
HOUSE BILL 1091

State of Washington

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1999 Regular Session

By Representatives Barlean and Ericksen

Read first time 01/14/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sex offender sentencing; amending RCW 9.94A.120,
2 9.94A.030, 9.94A.123, 9.94A.130, 9.94A.137, 9.94A.205, 9.94A.440,
3 18.155.010, 18.155.020, 18.155.030, 72.09.340, and 88.12.033; and
4 creating a new section.

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

6 **Sec. 1.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read
7 as follows:

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

10 (1) Except as authorized in subsections (2), (4), (5), and (6)~~((7~~
11 ~~and (8))~~) of this section, the court shall impose a sentence within the
12 sentence range for the offense.

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

17 (3) Whenever a sentence outside the standard range is imposed, the
18 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) A persistent offender shall be sentenced to a term of total
4 confinement for life without the possibility of parole or, when
5 authorized by RCW 10.95.030 for the crime of aggravated murder in the
6 first degree, sentenced to death, notwithstanding the maximum sentence
7 under any other law. An offender convicted of the crime of murder in
8 the first degree shall be sentenced to a term of total confinement not
9 less than twenty years. An offender convicted of the crime of assault
10 in the first degree or assault of a child in the first degree where the
11 offender used force or means likely to result in death or intended to
12 kill the victim shall be sentenced to a term of total confinement not
13 less than five years. An offender convicted of the crime of rape in
14 the first degree shall be sentenced to a term of total confinement not
15 less than five years. The foregoing minimum terms of total confinement
16 are mandatory and shall not be varied or modified as provided in
17 subsection (2) of this section. In addition, all offenders subject to
18 the provisions of this subsection shall not be eligible for community
19 custody, earned early release time, furlough, home detention, partial
20 confinement, work crew, work release, or any other form of early
21 release as defined under RCW 9.94A.150 (1), (2), (3), (5), or (7), (~~or~~
22 ~~(8)~~) or any other form of authorized leave of absence from the
23 correctional facility while not in the direct custody of a corrections
24 officer or officers during such minimum terms of total confinement
25 except in the case of an offender in need of emergency medical
26 treatment or for the purpose of commitment to an inpatient treatment
27 facility in the case of an offender convicted of the crime of rape in
28 the first degree.

29 (5) In sentencing a first-time offender the court may waive the
30 imposition of a sentence within the sentence range and impose a
31 sentence which may include up to ninety days of confinement in a
32 facility operated or utilized under contract by the county and a
33 requirement that the offender refrain from committing new offenses.
34 The sentence may also include up to two years of community supervision,
35 which, in addition to crime-related prohibitions, may include
36 requirements that the offender perform any one or more of the
37 following:

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

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

4 (c) Pursue a prescribed, secular course of study or vocational
5 training;

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

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

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

13 (6)(a) An offender is eligible for the special drug offender
14 sentencing alternative if:

15 (i) The offender is convicted of the manufacture, delivery, or
16 possession with intent to manufacture or deliver a controlled substance
17 classified in Schedule I or II that is a narcotic drug or a felony that
18 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
19 criminal solicitation, or criminal conspiracy to commit such crimes,
20 and the violation does not involve a sentence enhancement under RCW
21 9.94A.310 (3) or (4);

22 (ii) The offender has no prior convictions for a felony in this
23 state, another state, or the United States; and

24 (iii) The offense involved only a small quantity of the particular
25 controlled substance as determined by the judge upon consideration of
26 such factors as the weight, purity, packaging, sale price, and street
27 value of the controlled substance.

28 (b) If the midpoint of the standard range is greater than one year
29 and the sentencing judge determines that the offender is eligible for
30 this option and that the offender and the community will benefit from
31 the use of the special drug offender sentencing alternative, the judge
32 may waive imposition of a sentence within the standard range and impose
33 a sentence that must include a period of total confinement in a state
34 facility for one-half of the midpoint of the standard range. During
35 incarceration in the state facility, offenders sentenced under this
36 subsection shall undergo a comprehensive substance abuse assessment and
37 receive, within available resources, treatment services appropriate for
38 the offender. The treatment services shall be designed by the division
39 of alcohol and substance abuse of the department of social and health

1 services, in cooperation with the department of corrections. If the
2 midpoint of the standard range is twenty-four months or less, no more
3 than three months of the sentence may be served in a work release
4 status. The court shall also impose one year of concurrent community
5 custody and community supervision that must include appropriate
6 outpatient substance abuse treatment, crime-related prohibitions
7 including a condition not to use illegal controlled substances, and a
8 requirement to submit to urinalysis or other testing to monitor that
9 status. The court may require that the monitoring for controlled
10 substances be conducted by the department or by a treatment
11 alternatives to street crime program or a comparable court or agency-
12 referred program. The offender may be required to pay thirty dollars
13 per month while on community custody to offset the cost of monitoring.
14 In addition, the court shall impose three or more of the following
15 conditions:

- 16 (i) Devote time to a specific employment or training;
 - 17 (ii) Remain within prescribed geographical boundaries and notify
18 the court or the community corrections officer before any change in the
19 offender's address or employment;
 - 20 (iii) Report as directed to a community corrections officer;
 - 21 (iv) Pay all court-ordered legal financial obligations;
 - 22 (v) Perform community service work;
 - 23 (vi) Stay out of areas designated by the sentencing judge.
- 24 (c) If the offender violates any of the sentence conditions in (b)
25 of this subsection, the department shall impose sanctions
26 administratively, with notice to the prosecuting attorney and the
27 sentencing court. Upon motion of the court or the prosecuting
28 attorney, a violation hearing shall be held by the court. If the court
29 finds that conditions have been willfully violated, the court may
30 impose confinement consisting of up to the remaining one-half of the
31 midpoint of the standard range. All total confinement served during
32 the period of community custody shall be credited to the offender,
33 regardless of whether the total confinement is served as a result of
34 the original sentence, as a result of a sanction imposed by the
35 department, or as a result of a violation found by the court. The term
36 of community supervision shall be tolled by any period of time served
37 in total confinement as a result of a violation found by the court.
- 38 (d) The department shall determine the rules for calculating the
39 value of a day fine based on the offender's income and reasonable

1 obligations which the offender has for the support of the offender and
2 any dependents. These rules shall be developed in consultation with
3 the administrator for the courts, the office of financial management,
4 and the commission.

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

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

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

26 ~~The examiner shall assess and report regarding the defendant's~~
27 ~~amenability to treatment and relative risk to the community. A~~
28 ~~proposed treatment plan shall be provided and shall include, at a~~
29 ~~minimum:~~

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

31 ~~(B) Specific issues to be addressed in the treatment and~~
32 ~~description of planned treatment modalities;~~

33 ~~(C) Monitoring plans, including any requirements regarding living~~
34 ~~conditions, lifestyle requirements, and monitoring by family members~~
35 ~~and others;~~

36 ~~(D) Anticipated length of treatment; and~~

37 ~~(E) Recommended crime-related prohibitions.~~

38 ~~The court on its own motion may order, or on a motion by the state~~
39 ~~shall order, a second examination regarding the offender's amenability~~

1 to treatment. The evaluator shall be selected by the party making the
2 motion. The defendant shall pay the cost of any second examination
3 ordered unless the court finds the defendant to be indigent in which
4 case the state shall pay the cost.

5 (ii) After receipt of the reports, the court shall consider whether
6 the offender and the community will benefit from use of this special
7 sex offender sentencing alternative and consider the victim's opinion
8 whether the offender should receive a treatment disposition under this
9 subsection. If the court determines that this special sex offender
10 sentencing alternative is appropriate, the court shall then impose a
11 sentence within the sentence range. If this sentence is less than
12 eleven years of confinement, the court may suspend the execution of the
13 sentence and impose the following conditions of suspension:

14 (A) The court shall place the defendant on community custody for
15 the length of the suspended sentence or three years, whichever is
16 greater, and require the offender to comply with any conditions imposed
17 by the department of corrections under subsection (14) of this section;

18 (B) The court shall order treatment for any period up to three
19 years in duration. The court in its discretion shall order outpatient
20 sex offender treatment or inpatient sex offender treatment, if
21 available. A community mental health center may not be used for such
22 treatment unless it has an appropriate program designed for sex
23 offender treatment. The offender shall not change sex offender
24 treatment providers or treatment conditions without first notifying the
25 prosecutor, the community corrections officer, and the court, and shall
26 not change providers without court approval after a hearing if the
27 prosecutor or community corrections officer object to the change. In
28 addition, as conditions of the suspended sentence, the court may impose
29 other sentence conditions including up to six months of confinement,
30 not to exceed the sentence range of confinement for that offense,
31 crime-related prohibitions, and requirements that the offender perform
32 any one or more of the following:

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

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

37 (III) Report as directed to the court and a community corrections
38 officer;

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

4 ~~(V) Make recoupment to the victim for the cost of any counseling~~
5 ~~required as a result of the offender's crime; and~~

6 ~~(C) Sex offenders sentenced under this special sex offender~~
7 ~~sentencing alternative are not eligible to accrue any earned early~~
8 ~~release time while serving a suspended sentence.~~

9 ~~(iii) The sex offender therapist shall submit quarterly reports on~~
10 ~~the defendant's progress in treatment to the court and the parties.~~
11 ~~The report shall reference the treatment plan and include at a minimum~~
12 ~~the following:— Dates of attendance, defendant's compliance with~~
13 ~~requirements, treatment activities, the defendant's relative progress~~
14 ~~in treatment, and any other material as specified by the court at~~
15 ~~sentencing.~~

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

31 ~~(v) If a violation of conditions occurs during community custody,~~
32 ~~the department shall either impose sanctions as provided for in RCW~~
33 ~~9.94A.205(2)(a) or refer the violation to the court and recommend~~
34 ~~revocation of the suspended sentence as provided for in (a)(vi) of this~~
35 ~~subsection.~~

36 ~~(vi) The court may revoke the suspended sentence at any time during~~
37 ~~the period of community custody and order execution of the sentence if:~~
38 ~~(A) The defendant violates the conditions of the suspended sentence, or~~
39 ~~(B) the court finds that the defendant is failing to make satisfactory~~

1 progress in treatment. All confinement time served during the period
2 of community custody shall be credited to the offender if the suspended
3 sentence is revoked.

4 (vii) Except as provided in (a)(viii) of this subsection, after
5 July 1, 1991, examinations and treatment ordered pursuant to this
6 subsection shall only be conducted by sex offender treatment providers
7 certified by the department of health pursuant to chapter 18.155 RCW.

8 (viii) A sex offender therapist who examines or treats a sex
9 offender pursuant to this subsection (8) does not have to be certified
10 by the department of health pursuant to chapter 18.155 RCW if the court
11 finds that: (A) The offender has already moved to another state or
12 plans to move to another state for reasons other than circumventing the
13 certification requirements; (B) no certified providers are available
14 for treatment within a reasonable geographical distance of the
15 offender's home; and (C) the evaluation and treatment plan comply with
16 this subsection (8) and the rules adopted by the department of health.

17 (ix) For purposes of this subsection (8), "victim" means any person
18 who has sustained emotional, psychological, physical, or financial
19 injury to person or property as a result of the crime charged.
20 "Victim" also means a parent or guardian of a victim who is a minor
21 child unless the parent or guardian is the perpetrator of the offense.

22 (x) If the defendant was less than eighteen years of age when the
23 charge was filed, the state shall pay for the cost of initial
24 evaluation and treatment.

25 (b) 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
30 to treatment and the department may place the offender in a treatment
31 program within a correctional facility operated by the department.

32 Except for an offender who has been convicted of a violation of RCW
33 9A.44.040 or 9A.44.050, if the offender completes the treatment program
34 before the expiration of his or her term of confinement, the department
35 of corrections may request the court to convert the balance of
36 confinement to community supervision and to place conditions on the
37 offender including crime-related prohibitions and requirements that the
38 offender perform any one or more of the following:

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

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

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

6 ~~(iv) Undergo available outpatient treatment.~~

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

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

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

23 ~~(9)))(a) When a court sentences a person to a term of total~~
24 ~~confinement to the custody of the department of corrections for an~~
25 ~~offense categorized as a sex offense or a serious violent offense~~
26 ~~committed after July 1, 1988, but before July 1, 1990, assault in the~~
27 ~~second degree, assault of a child in the second degree, any crime~~
28 ~~against a person where it is determined in accordance with RCW~~
29 ~~9.94A.125 that the defendant or an accomplice was armed with a deadly~~
30 ~~weapon at the time of commission, or any felony offense under chapter~~
31 ~~69.50 or 69.52 RCW not sentenced under subsection (6) of this section,~~
32 ~~committed on or after July 1, 1988, the court shall in addition to the~~
33 ~~other terms of the sentence, sentence the offender to a one-year term~~
34 ~~of community placement beginning either upon completion of the term of~~
35 ~~confinement or at such time as the offender is transferred to community~~
36 ~~custody in lieu of earned early release in accordance with RCW~~
37 ~~9.94A.150 (1) and (2). When the court sentences an offender under this~~
38 ~~subsection to the statutory maximum period of confinement then the~~
39 ~~community placement portion of the sentence shall consist entirely of~~

1 such community custody to which the offender may become eligible, in
2 accordance with RCW 9.94A.150 (1) and (2). Any period of community
3 custody actually served shall be credited against the community
4 placement portion of the sentence.

5 (b) When a court sentences a person to a term of total confinement
6 to the custody of the department of corrections for an offense
7 categorized as a sex offense committed on or after July 1, 1990, but
8 before June 6, 1996, a serious violent offense, vehicular homicide, or
9 vehicular assault, committed on or after July 1, 1990, the court shall
10 in addition to other terms of the sentence, sentence the offender to
11 community placement for two years or up to the period of earned early
12 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
13 longer. The community placement shall begin either upon completion of
14 the term of confinement or at such time as the offender is transferred
15 to community custody in lieu of earned early release in accordance with
16 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
17 this subsection to the statutory maximum period of confinement then the
18 community placement portion of the sentence shall consist entirely of
19 the community custody to which the offender may become eligible, in
20 accordance with RCW 9.94A.150 (1) and (2). Any period of community
21 custody actually served shall be credited against the community
22 placement portion of the sentence. Unless a condition is waived by the
23 court, the terms of community placement for offenders sentenced
24 pursuant to this section shall include the following conditions:

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

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

29 (iii) The offender shall not possess or consume controlled
30 substances except pursuant to lawfully issued prescriptions;

31 (iv) The offender shall pay supervision fees as determined by the
32 department of corrections;

33 (v) The residence location and living arrangements are subject to
34 the prior approval of the department of corrections during the period
35 of community placement; and

36 (vi) The offender shall submit to affirmative acts necessary to
37 monitor compliance with the orders of the court as required by the
38 department.

1 (c) As a part of any sentence imposed under (a) or (b) of this
2 subsection, the court may also order any of the following special
3 conditions:

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

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

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

10 (iv) The offender shall not consume alcohol;

11 (v) The offender shall comply with any crime-related prohibitions;

12 or

13 (vi) For an offender convicted of a felony sex offense against a
14 minor victim after June 6, 1996, the offender shall comply with any
15 terms and conditions of community placement imposed by the department
16 of corrections relating to contact between the sex offender and a minor
17 victim or a child of similar age or circumstance as a previous victim.

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

22 (~~(+10+)~~) (9)(a) When a court sentences a person to the custody of
23 the department of corrections for an offense categorized as a sex
24 offense committed on or after June 6, 1996, the court shall, in
25 addition to other terms of the sentence, sentence the offender to
26 community custody for three years or up to the period of earned early
27 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
28 longer. The community custody shall begin either upon completion of
29 the term of confinement or at such time as the offender is transferred
30 to community custody in lieu of earned early release in accordance with
31 RCW 9.94A.150 (1) and (2).

32 (b) Unless a condition is waived by the court, the terms of
33 community custody shall be the same as those provided for in subsection
34 (~~(+9+)~~) (8)(b) of this section and may include those provided for in
35 subsection (~~(+9+)~~) (8)(c) of this section. As part of any sentence
36 that includes a term of community custody imposed under this
37 subsection, the court shall also require the offender to comply with
38 any conditions imposed by the department of corrections under
39 subsection (~~(+14+)~~) (13) of this section.

1 (c) At any time prior to the completion of a sex offender's term of
2 community custody, if the court finds that public safety would be
3 enhanced, the court may impose and enforce an order extending any or
4 all of the conditions imposed pursuant to this section for a period up
5 to the maximum allowable sentence for the crime as it is classified in
6 chapter 9A.20 RCW, regardless of the expiration of the offender's term
7 of community custody. If a violation of a condition extended under
8 this subsection occurs after the expiration of the offender's term of
9 community custody, it shall be deemed a violation of the sentence for
10 the purposes of RCW 9.94A.195 and may be punishable as contempt of
11 court as provided for in RCW 7.21.040.

12 (~~((11))~~) (10) If the court imposes a sentence requiring confinement
13 of thirty days or less, the court may, in its discretion, specify that
14 the sentence be served on consecutive or intermittent days. A sentence
15 requiring more than thirty days of confinement shall be served on
16 consecutive days. Local jail administrators may schedule court-ordered
17 intermittent sentences as space permits.

18 (~~((12))~~) (11) If a sentence imposed includes payment of a legal
19 financial obligation, the sentence shall specify the total amount of
20 the legal financial obligation owed, and shall require the offender to
21 pay a specified monthly sum toward that legal financial obligation.
22 Restitution to victims shall be paid prior to any other payments of
23 monetary obligations. Any legal financial obligation that is imposed
24 by the court may be collected by the department, which shall deliver
25 the amount paid to the county clerk for credit. The offender's
26 compliance with payment of legal financial obligations shall be
27 supervised by the department for ten years following the entry of the
28 judgment and sentence or ten years following the offender's release
29 from total confinement. All monetary payments ordered shall be paid no
30 later than ten years after the last date of release from confinement
31 pursuant to a felony conviction or the date the sentence was entered
32 unless the superior court extends the criminal judgment an additional
33 ten years. If the legal financial obligations including crime victims'
34 assessments are not paid during the initial ten-year period, the
35 superior court may extend jurisdiction under the criminal judgment an
36 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
37 9.94A.145. If jurisdiction under the criminal judgment is extended,
38 the department is not responsible for supervision of the offender
39 during the subsequent period. Independent of the department, the party

1 or entity to whom the legal financial obligation is owed shall have the
2 authority to utilize any other remedies available to the party or
3 entity to collect the legal financial obligation. Nothing in this
4 section makes the department, the state, or any of its employees,
5 agents, or other persons acting on their behalf liable under any
6 circumstances for the payment of these legal financial obligations. If
7 an order includes restitution as one of the monetary assessments, the
8 county clerk shall make disbursements to victims named in the order.

9 ~~((13))~~ (12) Except as provided under RCW 9.94A.140(1) and
10 9.94A.142(1), a court may not impose a sentence providing for a term of
11 confinement or community supervision or community placement which
12 exceeds the statutory maximum for the crime as provided in chapter
13 9A.20 RCW.

14 ~~((14))~~ (13) All offenders sentenced to terms involving community
15 supervision, community service, community placement, or legal financial
16 obligation shall be under the supervision of the department of
17 corrections and shall follow explicitly the instructions and conditions
18 of the department of corrections. The department may require an
19 offender to perform affirmative acts it deems appropriate to monitor
20 compliance with the conditions of the sentence imposed.

21 (a) The instructions shall include, at a minimum, reporting as
22 directed to a community corrections officer, remaining within
23 prescribed geographical boundaries, notifying the community corrections
24 officer of any change in the offender's address or employment, and
25 paying the supervision fee assessment.

26 (b) For offenders sentenced to terms involving community custody
27 for crimes committed on or after June 6, 1996, the department may
28 include, in addition to the instructions in (a) of this subsection, any
29 appropriate conditions of supervision, including but not limited to,
30 prohibiting the offender from having contact with any other specified
31 individuals or specific class of individuals. The conditions
32 authorized under this subsection ~~((14))~~ (13)(b) may be imposed by the
33 department prior to or during an offender's community custody term. If
34 a violation of conditions imposed by the court or the department
35 pursuant to subsection ~~((10))~~ (9) of this section occurs during
36 community custody, it shall be deemed a violation of community
37 placement for the purposes of RCW 9.94A.207 and shall authorize the
38 department to transfer an offender to a more restrictive confinement
39 status as provided in RCW 9.94A.205. At any time prior to the

1 completion of a sex offender's term of community custody, the
2 department may recommend to the court that any or all of the conditions
3 imposed by the court or the department pursuant to subsection (~~((10))~~)
4 (9) of this section be continued beyond the expiration of the
5 offender's term of community custody as authorized in subsection
6 (~~((10))~~) (9)(c) of this section.

7 The department may require offenders to pay for special services
8 rendered on or after July 25, 1993, including electronic monitoring,
9 day reporting, and telephone reporting, dependent upon the offender's
10 ability to pay. The department may pay for these services for
11 offenders who are not able to pay.

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

22 (~~((16))~~) (15) The sentencing court shall give the offender credit
23 for all confinement time served before the sentencing if that
24 confinement was solely in regard to the offense for which the offender
25 is being sentenced.

26 (~~((17))~~) (16) A departure from the standards in RCW 9.94A.400 (1)
27 and (2) governing whether sentences are to be served consecutively or
28 concurrently is an exceptional sentence subject to the limitations in
29 subsections (2) and (3) of this section, and may be appealed by the
30 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

31 (~~((18))~~) (17) The court shall order restitution whenever the
32 offender is convicted of a felony that results in injury to any person
33 or damage to or loss of property, whether the offender is sentenced to
34 confinement or placed under community supervision, unless extraordinary
35 circumstances exist that make restitution inappropriate in the court's
36 judgment. The court shall set forth the extraordinary circumstances in
37 the record if it does not order restitution.

38 (~~((19))~~) (18) As a part of any sentence, the court may impose and
39 enforce an order that relates directly to the circumstances of the

1 crime for which the offender has been convicted, prohibiting the
2 offender from having any contact with other specified individuals or a
3 specific class of individuals for a period not to exceed the maximum
4 allowable sentence for the crime, regardless of the expiration of the
5 offender's term of community supervision or community placement.

6 ~~((+20+))~~ (19) The court may order an offender whose sentence
7 includes community placement or community supervision to undergo a
8 mental status evaluation and to participate in available outpatient
9 mental health treatment, if the court finds that reasonable grounds
10 exist to believe that the offender is a mentally ill person as defined
11 in RCW 71.24.025, and that this condition is likely to have influenced
12 the offense. An order requiring mental status evaluation or treatment
13 must be based on a presentence report and, if applicable, mental status
14 evaluations that have been filed with the court to determine the
15 offender's competency or eligibility for a defense of insanity. The
16 court may order additional evaluations at a later date if deemed
17 appropriate.

18 ~~((+21+))~~ (20) In any sentence of partial confinement, the court may
19 require the defendant to serve the partial confinement in work release,
20 in a program of home detention, on work crew, or in a combined program
21 of work crew and home detention.

22 ~~((+22+))~~ (21) All court-ordered legal financial obligations
23 collected by the department and remitted to the county clerk shall be
24 credited and paid where restitution is ordered. Restitution shall be
25 paid prior to any other payments of monetary obligations.

26 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
27 as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

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

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

5 (4) "Community custody" means that portion of an inmate's sentence
6 of confinement in lieu of earned early release time or imposed pursuant
7 to RCW 9.94A.120 (6), (~~((8), or (10))~~) (7), or (9) served in the
8 community subject to controls placed on the inmate's movement and
9 activities by the department of corrections.

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

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

20 (7) "Community supervision" means a period of time during which a
21 convicted offender is subject to crime-related prohibitions and other
22 sentence conditions imposed by a court pursuant to this chapter or RCW
23 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
24 may include crime-related prohibitions and other conditions imposed
25 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
26 for out-of-state supervision of parolees and probationers, RCW
27 9.95.270, community supervision is the functional equivalent of
28 probation and should be considered the same as probation by other
29 states.

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

32 (9) "Conviction" means an adjudication of guilt pursuant to Titles
33 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
34 acceptance of a plea of guilty.

35 (10) "Court-ordered legal financial obligation" means a sum of
36 money that is ordered by a superior court of the state of Washington
37 for legal financial obligations which may include restitution to the
38 victim, statutorily imposed crime victims' compensation fees as
39 assessed pursuant to RCW 7.68.035, court costs, county or interlocal

1 drug funds, court-appointed attorneys' fees, and costs of defense,
2 fines, and any other financial obligation that is assessed to the
3 offender as a result of a felony conviction. Upon conviction for
4 vehicular assault while under the influence of intoxicating liquor or
5 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
6 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
7 legal financial obligations may also include payment to a public agency
8 of the expense of an emergency response to the incident resulting in
9 the conviction, subject to the provisions in RCW 38.52.430.

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

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

23 (13) "Day fine" means a fine imposed by the sentencing judge that
24 equals the difference between the offender's net daily income and the
25 reasonable obligations that the offender has for the support of the
26 offender and any dependents.

27 (14) "Day reporting" means a program of enhanced supervision
28 designed to monitor the defendant's daily activities and compliance
29 with sentence conditions, and in which the defendant is required to
30 report daily to a specific location designated by the department or the
31 sentencing judge.

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

33 (16) "Determinate sentence" means a sentence that states with
34 exactitude the number of actual years, months, or days of total
35 confinement, of partial confinement, of community supervision, the
36 number of actual hours or days of community service work, or dollars or
37 terms of a legal financial obligation. The fact that an offender
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

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

15 (18) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
18 controlled substance (RCW 69.50.403);

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

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

25 (19) "Escape" means:

26 (a) Escape in the first degree (RCW 9A.76.110), escape in the
27 second degree (RCW 9A.76.120), willful failure to return from furlough
28 (RCW 72.66.060), willful failure to return from work release (RCW
29 72.65.070), or willful failure to be available for supervision by the
30 department while in community custody (RCW 72.09.310); or

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

34 (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); or

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

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

6 (22) "First-time offender" means any person who is convicted of a
7 felony (a) not classified as a violent offense or a sex offense under
8 this chapter, or (b) that is not the manufacture, delivery, or
9 possession with intent to manufacture or deliver a controlled substance
10 classified in Schedule I or II that is a narcotic drug or flunitrazepam
11 classified in Schedule IV, nor the manufacture, delivery, or possession
12 with intent to deliver methamphetamine, its salts, isomers, and salts
13 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
14 profit of any controlled substance or counterfeit substance classified
15 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
16 marihuana, who previously has never been convicted of a felony in this
17 state, federal court, or another state, and who has never participated
18 in a program of deferred prosecution for a felony offense.

19 (23) "Most serious offense" means any of the following felonies or
20 a felony attempt to commit any of the following felonies, as now
21 existing or hereafter amended:

22 (a) Any felony defined under any law as a class A felony or
23 criminal solicitation of or criminal conspiracy to commit a class A
24 felony;

25 (b) Assault in the second degree;

26 (c) Assault of a child in the second degree;

27 (d) Child molestation in the second degree;

28 (e) Controlled substance homicide;

29 (f) Extortion in the first degree;

30 (g) Incest when committed against a child under age fourteen;

31 (h) Indecent liberties;

32 (i) Kidnapping in the second degree;

33 (j) Leading organized crime;

34 (k) Manslaughter in the first degree;

35 (l) Manslaughter in the second degree;

36 (m) Promoting prostitution in the first degree;

37 (n) Rape in the third degree;

38 (o) Robbery in the second degree;

39 (p) Sexual exploitation;

1 (q) Vehicular assault;

2 (r) Vehicular homicide, when proximately caused by the driving of
3 any vehicle by any person while under the influence of intoxicating
4 liquor or any drug as defined by RCW 46.61.502, or by the operation of
5 any vehicle in a reckless manner;

6 (s) Any other class B felony offense with a finding of sexual
7 motivation, as "sexual motivation" is defined under this section;

8 (t) Any other felony with a deadly weapon verdict under RCW
9 9.94A.125;

10 (u) Any felony offense in effect at any time prior to December 2,
11 1993, that is comparable to a most serious offense under this
12 subsection, or any federal or out-of-state conviction for an offense
13 that under the laws of this state would be a felony classified as a
14 most serious offense under this subsection;

15 (v)(i) A prior conviction for indecent liberties under RCW
16 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
17 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
18 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
19 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
22 if: (A) The crime was committed against a child under the age of
23 fourteen; or (B) the relationship between the victim and perpetrator is
24 included in the definition of indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
26 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
27 through July 27, 1997.

28 (24) "Nonviolent offense" means an offense which is not a violent
29 offense.

30 (25) "Offender" means a person who has committed a felony
31 established by state law and is eighteen years of age or older or is
32 less than eighteen years of age but whose case is under superior court
33 jurisdiction under RCW 13.04.030 or has been transferred by the
34 appropriate juvenile court to a criminal court pursuant to RCW
35 13.40.110. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.

37 (26) "Partial confinement" means confinement for no more than one
38 year in a facility or institution operated or utilized under contract
39 by the state or any other unit of government, or, if home detention or

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

6 (27) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.360; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
18 of a child in the first degree, child molestation in the first degree,
19 rape in the second degree, rape of a child in the second degree, or
20 indecent liberties by forcible compulsion; (B) murder in the first
21 degree, murder in the second degree, homicide by abuse, kidnapping in
22 the first degree, kidnapping in the second degree, assault in the first
23 degree, assault in the second degree, assault of a child in the first
24 degree, or burglary in the first degree, with a finding of sexual
25 motivation; or (C) an attempt to commit any crime listed in this
26 subsection (27)(b)(i); and

27 (ii) Has, before the commission of the offense under (b)(i) of this
28 subsection, been convicted as an offender on at least one occasion,
29 whether in this state or elsewhere, of an offense listed in (b)(i) of
30 this subsection. A conviction for rape of a child in the first degree
31 constitutes a conviction under subsection (27)(b)(i) only when the
32 offender was sixteen years of age or older when the offender committed
33 the offense. A conviction for rape of a child in the second degree
34 constitutes a conviction under subsection (27)(b)(i) only when the
35 offender was eighteen years of age or older when the offender committed
36 the offense.

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

1 (29) "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 (30) "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 (31) "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, manslaughter in the first degree, assault in the first
18 degree, kidnapping in the first degree, or rape in the first degree,
19 assault of a child in the first degree, or an attempt, criminal
20 solicitation, or criminal conspiracy to commit one of these felonies;
21 or

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

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

27 (33) "Sex offense" means:

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

32 (b) A felony with a finding of sexual motivation under RCW
33 9.94A.127 or 13.40.135; or

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

37 (34) "Sexual motivation" means that one of the purposes for which
38 the defendant committed the crime was for the purpose of his or her
39 sexual gratification.

1 (35) "Total confinement" means confinement inside the physical
2 boundaries of a facility or institution operated or utilized under
3 contract by the state or any other unit of government for twenty-four
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (36) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

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

14 (38) "Violent offense" means:

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

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

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

34 (39) "Work crew" means a program of partial confinement consisting
35 of civic improvement tasks for the benefit of the community of not less
36 than thirty-five hours per week that complies with RCW 9.94A.135. The
37 civic improvement tasks shall have minimal negative impact on existing
38 private industries or the labor force in the county where the service
39 or labor is performed. The civic improvement tasks shall not affect

1 employment opportunities for people with developmental disabilities
2 contracted through sheltered workshops as defined in RCW 82.04.385.
3 Only those offenders sentenced to a facility operated or utilized under
4 contract by a county or the state are eligible to participate on a work
5 crew. Offenders sentenced for a sex offense as defined in subsection
6 (33) of this section are not eligible for the work crew program.

7 (40) "Work ethic camp" means an alternative incarceration program
8 designed to reduce recidivism and lower the cost of corrections by
9 requiring offenders to complete a comprehensive array of real-world job
10 and vocational experiences, character-building work ethics training,
11 life management skills development, substance abuse rehabilitation,
12 counseling, literacy training, and basic adult education.

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

18 (42) "Home detention" means a program of partial confinement
19 available to offenders wherein the offender is confined in a private
20 residence subject to electronic surveillance.

21 **Sec. 3.** RCW 9.94A.123 and 1987 c 402 s 2 are each amended to read
22 as follows:

23 The legislature finds that the sexual offender treatment programs
24 at western and eastern state hospitals, while not proven to be totally
25 effective, may be of some benefit in positively affecting the behavior
26 of certain sexual offenders. Given the significance of the problems of
27 sexual assault and sexual abuse of children, it is therefore
28 appropriate to review and revise these treatment efforts.

29 At the same time, concerns regarding the lack of adequate security
30 at the existing programs must be satisfactorily addressed. In an
31 effort to promote public safety, it is the intent of the legislature to
32 transfer the responsibility for felony sexual offenders from the
33 department of social and health services to the department of
34 corrections.

35 Therefore, no person committing a felony sexual offense on or after
36 July 1, 1987, may be committed (~~(under RCW 9.94A.120(7)(b))~~) to the
37 department of social and health services at eastern state hospital or
38 western state hospital. Any person committed to the department of

1 social and health services under RCW 9.94A.120(7)(b) as existing on
2 June 30, 1987, for an offense committed before July 1, 1987, and still
3 in the custody of the department of social and health services on June
4 30, 1993, shall be transferred to the custody of the department of
5 corrections. (~~(Any person eligible for evaluation or treatment under~~
6 ~~RCW 9.94A.120(7)(b) shall be committed to the department of~~
7 ~~corrections.)~~)

8 **Sec. 4.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
9 as follows:

10 The power to defer or suspend the imposition or execution of
11 sentence is hereby abolished in respect to sentences prescribed for
12 felonies committed after June 30, 1984(~~(, except for offenders~~
13 ~~sentenced under RCW 9.94A.120(7)(a), the special sexual offender~~
14 ~~sentencing alternative, whose sentence may be suspended)~~).

15 **Sec. 5.** RCW 9.94A.137 and 1995 1st sp.s. c 19 s 20 are each
16 amended to read as follows:

17 (1)(a) An offender is eligible to be sentenced to a work ethic camp
18 if the offender:

19 (i) Is sentenced to a term of total confinement of not less than
20 sixteen months or more than thirty-six months; and

21 (ii) Has no current or prior convictions for any sex offenses or
22 for violent offenses other than drug offenses for manufacturing,
23 possession, delivery, or intent to deliver a controlled substance.

24 (b) The length of the work ethic camp shall be at least one hundred
25 twenty days and not more than one hundred eighty days. Because of the
26 conversion ratio, earned early release time shall not accrue to
27 offenders who successfully complete the program.

28 (2) If the sentencing judge determines that the offender is
29 eligible for the work ethic camp and is likely to qualify under
30 subsection (3) of this section, the judge shall impose a sentence
31 within the standard range and may recommend that the offender serve the
32 sentence at a work ethic camp. The sentence shall provide that if the
33 offender successfully completes the program, the department shall
34 convert the period of work ethic camp confinement at the rate of one
35 day of work ethic camp confinement to three days of total standard
36 confinement. In sentencing an offender to the work ethic camp, the
37 court shall specify: (a) That upon completion of the work ethic camp

1 the offender shall be released on community custody for any remaining
2 time of total confinement; (b) the applicable conditions of supervision
3 on community custody status as required by RCW 9.94A.120(~~((+9))~~) (8)(b)
4 and authorized by RCW 9.94A.120(~~((+9))~~) (8)(c); and (c) that violation
5 of the conditions may result in a return to total confinement for the
6 balance of the offender's remaining time of confinement.

7 (3) The department shall place the offender in the work ethic camp
8 program, subject to capacity, unless: (a) The department determines
9 that the offender has physical or mental impairments that would prevent
10 participation and completion of the program; (b) the department
11 determines that the offender's custody level prevents placement in the
12 program; or (c) the offender refuses to agree to the terms and
13 conditions of the program.

14 (4) An offender who fails to complete the work ethic camp program,
15 who is administratively terminated from the program, or who otherwise
16 violates any conditions of supervision, as defined by the department,
17 shall be reclassified to serve the unexpired term of his or her
18 sentence as ordered by the sentencing judge and shall be subject to all
19 rules relating to earned early release time.

20 (5) During the last two weeks prior to release from the work ethic
21 camp program the department shall provide the offender with
22 comprehensive transition training.

23 **Sec. 6.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read
24 as follows:

25 (1) If an inmate violates any condition or requirement of community
26 custody, the department may transfer the inmate to a more restrictive
27 confinement status to serve up to the remaining portion of the
28 sentence, less credit for any period actually spent in community
29 custody or in detention awaiting disposition of an alleged violation
30 and subject to the limitations of subsection (2) of this section.

31 ~~(2)((a) For a sex offender sentenced to a term of community~~
32 ~~eustody under RCW 9.94A.120(8) who violates any condition of community~~
33 ~~eustody, the department may impose a sanction of up to sixty days'~~
34 ~~confinement in a local correctional facility for each violation. If~~
35 ~~the department imposes a sanction, the department shall submit within~~
36 ~~seventy two hours a report to the court and the prosecuting attorney~~
37 ~~outlining the violation or violations and the sanctions imposed.~~

1 (~~b~~)) For a sex offender sentenced to a term of community custody
2 under RCW 9.94A.120(~~(+10)~~) (9) who violates any condition of community
3 custody after having completed his or her maximum term of total
4 confinement, including time served on community custody in lieu of
5 earned early release, the department may impose a sanction of up to
6 sixty days in a local correctional facility for each violation.

7 (3) If an inmate is accused of violating any condition or
8 requirement of community custody, he or she is entitled to a hearing
9 before the department prior to the imposition of sanctions. The
10 hearing shall be considered as inmate disciplinary proceedings and
11 shall not be subject to chapter 34.05 RCW. The department shall
12 develop hearing procedures and sanctions.

13 **Sec. 7.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
14 as follows:

15 (1) Decision not to prosecute.

16 STANDARD: A prosecuting attorney may decline to prosecute, even
17 though technically sufficient evidence to prosecute exists, in
18 situations where prosecution would serve no public purpose, would
19 defeat the underlying purpose of the law in question or would result in
20 decreased respect for the law.

21 GUIDELINE/COMMENTARY:

22 Examples

23 The following are examples of reasons not to prosecute which could
24 satisfy the standard.

25 (a) Contrary to Legislative Intent - It may be proper to decline to
26 charge where the application of criminal sanctions would be clearly
27 contrary to the intent of the legislature in enacting the particular
28 statute.

29 (b) Antiquated Statute - It may be proper to decline to charge
30 where the statute in question is antiquated in that:

31 (i) It has not been enforced for many years; and

32 (ii) Most members of society act as if it were no longer in
33 existence; and

34 (iii) It serves no deterrent or protective purpose in today's
35 society; and

36 (iv) The statute has not been recently reconsidered by the
37 legislature.

1 This reason is not to be construed as the basis for declining cases
2 because the law in question is unpopular or because it is difficult to
3 enforce.

4 (c) De Minimus Violation - It may be proper to decline to charge
5 where the violation of law is only technical or insubstantial and where
6 no public interest or deterrent purpose would be served by prosecution.

7 (d) Confinement on Other Charges - It may be proper to decline to
8 charge because the accused has been sentenced on another charge to a
9 lengthy period of confinement; and

10 (i) Conviction of the new offense would not merit any additional
11 direct or collateral punishment;

12 (ii) The new offense is either a misdemeanor or a felony which is
13 not particularly aggravated; and

14 (iii) Conviction of the new offense would not serve any significant
15 deterrent purpose.

16 (e) Pending Conviction on Another Charge - It may be proper to
17 decline to charge because the accused is facing a pending prosecution
18 in the same or another county; and

19 (i) Conviction of the new offense would not merit any additional
20 direct or collateral punishment;

21 (ii) Conviction in the pending prosecution is imminent;

22 (iii) The new offense is either a misdemeanor or a felony which is
23 not particularly aggravated; and

24 (iv) Conviction of the new offense would not serve any significant
25 deterrent purpose.

26 (f) High Disproportionate Cost of Prosecution - It may be proper to
27 decline to charge where the cost of locating or transporting, or the
28 burden on, prosecution witnesses is highly disproportionate to the
29 importance of prosecuting the offense in question. This reason should
30 be limited to minor cases and should not be relied upon in serious
31 cases.

32 (g) Improper Motives of Complainant - It may be proper to decline
33 charges because the motives of the complainant are improper and
34 prosecution would serve no public purpose, would defeat the underlying
35 purpose of the law in question or would result in decreased respect for
36 the law.

37 (h) Immunity - It may be proper to decline to charge where immunity
38 is to be given to an accused in order to prosecute another where the
39 accused's information or testimony will reasonably lead to the

1 conviction of others who are responsible for more serious criminal
2 conduct or who represent a greater danger to the public interest.

3 (i) Victim Request - It may be proper to decline to charge because
4 the victim requests that no criminal charges be filed and the case
5 involves the following crimes or situations:

6 (i) Assault cases where the victim has suffered little or no
7 injury;

8 (ii) Crimes against property, not involving violence, where no
9 major loss was suffered;

10 (iii) Where doing so would not jeopardize the safety of society.

11 Care should be taken to insure that the victim's request is freely
12 made and is not the product of threats or pressure by the accused.

13 The presence of these factors may also justify the decision to
14 dismiss a prosecution which has been commenced.

15 Notification

16 The prosecutor is encouraged to notify the victim, when practical,
17 and the law enforcement personnel, of the decision not to prosecute.

18 (2) Decision to prosecute.

19 STANDARD:

20 Crimes against persons will be filed if sufficient admissible
21 evidence exists, which, when considered with the most plausible,
22 reasonably foreseeable defense that could be raised under the evidence,
23 would justify conviction by a reasonable and objective fact-finder.

24 (~~With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,~~
25 ~~9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and~~
26 ~~9A.64.020 the prosecutor should avoid prefiling agreements or~~
27 ~~diversions intended to place the accused in a program of treatment or~~
28 ~~counseling, so that treatment, if determined to be beneficial, can be~~
29 ~~provided pursuant to RCW 9.94A.120(8).)~~)

30 Crimes against property/other crimes will be filed if the
31 admissible evidence is of such convincing force as to make it probable
32 that a reasonable and objective fact-finder would convict after hearing
33 all the admissible evidence and the most plausible defense that could
34 be raised.

35 See table below for the crimes within these categories.

1 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

2 CRIMES AGAINST PERSONS

- 3 Aggravated Murder
- 4 1st Degree Murder
- 5 2nd Degree Murder
- 6 1st Degree Kidnaping
- 7 1st Degree Assault
- 8 1st Degree Assault of a Child
- 9 1st Degree Rape
- 10 1st Degree Robbery
- 11 1st Degree Rape of a Child
- 12 1st Degree Arson
- 13 2nd Degree Kidnaping
- 14 2nd Degree Assault
- 15 2nd Degree Assault of a Child
- 16 2nd Degree Rape
- 17 2nd Degree Robbery
- 18 1st Degree Burglary
- 19 1st Degree Manslaughter
- 20 2nd Degree Manslaughter
- 21 1st Degree Extortion
- 22 Indecent Liberties
- 23 Incest
- 24 2nd Degree Rape of a Child
- 25 Vehicular Homicide
- 26 Vehicular Assault
- 27 3rd Degree Rape
- 28 3rd Degree Rape of a Child
- 29 1st Degree Child Molestation
- 30 2nd Degree Child Molestation
- 31 3rd Degree Child Molestation
- 32 2nd Degree Extortion
- 33 1st Degree Promoting Prostitution
- 34 Intimidating a Juror
- 35 Communication with a Minor
- 36 Intimidating a Witness
- 37 Intimidating a Public Servant
- 38 Bomb Threat (if against person)
- 39 3rd Degree Assault

1 3rd Degree Assault of a Child
2 Unlawful Imprisonment
3 Promoting a Suicide Attempt
4 Riot (if against person)

5 CRIMES AGAINST PROPERTY/OTHER CRIMES
6 2nd Degree Arson
7 1st Degree Escape
8 2nd Degree Burglary
9 1st Degree Theft
10 1st Degree Perjury
11 1st Degree Introducing Contraband
12 1st Degree Possession of Stolen Property
13 Bribery
14 Bribing a Witness
15 Bribe received by a Witness
16 Bomb Threat (if against property)
17 1st Degree Malicious Mischief
18 2nd Degree Theft
19 2nd Degree Escape
20 2nd Degree Introducing Contraband
21 2nd Degree Possession of Stolen Property
22 2nd Degree Malicious Mischief
23 1st Degree Reckless Burning
24 Taking a Motor Vehicle without Authorization
25 Forgery
26 2nd Degree Perjury
27 2nd Degree Promoting Prostitution
28 Tampering with a Witness
29 Trading in Public Office
30 Trading in Special Influence
31 Receiving/Granting Unlawful Compensation
32 Bigamy
33 Eluding a Pursuing Police Vehicle
34 Willful Failure to Return from Furlough
35 Escape from Community Custody
36 Riot (if against property)
37 Thefts of Livestock

38 ALL OTHER UNCLASSIFIED FELONIES

1 Selection of Charges/Degree of Charge

2 (1) The prosecutor should file charges which adequately describe
3 the nature of defendant's conduct. Other offenses may be charged only
4 if they are necessary to ensure that the charges:

5 (a) Will significantly enhance the strength of the state's case at
6 trial; or

7 (b) Will result in restitution to all victims.

8 (2) The prosecutor should not overcharge to obtain a guilty plea.
9 Overcharging includes:

10 (a) Charging a higher degree;

11 (b) Charging additional counts.

12 This standard is intended to direct prosecutors to charge those
13 crimes which demonstrate the nature and seriousness of a defendant's
14 criminal conduct, but to decline to charge crimes which are not
15 necessary to such an indication. Crimes which do not merge as a matter
16 of law, but which arise from the same course of conduct, do not all
17 have to be charged.

18 GUIDELINES/COMMENTARY:

19 Police Investigation

20 A prosecuting attorney is dependent upon law enforcement agencies
21 to conduct the necessary factual investigation which must precede the
22 decision to prosecute. The prosecuting attorney shall ensure that a
23 thorough factual investigation has been conducted before a decision to
24 prosecute is made. In ordinary circumstances the investigation should
25 include the following:

26 (1) The interviewing of all material witnesses, together with the
27 obtaining of written statements whenever possible;

28 (2) The completion of necessary laboratory tests; and

29 (3) The obtaining, in accordance with constitutional requirements,
30 of the suspect's version of the events.

31 If the initial investigation is incomplete, a prosecuting attorney
32 should insist upon further investigation before a decision to prosecute
33 is made, and specify what the investigation needs to include.

34 Exceptions

35 In certain situations, a prosecuting attorney may authorize filing
36 of a criminal complaint before the investigation is complete if:

37 (1) Probable cause exists to believe the suspect is guilty; and

38 (2) The suspect presents a danger to the community or is likely to
39 flee if not apprehended; or

1 (3) The arrest of the suspect is necessary to complete the
2 investigation of the crime.

3 In the event that the exception to the standard is applied, the
4 prosecuting attorney shall obtain a commitment from the law enforcement
5 agency involved to complete the investigation in a timely manner. If
6 the subsequent investigation does not produce sufficient evidence to
7 meet the normal charging standard, the complaint should be dismissed.

8 Investigation Techniques

9 The prosecutor should be fully advised of the investigatory
10 techniques that were used in the case investigation including:

- 11 (1) Polygraph testing;
- 12 (2) Hypnosis;
- 13 (3) Electronic surveillance;
- 14 (4) Use of informants.

15 Pre-Filing Discussions with Defendant

16 Discussions with the defendant or his/her representative regarding
17 the selection or disposition of charges may occur prior to the filing
18 of charges, and potential agreements can be reached.

19 Pre-Filing Discussions with Victim(s)

20 Discussions with the victim(s) or victims' representatives
21 regarding the selection or disposition of charges may occur before the
22 filing of charges. The discussions may be considered by the prosecutor
23 in charging and disposition decisions, and should be considered before
24 reaching any agreement with the defendant regarding these decisions.

25 **Sec. 8.** RCW 18.155.010 and 1990 c 3 s 801 are each amended to read
26 as follows:

27 The legislature finds that sex offender therapists (~~who examine~~
28 ~~and treat sex offenders pursuant to the special sexual offender~~
29 ~~sentencing alternative under RCW 9.94A.120(7)(a) and~~) who may treat
30 juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in
31 protecting the public from juvenile sex offenders who remain in the
32 community following conviction. The legislature finds that the
33 qualifications, practices, techniques, and effectiveness of juvenile
34 sex offender treatment providers vary widely and that the court's
35 ability to effectively determine the appropriateness of granting the
36 sentencing alternative and monitoring the offender to ensure continued
37 protection of the community is undermined by a lack of regulated
38 practices. The legislature recognizes the right of sex offender

1 therapists to practice, consistent with the paramount requirements of
2 public safety. Public safety is best served by regulating sex offender
3 therapists whose clients are being evaluated and being treated pursuant
4 to RCW (~~(9.94A.120(7)(a) and~~) 13.40.160. This chapter shall be
5 construed to require only those sex offender therapists who examine and
6 treat sex offenders pursuant to RCW (~~(9.94A.120(7)(a) and~~) 13.40.160
7 to obtain a sexual offender treatment certification as provided in this
8 chapter.

9 **Sec. 9.** RCW 18.155.020 and 1990 c 3 s 802 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter:

13 (1) "Certified sex offender treatment provider" means a licensed,
14 certified, or registered health professional who is certified to
15 examine and treat sex offenders pursuant to RCW (~~(9.94A.120(7)(a) and~~)
16 13.40.160.

17 (2) "Department" means the department of health.

18 (3) "Secretary" means the secretary of health.

19 (4) "Sex offender treatment provider" means a person who counsels
20 or treats sex offenders accused of or convicted of a sex offense as
21 defined by RCW 9.94A.030.

22 **Sec. 10.** RCW 18.155.030 and 1990 c 3 s 803 are each amended to
23 read as follows:

24 (1) No person shall represent himself or herself as a certified sex
25 offender treatment provider without first applying for and receiving a
26 certificate pursuant to this chapter.

27 (2) Only a certified sex offender treatment provider may perform or
28 provide the following services:

29 (a) Evaluations conducted for the purposes of and pursuant to RCW
30 (~~(9.94A.120(7)(a) and~~) 13.40.160;

31 (b) Treatment of (~~convicted sex offenders who are sentenced and~~
32 ~~ordered into treatment pursuant to RCW 9.94A.120(7)(a) and~~)
33 adjudicated juvenile sex offenders who are ordered into treatment
34 pursuant to RCW 13.40.160.

35 **Sec. 11.** RCW 72.09.340 and 1996 c 215 s 3 are each amended to read
36 as follows:

1 (1) In making all discretionary decisions regarding release plans
2 for and supervision of sex offenders, the department shall set
3 priorities and make decisions based on an assessment of public safety
4 risks.

5 (2) The department shall, no later than September 1, 1996,
6 implement a policy governing the department's evaluation and approval
7 of release plans for sex offenders. The policy shall include, at a
8 minimum, a formal process by which victims, witnesses, and other
9 interested people may provide information and comments to the
10 department on potential safety risks to specific individuals or classes
11 of individuals posed by a specific sex offender. The department shall
12 make all reasonable efforts to publicize the availability of this
13 process through currently existing mechanisms and shall seek the
14 assistance of courts, prosecutors, law enforcement, and victims'
15 advocacy groups in doing so. Notice of an offender's proposed
16 residence shall be provided to all people registered to receive notice
17 of an offender's release under RCW 9.94A.155(2), except that in no case
18 may this notification requirement be construed to require an extension
19 of an offender's release date.

20 (3) For any offender convicted of a felony sex offense against a
21 minor victim after June 6, 1996, the department shall not approve a
22 residence location if the proposed residence: (a) Includes a minor
23 victim or child of similar age or circumstance as a previous victim who
24 the department determines may be put at substantial risk of harm by the
25 offender's residence in the household; or (b) is within close proximity
26 of the current residence of a minor victim, unless the whereabouts of
27 the minor victim cannot be determined or unless such a restriction
28 would impede family reunification efforts ordered by the court or
29 directed by the department of social and health services. The
30 department is further authorized to reject a residence location if the
31 proposed residence is within close proximity to schools, child care
32 centers, playgrounds, or other grounds or facilities where children of
33 similar age or circumstance as a previous victim are present who the
34 department determines may be put at substantial risk of harm by the sex
35 offender's residence at that location.

36 (4) When the department requires supervised visitation as a term or
37 condition of a sex offender's community placement under RCW
38 9.94A.120(~~(+9)~~) (8)(c)(vi), the department shall, prior to approving
39 a supervisor, consider the following:

1 (a) The relationships between the proposed supervisor, the
2 offender, and the minor; (b) the proposed supervisor's acknowledgment
3 and understanding of the offender's prior criminal conduct, general
4 knowledge of the dynamics of child sexual abuse, and willingness and
5 ability to protect the minor from the potential risks posed by contact
6 with the offender; and (c) recommendations made by the department of
7 social and health services about the best interests of the child.

8 **Sec. 12.** RCW 88.12.033 and 1998 c 219 s 3 are each amended to read
9 as follows:

10 A person convicted under RCW 88.12.029 or 88.12.032 shall, as a
11 condition of community supervision imposed under RCW 9.94A.383 or
12 community placement imposed under RCW 9.94A.120(~~(+9)~~) (8), complete a
13 diagnostic evaluation by an alcohol or drug dependency agency approved
14 by the department of social and health services or a qualified
15 probation department, defined under RCW 46.61.516, that has been
16 approved by the department of social and health services. If the
17 person is found to have an alcohol or drug problem that requires
18 treatment, the person shall complete treatment in a program approved by
19 the department of social and health services under chapter 70.96A RCW.
20 If the person is found not to have an alcohol or drug problem that
21 requires treatment, he or she shall complete a course in an information
22 school approved by the department of social and health services under
23 chapter 70.96A RCW. The convicted person shall pay all costs for any
24 evaluation, education, or treatment required by this section, unless
25 the person is eligible for an existing program offered or approved by
26 the department of social and health services. Nothing in chapter 219,
27 Laws of 1998 requires the addition of new treatment or assessment
28 facilities nor affects the department of social and health services use
29 of existing programs and facilities authorized by law.

30 NEW SECTION. **Sec. 13.** This act applies to offenses committed
31 after July 31, 1999.

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