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SENATE BILL 6210

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State of Washington                      52nd Legislature                      1992 Regular Session

By Senators Thorsness, Niemi, Nelson, Erwin, Newhouse and M. Kreidler

Read first time 01/21/92. Referred to Committee on Law & Justice.

1            AN ACT Relating to sentencing options for select nonviolent  
2 offenders; amending RCW 9.94A.150, 9.94A.180, 9.94A.205, 9.94A.210,  
3 9.94A.310, 9.94A.370, and 9.94A.410; reenacting and amending RCW  
4 9.94A.030 and 9.94A.120; creating a new section; and prescribing  
5 penalties.

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

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

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

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

1 financial obligation, receiving payment thereof from the offender, and,  
2 consistent with current law, delivering daily the entire payment to the  
3 superior court clerk without depositing it in a departmental account.

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

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

9 (4) "Community custody" means that portion of an inmate's sentence  
10 of confinement in lieu of earned early release time, or a sentence  
11 under RCW 9.94A.120(5) or (9), served in the community subject to  
12 controls placed on the inmate's movement and activities by the  
13 department of corrections.

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

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

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

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

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

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

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

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

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

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

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

9 (13) "Day supervision" means daily face-to-face contact between a  
10 community corrections officer, or designee, and an offender for  
11 purposes of monitoring and facilitating an offender's compliance with  
12 sentence requirements.

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

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

22 ((~~15~~)) (16) "Disposable earnings" means that part of the earnings  
23 of an individual remaining after the deduction from those earnings of  
24 any amount required by law to be withheld. For the purposes of this  
25 definition, "earnings" means compensation paid or payable for personal  
26 services, whether denominated as wages, salary, commission, bonuses, or  
27 otherwise, and, notwithstanding any other provision of law making the  
28 payments exempt from garnishment, attachment, or other process to  
29 satisfy a court-ordered legal financial obligation, specifically  
30 includes periodic payments pursuant to pension or retirement programs,

1 or insurance policies of any type, but does not include payments made  
2 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
3 or Title 74 RCW.

4 (~~(16)~~) (17) "Drug offense" means:

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

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

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

14 (~~(17)~~) (18) "Escape" means:

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

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

23 (~~(18)~~) (19) "Felony traffic offense" means:

24 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
25 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
26 and-run injury-accident (RCW 46.52.020(4)); or

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

1       (~~(19)~~) (20) "Fines" means the requirement that the offender pay  
2 a specific sum of money over a specific period of time to the court.

3       (~~(20)~~) (21)(a) "First-time offender" means any person who is  
4 convicted of a felony (i) not classified as a violent offense or a sex  
5 offense under this chapter, or (ii) that is not the manufacture,  
6 delivery, or possession with intent to manufacture or deliver a  
7 controlled substance classified in schedule I or II that is a narcotic  
8 drug or the selling for profit (~~{of}~~) of any controlled substance or  
9 counterfeit substance classified in schedule I, RCW 69.50.204, except  
10 leaves and flowering tops of marihuana, and except as provided in (b)  
11 of this subsection, who previously has never been convicted of a felony  
12 in this state, federal court, or another state, and who has never  
13 participated in a program of deferred prosecution for a felony offense.

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

17       (~~(21)~~) (22) "Intensive supervision" means three to six face-to-  
18 face contacts per month between a community corrections officer and an  
19 offender for purposes of monitoring an offender's progress and  
20 compliance with sentence conditions.

21       (23) "Nonviolent offense" means an offense which is not a violent  
22 offense.

23       (~~(22)~~) (24) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case has been transferred by  
26 the appropriate juvenile court to a criminal court pursuant to RCW  
27 13.40.110. Throughout this chapter, the terms "offender" and  
28 "defendant" are used interchangeably.

29       (~~(23)~~) (25) "Partial confinement" means confinement for no more  
30 than one year in a facility or institution operated or utilized under

1 contract by the state or any other unit of government, or, if home  
2 detention or work crew has been ordered by the court, in an approved  
3 residence, for a substantial portion of each day with the balance of  
4 the day spent in the community. Partial confinement includes work  
5 release, home detention, work crew, and a combination of work crew and  
6 home detention as defined in this section.

7 ~~((24))~~ (26) "Postrelease supervision" is that portion of an  
8 offender's community placement that is not community custody.

9 ~~((25))~~ (27) "Punishment units" means an interchangeable  
10 measurement of severity imposed by the court under RCW 9.94A.120(5).

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

15 ~~((26))~~ (29) "Serious traffic offense" means:

16 (a) Driving while under the influence of intoxicating liquor or any  
17 drug (RCW 46.61.502), actual physical control while under the influence  
18 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
19 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
20 or

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

24 ~~((27))~~ (30) "Serious violent offense" is a subcategory of violent  
25 offense and means:

26 (a) Murder in the first degree, homicide by abuse, murder in the  
27 second degree, assault in the first degree, kidnapping in the first  
28 degree, or rape in the first degree, or an attempt, criminal  
29 solicitation, or criminal conspiracy to commit one of these felonies;  
30 or

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

4 (~~(28)~~) (31) "Sentence range" means the sentencing court's  
5 discretionary range in imposing a nonappealable sentence.

6 (~~(29)~~) (32) "Sex offense" means:

7 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
8 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
9 attempt, criminal solicitation, or criminal conspiracy to commit such  
10 crimes;

11 (b) A felony with a finding of sexual motivation under RCW  
12 9.94A.127; or

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

16 (~~(30)~~) (33) "Sexual motivation" means that one of the purposes  
17 for which the defendant committed the crime was for the purpose of his  
18 or her sexual gratification.

19 (~~(31)~~) (34) "Total confinement" means confinement inside the  
20 physical boundaries of a facility or institution operated or utilized  
21 under contract by the state or any other unit of government for twenty-  
22 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

23 (~~(32)~~) (35) "Victim" means any person who has sustained  
24 emotional, psychological, physical, or financial injury to person or  
25 property as a direct result of the crime charged.

26 (~~(33)~~) (36) "Violent offense" means:

27 (a) Any of the following felonies, as now existing or hereafter  
28 amended: Any felony defined under any law as a class A felony or an  
29 attempt to commit a class A felony, criminal solicitation of or  
30 criminal conspiracy to commit a class A felony, manslaughter in the



1 first degree, manslaughter in the second degree, indecent liberties if  
2 committed by forcible compulsion, kidnapping in the second degree,  
3 arson in the second degree, assault in the second degree, extortion in  
4 the first degree, robbery in the second degree, vehicular assault, and  
5 vehicular homicide, when proximately caused by the driving of any  
6 vehicle by any person while under the influence of intoxicating liquor  
7 or any drug as defined by RCW 46.61.502, or by the operation of any  
8 vehicle in a reckless manner;

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

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

15 (~~((34))~~) (37) "Work crew" means a program of partial confinement  
16 consisting of civic improvement tasks for the benefit of the community  
17 of not less than thirty-five hours per week that complies with RCW  
18 9.94A.135. The civic improvement tasks shall be performed on public  
19 property or on private property owned or operated by nonprofit  
20 entities, except that, for emergency purposes only, work crews may  
21 perform snow removal on any private property. The civic improvement  
22 tasks shall have minimal negative impact on existing private industries  
23 or the labor force in the county where the service or labor is  
24 performed. The civic improvement tasks shall not affect employment  
25 opportunities for people with developmental disabilities contracted  
26 through sheltered workshops as defined in RCW 82.04.385. Only those  
27 offenders sentenced to a facility operated or utilized under contract  
28 by a county are eligible to participate on a work crew. Offenders  
29 sentenced for a sex offense as defined in subsection (29) of this  
30 section are not eligible for the work crew program.

1       (~~(35)~~) (38) "Work release" means a program of partial confinement  
2 available to offenders who are employed or engaged as a student in a  
3 regular course of study at school. Participation in work release shall  
4 be conditioned upon the offender attending work or school at regularly  
5 defined hours and abiding by the rules of the work release facility.

6       (~~(36)~~) (39) "Home detention" means a program of partial  
7 confinement available to offenders wherein the offender is confined in  
8 a private residence subject to electronic surveillance. Home detention  
9 may not be imposed for offenders convicted of a violent offense, any  
10 sex offense, any drug offense, reckless burning in the first or second  
11 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third  
12 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in  
13 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home  
14 detention may be imposed for offenders convicted of possession of a  
15 controlled substance (RCW 69.50.401(d)) or forged prescription for a  
16 controlled substance (RCW 69.50.403) if the offender fulfills the  
17 participation conditions set forth in this subsection and is monitored  
18 for drug use by treatment alternatives to street crime (TASC) or a  
19 comparable court or agency-referred program.

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

1 (b) Participation in a home detention program shall be conditioned  
2 upon: (i) The offender obtaining or maintaining current employment or  
3 attending a regular course of school study at regularly defined hours,  
4 or the offender performing parental duties to offspring or minors  
5 normally in the custody of the offender, (ii) abiding by the rules of  
6 the home detention program, and (iii) compliance with court-ordered  
7 legal financial obligations. The home detention program may also be  
8 made available to offenders whose charges and convictions do not  
9 otherwise disqualify them if medical or health-related conditions,  
10 concerns or treatment would be better addressed under the home  
11 detention program, or where the health and welfare of the offender,  
12 other inmates, or staff would be jeopardized by the offender's  
13 incarceration. Participation in the home detention program for medical  
14 or health-related reasons is conditioned on the offender abiding by the  
15 rules of the home detention program and complying with court-ordered  
16 restitution.

17 **Sec. 2.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991  
18 c 104 s 3 are each reenacted and amended to read as follows:

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

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

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

28 (3) Whenever a sentence outside the standard range is imposed, the  
29 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range  
2 shall be a determinate sentence.

3 (4) An offender convicted of the crime of murder in the first  
4 degree shall be sentenced to a term of total confinement not less than  
5 twenty years. An offender convicted of the crime of assault in the  
6 first degree where the offender used force or means likely to result in  
7 death or intended to kill the victim shall be sentenced to a term of  
8 total confinement not less than five years. An offender convicted of  
9 the crime of rape in the first degree shall be sentenced to a term of  
10 total confinement not less than five years, and shall not be eligible  
11 for furlough, work release or other authorized leave of absence from  
12 the correctional facility during such minimum five-year term except for  
13 the purpose of commitment to an inpatient treatment facility. The  
14 foregoing minimum terms of total confinement are mandatory and shall  
15 not be varied or modified as provided in subsection (2) of this  
16 section.

17 (5) In sentencing a first-time offender (~~the court may waive the~~  
18 ~~imposition of a sentence within the sentence range and impose a~~  
19 ~~sentence which may include up to ninety days of confinement in a~~  
20 ~~facility operated or utilized under contract by the county and a~~  
21 ~~requirement that the offender refrain from committing new offenses.~~  
22 ~~The sentence may also include up to two years of community supervision,~~  
23 ~~which, in addition to crime-related prohibitions, may include~~  
24 ~~requirements that the offender perform any one or more of the~~  
25 ~~following:~~

26 (a) ~~Devote time to a specific employment or occupation;~~

27 (b) ~~Undergo available outpatient treatment for up to two years, or~~  
28 ~~inpatient treatment not to exceed the standard range of confinement for~~  
29 ~~that offense;~~

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

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

6       ~~(e) Report as directed to the court and a community corrections~~  
7 ~~officer; or~~

8       ~~(f) Pay all court ordered legal financial obligations as provided~~  
9 ~~in RCW 9.94A.030 and/or perform community service work.))~~ or an  
10 offender with a current nonviolent offense conviction, excluding sex  
11 offenses, and no prior convictions for a violent offense or serious  
12 violent offense, if the current offense has a sentence range of zero to  
13 twelve months and the court finds that the community and the offender  
14 would benefit from community-based punishment, the court may waive the  
15 imposition of a sentence within the standard range and impose a  
16 determinate sentence under this subsection.

17       Sentences under this subsection shall be imposed in the form of  
18 punishment units in some combination of total confinement, work  
19 release, home detention, work crew, community service, treatment,  
20 training and rehabilitative programs, intensive supervision, and day  
21 supervision. Punishment units shall be credited as follows:

22       (a) One punishment unit equals one day of total confinement, one  
23 day of work release, one day of home detention, eight hours of  
24 community service, or seven hours of work crew.

25       (b) Fifteen punishment units equal one month of day supervision or  
26 two months of intensive supervision.

27       (c) Thirty punishment units equal one completed in-patient or out-  
28 patient treatment program for medical, emotional, or substance abuse  
29 problems or one completed educational, vocational, or employment-  
30 related program.

1       (d) Sixty punishment units equal one completed residential  
2 treatment program, including aftercare requirements.

3       Except during total or partial confinement, persons sentenced under  
4 this subsection shall be in community custody under procedures and  
5 sanctions developed by the department under RCW 9.94A.205.

6       (6) If a sentence range has not been established for the  
7 defendant's crime, the court shall impose a determinate sentence which  
8 may include not more than one year of confinement, community service  
9 work, a term of community supervision not to exceed one year, and/or  
10 other legal financial obligations. For offenders sentenced under  
11 subsection (5) of this section and who meet the definition of first-  
12 time offender under RCW 9.94A.030, the maximum sentence is sixty  
13 punishment units. The maximum sentence for those who are not first-  
14 time offenders is one hundred twenty punishment units. The court may  
15 impose a sentence which provides more than one year of confinement if  
16 the court finds, considering the purpose of this chapter, that there  
17 are substantial and compelling reasons justifying an exceptional  
18 sentence.

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

26       The report of the examination shall include at a minimum the  
27 following: The defendant's version of the facts and the official  
28 version of the facts, the defendant's offense history, an assessment of  
29 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 shall 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.180 and 1991 c 181 s 4 are each amended to read  
15 as follows:

16 (1) An offender sentenced to a term of partial confinement shall be  
17 confined in the facility for at least eight hours per day or, if  
18 serving a work crew sentence shall comply with the conditions of that  
19 sentence as set forth in RCW 9.94A.030(23) and 9.94A.135. The offender  
20 shall be required as a condition of partial confinement to report to  
21 the facility at designated times. An offender may be required to  
22 comply with crime-related prohibitions during the period of partial  
23 confinement.

24 (2) An offender in a county jail ordered to serve all or part of a  
25 term of less than one year in work release, work crew, or a program of  
26 home detention who violates the rules of the work release facility,  
27 work crew, or program of home detention or fails to remain employed or  
28 enrolled in school may be transferred to the appropriate county  
29 detention facility without further court order but shall, upon request,

1 be notified of the right to request an administrative hearing on the  
2 issue of whether or not the offender failed to comply with the order  
3 and relevant conditions. Pending such hearing, or in the absence of a  
4 request for the hearing, the offender shall serve the remainder of the  
5 term of confinement as total confinement. This subsection shall not  
6 affect transfer or placement of offenders committed to the state  
7 department of corrections or offenders sentenced under RCW  
8 9.94A.120(5).

9 **Sec. 5.** RCW 9.94A.205 and 1988 c 153 s 4 are each amended to read  
10 as follows:

11 If an inmate violates any condition or requirement of community  
12 custody, the department may transfer the inmate to a more restrictive  
13 confinement status to serve the remaining portion of the sentence, less  
14 credit for any period actually spent in community custody or in  
15 detention awaiting disposition of an alleged violation. If an inmate  
16 is accused of violating any condition or requirement of community  
17 custody, he or she is entitled to a hearing before the department prior  
18 to the imposition of sanctions. The hearing shall be considered as  
19 inmate disciplinary proceedings and shall not be subject to chapter  
20 34.05 RCW. The department shall develop hearing procedures and  
21 sanctions.

22 For offenders sentenced under RCW 9.94A.120(5), sanctions imposed  
23 by the department may not exceed the difference between the punishment  
24 units completed by the offender and the number of punishment units  
25 imposed by the court. Sanctions beyond the punishment units ordered by  
26 the court, not to exceed the upper limit of the sentence range, must be  
27 imposed by the court.

1       **Sec. 6.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read  
2 as follows:

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

7       (2) A sentence outside the sentence range for the offense is  
8 subject to appeal by the defendant or the state. The appeal shall be  
9 to the court of appeals in accordance with rules adopted by the supreme  
10 court.

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

14       (4) To reverse a sentence which is outside the sentence range, the  
15 reviewing court must find: (a) Either that the reasons supplied by the  
16 sentencing judge are not supported by the record which was before the  
17 judge or that those reasons do not justify a sentence outside the  
18 standard range for that offense; or (b) that the sentence imposed was  
19 clearly excessive or clearly too lenient.

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

24       (6) The court of appeals shall issue a written opinion in support  
25 of its decision whenever the judgment of the sentencing court is  
26 reversed and may issue written opinions in any other case where the  
27 court believes that a written opinion would provide guidance to  
28 sentencing judges and others in implementing this chapter and in  
29 developing a common law of sentencing within the state.



1 (7) The department may petition for a review of a sentence  
 2 committing an offender to the custody or jurisdiction of the  
 3 department. The review shall be limited to errors of law. Such  
 4 petition shall be filed with the court of appeals no later than ninety  
 5 days after the department has actual knowledge of terms of the  
 6 sentence. The petition shall include a certification by the department  
 7 that all reasonable efforts to resolve the dispute at the superior  
 8 court level have been exhausted.

9 **Sec. 7.** RCW 9.94A.310 and 1991 c 32 s 2 are each amended to read  
 10 as follows:

11 (1)

TABLE 1

12

13

Sentencing Grid

14 SERIOUSNESS

15 SCORE

OFFENDER SCORE

16 9 or

17 0 1 2 3 4 5 6 7 8 more

18 .....

19 XV Life Sentence without Parole/Death Penalty

20 .....

21 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m 36y 40y

22 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-

23 320 333 347 361 374 388 416 450 493 548

24 .....

1	XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
2		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
3		164	178	192	205	219	233	260	288	342	397
4	.....										
5	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
6		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
7		123	136	147	160	171	184	216	236	277	318
8	.....										
9	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
10		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
11		102	114	125	136	147	158	194	211	245	280
12	.....										
13	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
14		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
15		68	75	82	89	96	102	130	144	171	198
16	.....										
17	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
18		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
19		41	48	54	61	68	75	102	116	144	171
20	.....										
21	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
22		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
23		27	34	41	48	54	61	89	102	116	144
24	.....										
25	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
26		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
27		20	27	34	41	48	54	75	89	102	116
28	.....										

1	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
2		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
3		14	20	27	34	41	48	61	75	89	102
4	.....										
5	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
6		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
7		12	14	17	20	29	43	54	68	82	96
8		<u>180</u>									
9	.....										
10	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
11		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
12		9	12	14	17	20	29	43	57	70	84
13		<u>120</u>	<u>180</u>								
14	.....										
15	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
16		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
17		3	8	12	12	16	22	29	43	57	68
18		<u>75</u>	<u>120</u>	<u>150</u>	<u>270</u>						
19	.....										
20	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
21		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
22		Days	6	9	12	14	18	22	29	43	57
23		<u>60</u>	<u>90</u>	<u>120</u>	<u>150</u>						
24	.....										
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28		<u>60</u>	<u>60</u>	<u>90</u>	<u>90</u>	<u>120</u>	<u>150</u>				
29	.....										

1 NOTE: Numbers in the first horizontal row of each seriousness category  
2 represent sentencing midpoints in years(y) and months(m). Numbers in  
3 the second and third rows represent presumptive sentencing ranges in  
4 months, or in days if so designated. Numbers in the fourth rows  
5 indicate punishment units under RCW 9.94A.120(5). 12+ equals one year  
6 and one day.

7 (2) For persons convicted of the anticipatory offenses of criminal  
8 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
9 presumptive sentence is determined by locating the sentencing grid  
10 sentence range defined by the appropriate offender score and the  
11 seriousness level of the completed crime, and multiplying the range by  
12 75 percent. For persons sentenced under RCW 9.94A.120(5), the  
13 presumptive sentence is determined by multiplying the punishment units  
14 in the sentence range by 75 percent.

15 (3) The following additional times shall be added to the  
16 presumptive sentence if the offender or an accomplice was armed with a  
17 deadly weapon as defined in this chapter and the offender is being  
18 sentenced for one of the crimes listed in this subsection. If the  
19 offender or an accomplice was armed with a deadly weapon and the  
20 offender is being sentenced for an anticipatory offense under chapter  
21 9A.28 RCW to commit one of the crimes listed in this subsection, the  
22 following times shall be added to the presumptive range determined  
23 under subsection (2) of this section:

24 (a) 24 months for Rape 1 (RCW 9A.44.040), Robbery 1 (RCW  
25 9A.56.200), or Kidnapping 1 (RCW 9A.40.020)

26 (b) 18 months for Burglary 1 (RCW 9A.52.020)

27 (c) 12 months for Assault 2 (RCW 9A.36.020 or 9A.36.021), Escape 1  
28 (RCW 9A.76.110), Kidnapping 2 (RCW 9A.40.030), Burglary 2 of a building

1 other than a dwelling (RCW 9A.52.030), Theft of Livestock 1 or 2 (RCW  
2 9A.56.080), or any drug offense.

3 (4) The following additional times shall be added to the  
4 presumptive sentence if the offender or an accomplice committed the  
5 offense while in a county jail or state correctional facility as that  
6 term is defined in this chapter and the offender is being sentenced for  
7 one of the crimes listed in this subsection. If the offender or an  
8 accomplice committed one of the crimes listed in this subsection while  
9 in a county jail or state correctional facility as that term is defined  
10 in this chapter, and the offender is being sentenced for an  
11 anticipatory offense under chapter 9A.28 RCW to commit one of the  
12 crimes listed in this subsection, the following times shall be added to  
13 the presumptive sentence range determined under subsection (2) of this  
14 section:

15 (a) Eighteen months for offenses committed under RCW  
16 69.50.401(a)(1)(i) or 69.50.410;

17 (b) Fifteen months for offenses committed under RCW  
18 69.50.401(a)(1)(ii), (iii), and (iv);

19 (c) Twelve months for offenses committed under RCW 69.50.401(d).

20 For the purposes of this subsection, all of the real property of a  
21 state correctional facility or county jail shall be deemed to be part  
22 of that facility or county jail.

23 (5) An additional twenty-four months shall be added to the  
24 presumptive sentence for any ranked offense involving a violation of  
25 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

26 (6) For persons who are first-time offenders and who are sentenced  
27 under RCW 9.94A.120(5), 180 punishment units shall be the maximum  
28 sentence.

1       **Sec. 8.** RCW 9.94A.370 and 1989 c 124 s 2 are each amended to read  
2 as follows:

3       (1) The intersection of the column defined by the offender score  
4 and the row defined by the offense seriousness score determines the  
5 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The  
6 additional time for deadly weapon findings or for those offenses  
7 enumerated in RCW (~~(9.94A.310(4))~~) 9.94A.310(5) that were committed in  
8 a state correctional facility or county jail shall be added to the  
9 entire presumptive sentence range. The court may impose any sentence  
10 within the range that it deems appropriate. All presumptive sentence  
11 ranges are expressed in terms of total confinement or punishment units.

12       (2) In determining any sentence, the trial court may rely on no  
13 more information than is admitted by the plea agreement, or admitted,  
14 acknowledged, or proved in a trial or at the time of sentencing.  
15 Acknowledgement includes not objecting to information stated in the  
16 presentence reports. Where the defendant disputes material facts, the  
17 court must either not consider the fact or grant an evidentiary hearing  
18 on the point. The facts shall be deemed proved at the hearing by a  
19 preponderance of the evidence. Facts that establish the elements of a  
20 more serious crime or additional crimes may not be used to go outside  
21 the presumptive sentence range except upon stipulation or when  
22 specifically provided for in RCW 9.94A.390(2) (c), (d), and (~~(e)~~)  
23 (f).

24       **Sec. 9.** RCW 9.94A.410 and 1986 c 257 s 29 are each amended to read  
25 as follows:

26       For persons convicted of the anticipatory offenses of criminal  
27 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
28 presumptive sentence is determined by locating the sentencing grid  
29 sentence range defined by the appropriate offender score and the

1 seriousness level of the crime, and multiplying the range by 75  
2 percent. For persons sentenced under RCW 9.94A.120(5), the presumptive  
3 sentence is determined by multiplying the punishment units in the  
4 sentence range by 75 percent.

5 In calculating an offender score, count each prior conviction as if  
6 the present conviction were for the completed offense. When these  
7 convictions are used as criminal history, score them the same as a  
8 completed crime.

9 NEW SECTION. Sec. 10. If specific funding to the department of  
10 corrections for the purposes of providing drug treatment and  
11 supervision for offenders sentenced under RCW 9.94A.120(9), as amended  
12 by this act, is not provided by June 30, 1992, in the supplemental  
13 omnibus appropriations act, this act is null and void.