 than two prior convictions for a violent felony offense, (iv) having no  
21 prior charges of escape, and (v) fulfilling the other conditions of the  
22 home detention program.

23 (b) Participation in a home detention program shall be conditioned  
24 upon: (i) The offender obtaining or maintaining current employment or  
25 attending a regular course of school study at regularly defined hours,  
26 or the offender performing parental duties to offspring or minors  
27 normally in the custody of the offender, (ii) abiding by the rules of  
28 the home detention program, and (iii) compliance with court-ordered  
29 legal financial obligations. The home detention program may also be  
30 made available to offenders whose charges and convictions do not

1 otherwise disqualify them if medical or health-related conditions,  
2 concerns or treatment would be better addressed under the home  
3 detention program, or where the health and welfare of the offender,  
4 other inmates, or staff would be jeopardized by the offender's  
5 incarceration. Participation in the home detention program for medical  
6 or health-related reasons is conditioned on the offender abiding by the  
7 rules of the home detention program and complying with court-ordered  
8 restitution.

9       **Sec. 2.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991  
10 c 104 s 3 are each reenacted and amended to read 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), and  
14 (9) of this section, the court shall impose a sentence within the  
15 sentence range 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)(a) In sentencing a first-time offender (~~the court may waive~~  
10 ~~the 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)) when the offense seriousness level is I, II, or III, the  
19 court shall waive imposition of a sentence within the standard range  
20 and impose a sentence with a confinement term not to exceed one-half  
21 of that prescribed in the standard range or ninety days, whichever is  
22 less, to be served in a facility operated or utilized under contract by  
23 the county and a requirement that the offender refrain from committing  
24 new offenses. The sentence shall also include up to one year of  
25 community supervision, that, in addition to crime-related prohibitions,  
26 may include one or more of the requirements listed in (c) of this  
27 subsection.

28 (b) In sentencing a first time offender when the offense  
29 seriousness level is IV or above, or an offender with only one prior  
30 conviction provided the offender met the definition of first time

1 offender and the standard range for the present offense is twelve  
2 months or less and is not a sex offense or violent offender, the court  
3 may waive the imposition of a sentence within the standard range and  
4 impose a sentence with a confinement term not to exceed one-half of  
5 that prescribed in the standard range or ninety days, whichever is  
6 less, to be served in a facility operated or utilized under contract by  
7 the county and a requirement that the offender refrain from committing  
8 new offenses. The sentence shall also include up to one year of  
9 community supervision, that, in addition to crime-related prohibitions,  
10 may include one or more of the requirements listed in (c) of this  
11 subsection.

12 (c) Sentences under (a) or (b) of this subsection shall require  
13 offenders to pay a ten dollar first time offender penalty fee to the  
14 department of corrections and may include one or more of the following  
15 requirements:

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

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

20 ~~(e))~~ for up to one year. Offenders convicted of an offense under  
21 chapter 69.50 or 69.52 RCW who are eligible for a sentence under this  
22 subsection that includes a treatment requirement are responsible for  
23 all treatment costs unless outpatient treatment is the required  
24 treatment and they are determined to be indigent according to  
25 department of corrections guidelines and are not eligible for drug  
26 treatment assistance from other public or private agencies. When the  
27 offenders are determined to be indigent and are not eligible for other  
28 public or private assistance the department shall spend such funds as  
29 may be appropriated or as available from the first time offender

1 penalty fees collected to cover the costs of outpatient drug treatment  
2 for indigent offenders;

3 (iii) Pursue a prescribed, secular course of study or vocational  
4 training;

5 ~~((d))~~ (iv) Remain within prescribed geographical boundaries and  
6 notify the court or the community corrections officer prior to any  
7 change in the offender's address or employment;

8 ~~((e))~~ (v) Report as directed to the court and a community  
9 corrections officer; or

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

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

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

27 The report of the examination shall include at a minimum the  
28 following: The defendant's version of the facts and the official  
29 version of the facts, the defendant's offense history, an assessment of  
30 problems in addition to alleged deviant behaviors, the offender's

1 social and employment situation, and other evaluation measures used.  
2 The report shall set forth the sources of the evaluator's information.

3 The examiner shall assess and report regarding the defendant's  
4 amenability to treatment and relative risk to the community. A  
5 proposed treatment plan shall be provided and shall include, at a  
6 minimum:

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

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

10 (C) Monitoring plans, including any requirements regarding living  
11 conditions, lifestyle requirements, and monitoring by family members  
12 and others;

13 (D) Anticipated length of treatment; and

14 (E) Recommended crime-related prohibitions.

15 The court on its own motion may order, or on a motion by the state  
16 shall order, a second examination regarding the offender's amenability  
17 to treatment. The evaluator shall be selected by the party making the  
18 motion. The defendant shall pay the cost of any second examination  
19 ordered unless the court finds the defendant to be indigent in which  
20 case the state shall pay the cost.

21 (ii) After receipt of the reports, the court shall consider whether  
22 the offender and the community will benefit from use of this special  
23 sexual offender sentencing alternative and consider the victim's  
24 opinion whether the offender should receive a treatment disposition  
25 under this subsection. If the court determines that this special sex  
26 offender sentencing alternative is appropriate, the court shall then  
27 impose a sentence within the sentence range. If this sentence is less  
28 than eight years of confinement, the court may suspend the execution of  
29 the sentence and impose the following conditions of suspension:

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

4 (B) The court shall order treatment for any period up to three  
5 years in duration. The court in its discretion shall order outpatient  
6 sex offender treatment or inpatient sex offender treatment, if  
7 available. A community mental health center may not be used for such  
8 treatment unless it has an appropriate program designed for sex  
9 offender treatment. The offender shall not change sex offender  
10 treatment providers or treatment conditions without first notifying the  
11 prosecutor, the community corrections officer, and the court, and shall  
12 not change providers without court approval after a hearing if the  
13 prosecutor or community corrections officer object to the change. In  
14 addition, as conditions of the suspended sentence, the court may impose  
15 other sentence conditions including up to six months of confinement,  
16 not to exceed the sentence range of confinement for that offense,  
17 crime-related prohibitions, and requirements that the offender perform  
18 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) Pay all court-ordered legal financial obligations as provided  
26 in RCW 9.94A.030, perform community service work, or any combination  
27 thereof; or

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



1 (iii) The sex offender therapist shall submit quarterly reports on  
2 the defendant's progress in treatment to the court and the parties.  
3 The report shall reference the treatment plan and include at a minimum  
4 the following: Dates of attendance, defendant's compliance with  
5 requirements, treatment activities, the defendant's relative progress  
6 in treatment, and any other material as specified by the court at  
7 sentencing.

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

24 (v) The court may revoke the suspended sentence at any time during  
25 the period of community supervision and order execution of the sentence  
26 if: (A) The defendant violates the conditions of the suspended  
27 sentence, or (B) the court finds that the defendant is failing to make  
28 satisfactory progress in treatment. All confinement time served during  
29 the period of community supervision shall be credited to the offender  
30 if the suspended sentence is revoked.

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

5 For purposes of this subsection, "victim" means any person who has  
6 sustained emotional, psychological, physical, or financial injury to  
7 person or property as a result of the crime charged. "Victim" also  
8 means a parent or guardian of a victim who is a minor child unless the  
9 parent or guardian is the perpetrator of the offense.

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

1 If the offender does not comply with the conditions of the  
2 treatment program, the secretary of social and health services may  
3 refer the matter to the sentencing court. The sentencing court shall  
4 commit the offender to the department of corrections to serve the  
5 balance of the term of confinement.

6 If the offender successfully completes the treatment program before  
7 the expiration of the term of confinement, the court may convert the  
8 balance of confinement to community supervision and may place  
9 conditions on the offender including crime-related prohibitions and  
10 requirements that the offender perform any one or more of the  
11 following:

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

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

16 (iii) Report as directed to the court and a community corrections  
17 officer;

18 (iv) Undergo available outpatient treatment.

19 If the offender violates any of the terms of community supervision,  
20 the court may order the offender to serve out the balance of the  
21 community supervision term in confinement in the custody of the  
22 department of corrections.

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

25 (c) When an offender commits any felony sex offense on or after  
26 July 1, 1987, and is sentenced to a term of confinement of more than  
27 one year but less than six years, the sentencing court may, on its own  
28 motion or on the motion of the offender or the state, request the  
29 department of corrections to evaluate whether the offender is amenable

1 to treatment and the department may place the offender in a treatment  
2 program within a correctional facility operated by the department.

3 Except for an offender who has been convicted of a violation of RCW  
4 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
5 before the expiration of his or her term of confinement, the department  
6 of corrections may request the court to convert the balance of  
7 confinement to community supervision and to place conditions on the  
8 offender including crime-related prohibitions and requirements that the  
9 offender perform any one or more of the following:

- 10 (i) Devote time to a specific employment or occupation;
- 11 (ii) Remain within prescribed geographical boundaries and notify  
12 the court or the community corrections officer prior to any change in  
13 the offender's address or employment;
- 14 (iii) Report as directed to the court and a community corrections  
15 officer;
- 16 (iv) Undergo available outpatient treatment.

17 If the offender violates any of the terms of his or her community  
18 supervision, the court may order the offender to serve out the balance  
19 of his community supervision term in confinement in the custody of the  
20 department of corrections.

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

25 (d) Offenders convicted and sentenced for a sex offense committed  
26 prior to July 1, 1987, may, subject to available funds, request an  
27 evaluation by the department of corrections to determine whether they  
28 are amenable to treatment. If the offender is determined to be  
29 amenable to treatment, the offender may request placement in a  
30 treatment program within a correctional facility operated by the

1 department. Placement in such treatment program is subject to  
2 available funds.

3 (8)(a) When a court sentences a person to a term of total  
4 confinement to the custody of the department of corrections for an  
5 offense categorized as a sex offense or a serious violent offense  
6 committed after July 1, 1988, but before July 1, 1990, assault in the  
7 second degree, any crime against a person where it is determined in  
8 accordance with RCW 9.94A.125 that the defendant or an accomplice was  
9 armed with a deadly weapon at the time of commission, or any felony  
10 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,  
11 1988, when such sentence is not imposed under subsection (9)(a)(ii) of  
12 this section, the court shall in addition to the other terms of the  
13 sentence, sentence the offender to a one-year term of community  
14 placement beginning either upon completion of the term of confinement  
15 or at such time as the offender is transferred to community custody in  
16 lieu of earned early release in accordance with RCW 9.94A.150 (1) and  
17 (2). When the court sentences an offender under this subsection to the  
18 statutory maximum period of confinement then the community placement  
19 portion of the sentence shall consist entirely of such community  
20 custody to which the offender may become eligible, in accordance with  
21 RCW 9.94A.150 (1) and (2). Any period of community custody actually  
22 served shall be credited against the community placement portion of the  
23 sentence.

24 (b) When a court sentences a person to a term of total confinement  
25 to the custody of the department of corrections for an offense  
26 categorized as a sex offense or serious violent offense committed on or  
27 after July 1, 1990, the court shall in addition to other terms of the  
28 sentence, sentence the offender to community placement for two years or  
29 up to the period of earned early release awarded pursuant to RCW  
30 9.94A.150 (1) and (2), whichever is longer. The community placement

1 shall begin either upon completion of the term of confinement or at  
2 such time as the offender is transferred to community custody in lieu  
3 of earned early release in accordance with RCW 9.94A.150 (1) and (2).  
4 When the court sentences an offender under this subsection to the  
5 statutory maximum period of confinement then the community placement  
6 portion of the sentence shall consist entirely of the community custody  
7 to which the offender may become eligible, in accordance with RCW  
8 9.94A.150 (1) and (2). Any period of community custody actually served  
9 shall be credited against the community placement portion of the  
10 sentence. Unless a condition is waived by the court, the terms of  
11 community placement for offenders sentenced pursuant to this section  
12 shall include the following conditions:

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

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

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

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

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

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

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

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

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

1 (iv) The offender shall not consume alcohol;

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

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

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

10 (9)(a)(i) When (A) a person is convicted of a violation of RCW  
11 69.50.401(a)(1)(i) through (iv) that is not the manufacture of  
12 methamphetamine, RCW 69.50.401(b) through (d), 69.50.403, or  
13 69.52.030(1) and the violation does not involve a sentence enhancement  
14 under RCW 9.94A.310 (3) or (5); (B) the person has no previous or other  
15 current convictions of a violent offense or a sex offense; and (C) the  
16 applicable sentence range is more than twelve months and not more than  
17 sixty months, the court may order a presentence investigation and  
18 special evaluation to determine whether the offender was a user of  
19 illegal controlled substances at the time the crime occurred and is in  
20 need of treatment for the use of illegal controlled substances. The  
21 court may waive the presentence investigation and special evaluation  
22 and forego the use of this drug offender treatment option if, based  
23 upon specific findings, the court determines that this treatment option  
24 is not appropriate.

25 The report of the special evaluation shall include at a minimum the  
26 following: The defendant's offense history, a qualified chemical  
27 dependency assessment, including current and historical involvement  
28 with alcohol and other drugs, substance use-related physiological and  
29 behavioral problems, any prior alcohol or drug treatment or education,  
30 employment history, and social support system, noting any additional

1 evaluation instruments or tools used. The evaluation report shall note  
2 sources of information.

3 The evaluator shall assess and report regarding the defendant's  
4 amenability to treatment and relative risk to the community. A  
5 proposed treatment plan shall be provided and shall include, at a  
6 minimum:

7 (I) Recommended treatment modality/modalities;

8 (II) Frequency of treatment contacts;

9 (III) Specific problems or issues to be addressed in treatment and  
10 method or description of treatment interventions;

11 (IV) Specific plan for monitoring compliance, including urinalysis  
12 testing and confirmation of positives via alternate testing  
13 methodology, breath analysis, any requirements regarding living  
14 conditions, lifestyle requirements, and monitoring by family members  
15 and others;

16 (V) Anticipated length of treatment;

17 (VI) Recommended crime-related prohibitions;

18 (VII) Offender's ability to self-pay postrelease treatment service  
19 costs; and

20 (VIII) Vocational rehabilitation issues.

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

27 (ii) After receipt of the report, the court shall consider whether  
28 the offender and the community will benefit from the use of the  
29 sentencing option for drug offender treatment. If the court determines  
30 that this sentencing option is appropriate, the court shall impose a



1 sentence within the applicable sentence range plus one additional year  
2 of confinement to be served on community custody and shall direct that:

3 (A) If the sentence is not more than thirty-six months that the  
4 offender shall serve at least six months in total confinement, with at  
5 least three months of total confinement served in a facility operated  
6 by the department; or

7 (B) If the sentence is more than thirty-six months but not more  
8 than sixty months that the offender shall serve at least twelve months  
9 of total confinement, with at least six months of total confinement  
10 served in a facility operated by the department.

11 The balance of the sentence shall be served in total confinement,  
12 partial confinement, or community custody at the direction of the  
13 department.

14 (b) The department shall provide a program of drug treatment to all  
15 persons sentenced under this subsection and shall adopt rules governing  
16 (i) the nature of the treatment program to be provided during total  
17 confinement, partial confinement, and community custody, (ii) the  
18 decision as to whether, after the initial six or twelve month period of  
19 total confinement the balance of the sentence shall be served in total  
20 confinement, partial confinement, or community custody, (iii) the  
21 conditions to be imposed upon offenders sentenced under this  
22 subsection, and (iv) the procedures to be employed and the sanctions to  
23 be imposed in the event of violation of the conditions.

24 (10) If the court imposes a sentence requiring confinement of  
25 thirty days or less, the court may, in its discretion, specify that the  
26 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  
14 whom 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, notifying the community  
4 corrections officer of any change in the offender's address or  
5 employment, and paying the supervision fee assessment.

6 ~~((13))~~ (14) All offenders sentenced to terms involving community  
7 supervision, community service, or community placement under the  
8 supervision of the department of corrections shall not own, use, or  
9 possess firearms or ammunition. Offenders who own, use, or are found  
10 to be in actual or constructive possession of firearms or ammunition  
11 shall be subject to the appropriate violation process and sanctions.  
12 "Constructive possession" as used in this subsection means the power  
13 and intent to control the firearm or ammunition. "Firearm" as used in  
14 this subsection means a weapon or device from which a projectile may be  
15 fired by an explosive such as gunpowder.

16 ~~((14))~~ (15) The sentencing court shall give the offender credit  
17 for all confinement time served before the sentencing if that  
18 confinement was solely in regard to the offense for which the offender  
19 is being sentenced.

20 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)  
21 and (2) governing whether sentences are to be served consecutively or  
22 concurrently is an exceptional sentence subject to the limitations in  
23 subsections (2) and (3) of this section, and may be appealed by the  
24 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

25 ~~((16))~~ (17) The court shall order restitution whenever the  
26 offender is convicted of a felony that results in injury to any person  
27 or damage to or loss of property, whether the offender is sentenced to  
28 confinement or placed under community supervision, unless extraordinary  
29 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in  
2 the record if it does not order restitution.

3 ~~((17))~~ (18) As a part of any sentence, the court may impose and  
4 enforce an order that relates directly to the circumstances of the  
5 crime for which the offender has been convicted, prohibiting the  
6 offender from having any contact with other specified individuals or a  
7 specific class of individuals for a period not to exceed the maximum  
8 allowable sentence for the crime, regardless of the expiration of the  
9 offender's term of community supervision or community placement.

10 ~~((18))~~ (19) In any sentence of partial confinement, the court may  
11 require the defendant to serve the partial confinement in work release,  
12 in a program of home detention, on work crew, or in a combined program  
13 of work crew and home detention.

14 ~~((19))~~ (20) All court-ordered legal financial obligations  
15 collected by the department and remitted to the county clerk shall be  
16 credited and paid where restitution is ordered. Restitution shall be  
17 paid prior to any other payments of monetary obligations.

18 **Sec. 3.** RCW 9.94A.150 and 1990 c 3 s 202 are each amended to read  
19 as follows:

20 No person serving a sentence imposed pursuant to this chapter and  
21 committed to the custody of the department shall leave the confines of  
22 the correctional facility or be released prior to the expiration of the  
23 sentence except as follows:

24 (1) Except as otherwise provided for in subsection (2) of this  
25 section, the term of the sentence of an offender committed to a  
26 correctional facility operated by the department, may be reduced by  
27 earned early release time in accordance with procedures that shall be  
28 developed and promulgated by the correctional agency having  
29 jurisdiction in which the offender is confined. The earned early

1 release time shall be for good behavior and good performance during  
2 total or partial confinement, as determined by the correctional agency  
3 having jurisdiction. The correctional agency shall not credit the  
4 offender with earned early release credits in advance of the offender  
5 actually earning the credits. Any program established pursuant to this  
6 section shall allow an offender to earn early release credits for  
7 presentence incarceration. If an offender is transferred from a county  
8 jail to the department of corrections, the county jail facility shall  
9 certify to the department the amount of time spent in custody at the  
10 facility and the amount of earned early release time. In the case of  
11 an offender convicted of a serious violent offense or a sex offense  
12 that is a class A felony committed on or after July 1, 1990, the  
13 aggregate earned early release time may not exceed fifteen percent of  
14 the sentence. In no other case shall the aggregate earned early  
15 release time exceed one-third of the total sentence;

16 (2) A person convicted of a sex offense or an offense categorized  
17 as a serious violent offense, assault in the second degree, any crime  
18 against a person where it is determined in accordance with RCW  
19 9.94A.125 that the defendant or an accomplice was armed with a deadly  
20 weapon at the time of commission, or any felony offense under chapter  
21 69.50 or 69.52 RCW may become eligible, in accordance with a program  
22 developed by the department, for transfer to community custody status  
23 in lieu of earned early release time pursuant to subsection (1) of this  
24 section;

25 (3) An offender may leave a correctional facility pursuant to an  
26 authorized furlough or leave of absence. In addition, offenders may  
27 leave a correctional facility when in the custody of a corrections  
28 officer or officers;

29 (4) The governor, upon recommendation from the clemency and pardons  
30 board, may grant an extraordinary release for reasons of serious health

1 problems, senility, advanced age, extraordinary meritorious acts, or  
2 other extraordinary circumstances;

3 (5) No more than the final six months of the sentence may be served  
4 in partial confinement designed to aid the offender in finding work and  
5 reestablishing him or herself in the community, but this subsection  
6 shall not apply to a sentence imposed under RCW 9.94A.120(9);

7 (6) The governor may pardon any offender;

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

11 (8) An offender may leave a correctional facility prior to  
12 completion of his or her sentence if the sentence has been reduced as  
13 provided in RCW 9.94A.160.

14 **Sec. 4.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read  
15 as follows:

16 (1) A sentence within the standard range for the offense shall not  
17 be appealed. For purposes of this section, a sentence imposed (~~on a~~  
18 ~~first offender~~) under RCW 9.94A.120(5) or (9) shall also be deemed to  
19 be within the standard range for the offense and shall not be appealed.

20 (2) A sentence outside the sentence range for the offense is  
21 subject to appeal by the defendant or the state. The appeal shall be  
22 to the court of appeals in accordance with rules adopted by the supreme  
23 court.

24 (3) Pending review of the sentence, the sentencing court or the  
25 court of appeals may order the defendant confined or placed on  
26 conditional release, including bond.

27 (4) To reverse a sentence which is outside the sentence range, the  
28 reviewing court must find: (a) Either that the reasons supplied by the  
29 sentencing judge are not supported by the record which was before the

1 judge or that those reasons do not justify a sentence outside the  
2 standard range for that offense; or (b) that the sentence imposed was  
3 clearly excessive or clearly too lenient.

4 (5) A review under this section shall be made solely upon the  
5 record that was before the sentencing court. Written briefs shall not  
6 be required and the review and decision shall be made in an expedited  
7 manner according to rules adopted by the supreme court.

8 (6) The court of appeals shall issue a written opinion in support  
9 of its decision whenever the judgment of the sentencing court is  
10 reversed and may issue written opinions in any other case where the  
11 court believes that a written opinion would provide guidance to  
12 sentencing judges and others in implementing this chapter and in  
13 developing a common law of sentencing within the state.

14 (7) The department may petition for a review of a sentence  
15 committing an offender to the custody or jurisdiction of the  
16 department. The review shall be limited to errors of law. Such  
17 petition shall be filed with the court of appeals no later than ninety  
18 days after the department has actual knowledge of terms of the  
19 sentence. The petition shall include a certification by the department  
20 that all reasonable efforts to resolve the dispute at the superior  
21 court level have been exhausted.

22 NEW SECTION. **Sec. 5.** If specific funding for the purposes of  
23 this act, referencing this act by bill number, is not provided by June  
24 30, 1992, in the omnibus appropriations act, this act shall be null and  
25 void.