
HOUSE BILL 1543

State of Washington

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By Representatives O'Brien, Ballasiotes, Kastama, Cairnes and Keiser;
by request of Sentencing Guidelines Commission

Read first time 01/28/1999. Referred to Committee on Criminal Justice
& Corrections.

1 AN ACT Relating to sentences for violent offenses and crimes
2 against persons; amending RCW 9.94A.120 and 9.94A.440; and prescribing
3 penalties.

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

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

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

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

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

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

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

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

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

36 (b) Undergo available outpatient treatment for up to two years, or
37 inpatient treatment not to exceed the standard range of confinement for
38 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.

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

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

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

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

25 (b) If the midpoint of the standard range is greater than one year
26 and the sentencing judge determines that the offender is eligible for
27 this option and that the offender and the community will benefit from
28 the use of the special drug offender sentencing alternative, the judge
29 may waive imposition of a sentence within the standard range and impose
30 a sentence that must include a period of total confinement in a state
31 facility for one-half of the midpoint of the standard range. During
32 incarceration in the state facility, offenders sentenced under this
33 subsection shall undergo a comprehensive substance abuse assessment and
34 receive, within available resources, treatment services appropriate for
35 the offender. The treatment services shall be designed by the division
36 of alcohol and substance abuse of the department of social and health
37 services, in cooperation with the department of corrections. If the
38 midpoint of the standard range is twenty-four months or less, no more
39 than three months of the sentence may be served in a work release

1 status. The court shall also impose one year of concurrent community
2 custody and community supervision that must include appropriate
3 outpatient substance abuse treatment, crime-related prohibitions
4 including a condition not to use illegal controlled substances, and a
5 requirement to submit to urinalysis or other testing to monitor that
6 status. The court may require that the monitoring for controlled
7 substances be conducted by the department or by a treatment
8 alternatives to street crime program or a comparable court or agency-
9 referred program. The offender may be required to pay thirty dollars
10 per month while on community custody to offset the cost of monitoring.
11 In addition, the court shall impose three or more of the following
12 conditions:

- 13 (i) Devote time to a specific employment or training;
- 14 (ii) Remain within prescribed geographical boundaries and notify
15 the court or the community corrections officer before any change in the
16 offender's address or employment;
- 17 (iii) Report as directed to a community corrections officer;
- 18 (iv) Pay all court-ordered legal financial obligations;
- 19 (v) Perform community service work;
- 20 (vi) Stay out of areas designated by the sentencing judge.

21 (c) If the offender violates any of the sentence conditions in (b)
22 of this subsection, the department shall impose sanctions
23 administratively, with notice to the prosecuting attorney and the
24 sentencing court. Upon motion of the court or the prosecuting
25 attorney, a violation hearing shall be held by the court. If the court
26 finds that conditions have been willfully violated, the court may
27 impose confinement consisting of up to the remaining one-half of the
28 midpoint of the standard range. All total confinement served during
29 the period of community custody shall be credited to the offender,
30 regardless of whether the total confinement is served as a result of
31 the original sentence, as a result of a sanction imposed by the
32 department, or as a result of a violation found by the court. The term
33 of community supervision shall be tolled by any period of time served
34 in total confinement as a result of a violation found by the court.

35 (d) The department shall determine the rules for calculating the
36 value of a day fine based on the offender's income and reasonable
37 obligations which the offender has for the support of the offender and
38 any dependents. These rules shall be developed in consultation with

1 the administrator for the courts, the office of financial management,
2 and the commission.

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

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

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

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

- 28 (A) Frequency and type of contact between offender and therapist;
- 29 (B) Specific issues to be addressed in the treatment and
30 description of planned treatment modalities;
- 31 (C) Monitoring plans, including any requirements regarding living
32 conditions, lifestyle requirements, and monitoring by family members
33 and others;
- 34 (D) Anticipated length of treatment; and
- 35 (E) Recommended crime-related prohibitions.

36 The court on its own motion may order, or on a motion by the state
37 shall order, a second examination regarding the offender's amenability
38 to treatment. The evaluator shall be selected by the party making the
39 motion. The defendant shall pay the cost of any second examination

1 ordered unless the court finds the defendant to be indigent in which
2 case the state shall pay the cost.

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

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

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

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

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

35 (III) Report as directed to the court and a community corrections
36 officer;

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

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

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

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

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

28 (v) If a violation of conditions occurs during community custody,
29 the department shall either impose sanctions as provided for in RCW
30 9.94A.205(2)(a) or refer the violation to the court and recommend
31 revocation of the suspended sentence as provided for in (a)(vi) of this
32 subsection.

33 (vi) The court may revoke the suspended sentence at any time during
34 the period of community custody and order execution of the sentence if:
35 (A) The defendant violates the conditions of the suspended sentence, or
36 (B) the court finds that the defendant is failing to make satisfactory
37 progress in treatment. All confinement time served during the period
38 of community custody shall be credited to the offender if the suspended
39 sentence is revoked.

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

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

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

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

22 (b) When an offender commits any felony sex offense on or after
23 July 1, 1987, and is sentenced to a term of confinement of more than
24 one year but less than six years, the sentencing court may, on its own
25 motion or on the motion of the offender or the state, request the
26 department of corrections to evaluate whether the offender is amenable
27 to treatment and the department may place the offender in a treatment
28 program within a correctional facility operated by the department.

29 Except for an offender who has been convicted of a violation of RCW
30 9A.44.040 or 9A.44.050, if the offender completes the treatment program
31 before the expiration of his or her term of confinement, the department
32 of corrections may request the court to convert the balance of
33 confinement to community supervision and to place conditions on the
34 offender including crime-related prohibitions and requirements that the
35 offender perform any one or more of the following:

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

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

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

3 (iv) Undergo available outpatient treatment.

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

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

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

20 (9)(a) When a court sentences a person to a term of total
21 confinement to the custody of the department of corrections for an
22 offense categorized as a sex offense or a serious violent offense
23 committed after July 1, 1988, but before July 1, 1990, (~~assault in the~~
24 ~~second degree, assault of a child in the second degree~~) a violent
25 offense as defined in RCW 9.94A.030, any crime against a person (~~where~~
26 ~~it is determined in accordance with RCW 9.94A.125 that the defendant or~~
27 ~~an accomplice was armed with a deadly weapon at the time of~~
28 ~~commission~~) under RCW 9.94A.440(2), or any felony offense under
29 chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this
30 section, committed on or after July 1, 1988, the court shall, in
31 addition to the other terms of the sentence, sentence the offender to
32 a one-year term of community placement beginning either upon completion
33 of the term of confinement or at such time as the offender is
34 transferred to community custody in lieu of earned early release in
35 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
36 offender under this subsection to the statutory maximum period of
37 confinement then the community placement portion of the sentence shall
38 consist entirely of such community custody to which the offender may
39 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any

1 period of community custody actually served shall be credited against
2 the community placement portion of the sentence.

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

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

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

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

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

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

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

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

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

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

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

7 (iv) The offender shall not consume alcohol;

8 (v) The offender shall comply with any crime-related prohibitions;
9 or

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

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

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

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

36 (c) At any time prior to the completion of a sex offender's term of
37 community custody, if the court finds that public safety would be
38 enhanced, the court may impose and enforce an order extending any or
39 all of the conditions imposed pursuant to this section for a period up

1 to the maximum allowable sentence for the crime as it is classified in
2 chapter 9A.20 RCW, regardless of the expiration of the offender's term
3 of community custody. If a violation of a condition extended under
4 this subsection occurs after the expiration of the offender's term of
5 community custody, it shall be deemed a violation of the sentence for
6 the purposes of RCW 9.94A.195 and may be punishable as contempt of
7 court as provided for in RCW 7.21.040.

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

14 (12) If a sentence imposed includes payment of a legal financial
15 obligation, the sentence shall specify the total amount of the legal
16 financial obligation owed, and shall require the offender to pay a
17 specified monthly sum toward that legal financial obligation.
18 Restitution to victims shall be paid prior to any other payments of
19 monetary obligations. Any legal financial obligation that is imposed
20 by the court may be collected by the department, which shall deliver
21 the amount paid to the county clerk for credit. The offender's
22 compliance with payment of legal financial obligations shall be
23 supervised by the department for ten years following the entry of the
24 judgment and sentence or ten years following the offender's release
25 from total confinement. All monetary payments ordered shall be paid no
26 later than ten years after the last date of release from confinement
27 pursuant to a felony conviction or the date the sentence was entered
28 unless the superior court extends the criminal judgment an additional
29 ten years. If the legal financial obligations including crime victims'
30 assessments are not paid during the initial ten-year period, the
31 superior court may extend jurisdiction under the criminal judgment an
32 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
33 9.94A.145. If jurisdiction under the criminal judgment is extended,
34 the department is not responsible for supervision of the offender
35 during the subsequent period. Independent of the department, the party
36 or entity to whom the legal financial obligation is owed shall have the
37 authority to utilize any other remedies available to the party or
38 entity to collect the legal financial obligation. Nothing in this
39 section makes the department, the state, or any of its employees,

1 agents, or other persons acting on their behalf liable under any
2 circumstances for the payment of these legal financial obligations. If
3 an order includes restitution as one of the monetary assessments, the
4 county clerk shall make disbursements to victims named in the order.

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

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

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

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

1 The department may require offenders to pay for special services
2 rendered on or after July 25, 1993, including electronic monitoring,
3 day reporting, and telephone reporting, dependent upon the offender's
4 ability to pay. The department may pay for these services for
5 offenders who are not able to pay.

6 (15) 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 (16) The sentencing court shall give the offender credit for all
17 confinement time served before the sentencing if that confinement was
18 solely in regard to the offense for which the offender is being
19 sentenced.

20 (17) A departure from the standards in RCW 9.94A.400 (1) and (2)
21 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 (18) The court shall order restitution whenever the offender is
26 convicted of a felony that results in injury to any person or damage to
27 or loss of property, whether the offender is sentenced to confinement
28 or placed under community supervision, unless extraordinary
29 circumstances exist that make restitution inappropriate in the court's
30 judgment. The court shall set forth the extraordinary circumstances in
31 the record if it does not order restitution.

32 (19) As a part of any sentence, the court may impose and enforce an
33 order that relates directly to the circumstances of the crime for which
34 the offender has been convicted, prohibiting the offender from having
35 any contact with other specified individuals or a specific class of
36 individuals for a period not to exceed the maximum allowable sentence
37 for the crime, regardless of the expiration of the offender's term of
38 community supervision or community placement.

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

12 (21) In any sentence of partial confinement, the court may require
13 the defendant to serve the partial confinement in work release, in a
14 program of home detention, on work crew, or in a combined program of
15 work crew and home detention.

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

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

22 (1) Decision not to prosecute.

23 STANDARD: A prosecuting attorney may decline to prosecute, even
24 though technically sufficient evidence to prosecute exists, in
25 situations where prosecution would serve no public purpose, would
26 defeat the underlying purpose of the law in question or would result in
27 decreased respect for the law.

28 GUIDELINE/COMMENTARY:

29 Examples

30 The following are examples of reasons not to prosecute which could
31 satisfy the standard.

32 (a) Contrary to Legislative Intent - It may be proper to decline to
33 charge where the application of criminal sanctions would be clearly
34 contrary to the intent of the legislature in enacting the particular
35 statute.

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

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

1 (ii) Most members of society act as if it were no longer in
2 existence; and
3 (iii) It serves no deterrent or protective purpose in today's
4 society; and
5 (iv) The statute has not been recently reconsidered by the
6 legislature.

7 This reason is not to be construed as the basis for declining cases
8 because the law in question is unpopular or because it is difficult to
9 enforce.

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

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

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

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

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

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

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

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

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

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

32 (f) High Disproportionate Cost of Prosecution - It may be proper to
33 decline to charge where the cost of locating or transporting, or the
34 burden on, prosecution witnesses is highly disproportionate to the
35 importance of prosecuting the offense in question. This reason should
36 be limited to minor cases and should not be relied upon in serious
37 cases.

38 (g) Improper Motives of Complainant - It may be proper to decline
39 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying
2 purpose of the law in question or would result in decreased respect for
3 the law.

4 (h) Immunity - It may be proper to decline to charge where immunity
5 is to be given to an accused in order to prosecute another where the
6 accused's information or testimony will reasonably lead to the
7 conviction of others who are responsible for more serious criminal
8 conduct or who represent a greater danger to the public interest.

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

12 (i) Assault cases where the victim has suffered little or no
13 injury;

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

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

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

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

21 Notification

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

24 (2) Decision to prosecute.

25 (a) STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the evidence,
29 would justify conviction by a reasonable and objective fact-finder.
30 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
31 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
32 9A.64.020 the prosecutor should avoid prefiling agreements or
33 diversions intended to place the accused in a program of treatment or
34 counseling, so that treatment, if determined to be beneficial, can be
35 provided pursuant to RCW 9.94A.120(8).

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it probable
38 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

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

1 Intimidating a Witness
2 Intimidating a Public Servant
3 Bomb Threat (if against person)
4 3rd Degree Assault
5 3rd Degree Assault of a Child
6 Unlawful Imprisonment
7 Promoting a Suicide Attempt
8 Riot (if against person)
9 Stalking
10 Custodial Assault
11 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
12 and (c))
13 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
14 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
15 (5))

16 CRIMES AGAINST PROPERTY/OTHER CRIMES

17 2nd Degree Arson
18 1st Degree Escape
19 2nd Degree Burglary
20 1st Degree Theft
21 1st Degree Perjury
22 1st Degree Introducing Contraband
23 1st Degree Possession of Stolen Property
24 Bribery
25 Bribing a Witness
26 Bribe received by a Witness
27 Bomb Threat (if against property)
28 1st Degree Malicious Mischief
29 2nd Degree Theft
30 2nd Degree Escape
31 2nd Degree Introducing Contraband
32 2nd Degree Possession of Stolen Property
33 2nd Degree Malicious Mischief
34 1st Degree Reckless Burning
35 Taking a Motor Vehicle without Authorization
36 Forgery
37 2nd Degree Perjury
38 2nd Degree Promoting Prostitution
39 Tampering with a Witness

1 Trading in Public Office
2 Trading in Special Influence
3 Receiving/Granting Unlawful Compensation
4 Bigamy
5 Eluding a Pursuing Police Vehicle
6 Willful Failure to Return from Furlough
7 Escape from Community Custody
8 Riot (if against property)
9 Thefts of Livestock

10 ALL OTHER UNCLASSIFIED FELONIES

11 Selection of Charges/Degree of Charge

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

15 ~~((a))~~ (A) Will significantly enhance the strength of the state's
16 case at trial; or

17 ~~((b))~~ (B) Will result in restitution to all victims.

18 ~~((2))~~ (ii) The prosecutor should not overcharge to obtain a
19 guilty plea. Overcharging includes:

20 ~~((a))~~ (A) Charging a higher degree;

21 ~~((b))~~ (B) Charging additional counts.

22 This standard is intended to direct prosecutors to charge those
23 crimes which demonstrate the nature and seriousness of a defendant's
24 criminal conduct, but to decline to charge crimes which are not
25 necessary to such an indication. Crimes which do not merge as a matter
26 of law, but which arise from the same course of conduct, do not all
27 have to be charged.

28 (b) GUIDELINES/COMMENTARY:

29 (i) Police Investigation

30 A prosecuting attorney is dependent upon law enforcement agencies
31 to conduct the necessary factual investigation which must precede the
32 decision to prosecute. The prosecuting attorney shall ensure that a
33 thorough factual investigation has been conducted before a decision to
34 prosecute is made. In ordinary circumstances the investigation should
35 include the following:

36 ~~((1))~~ (A) The interviewing of all material witnesses, together
37 with the obtaining of written statements whenever possible;

38 ~~((2))~~ (B) The completion of necessary laboratory tests; and

1 (~~(3)~~) (C) The obtaining, in accordance with constitutional
2 requirements, of the suspect's version of the events.

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

6 (ii) Exceptions

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

9 (~~(1)~~) (A) Probable cause exists to believe the suspect is guilty;
10 and

11 (~~(2)~~) (B) The suspect presents a danger to the community or is
12 likely to flee if not apprehended; or

13 (~~(3)~~) (C) The arrest of the suspect is necessary to complete the
14 investigation of the crime.

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

20 (iii) Investigation Techniques

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

23 (~~(1)~~) (A) Polygraph testing;

24 (~~(2)~~) (B) Hypnosis;

25 (~~(3)~~) (C) Electronic surveillance;

26 (~~(4)~~) (D) Use of informants.

27 (iv) Pre-Filing Discussions with Defendant

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

31 (v) Pre-Filing Discussions with Victim(s)

32 Discussions with the victim(s) or victims' representatives
33 regarding the selection or disposition of charges may occur before the
34 filing of charges. The discussions may be considered by the prosecutor
35 in charging and disposition decisions, and should be considered before
36 reaching any agreement with the defendant regarding these decisions.

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