
HOUSE BILL 2948

State of Washington

59th Legislature

2006 Regular Session

By Representatives O'Brien and Dunn

Read first time 01/17/2006. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to felony sentences; amending RCW 9.94A.510,
2 9.94A.535, 9.94A.537, 9.94A.190, and 9.94A.850; creating new sections;
3 and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that statutorily
6 granted judicial discretion in sentencing has been limited by appellate
7 court decisions requiring jury findings prior to imposing sentences
8 above the standard sentence ranges. The legislature further finds that
9 expanding the sentencing ranges is the most appropriate method of
10 increasing judicial discretion while retaining commensurate and
11 appropriate punishment for similarly situated offenders as well as
12 assuring the frugal use of state and local government resources. The
13 legislature intends to provide judges with increased discretion and
14 decrease the need to impose exceptional sentences. The legislature
15 further intends that sentencing courts have the authority and power to
16 adopt suitable processes of proceeding in cases where exceptional
17 sentences are appropriate to the extent that such procedures are
18 mandated by the United States Constitution or Washington state
19 Constitution.

1 **Sec. 2.** RCW 9.94A.510 and 2002 c 290 s 10 are each amended to read
 2 as follows:

3 (~~TABLE 1~~)
 4 Sentencing Grid

SERIOUSNESS										
LEVEL	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XVI Life Sentence without Parole/Death Penalty										
XV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
	240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
	320-	333-	347-	361-	374-	388-	416-	450-	493-	548-
XIV	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	220	234	244	254	265	275	295	316	357	397
XIII	12y	13y	14y	15y	16y	17y	19y	21y	25y	29y
	123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
	164	178	192	205	219	233	260	288	342	397
XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
	93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
	123	136-	147-	160-	171-	184	216-	236-	277-	318-
XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
	78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
	102-	114	125-	136-	147-	158-	194-	211-	245-	280-
X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
	51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
	68	75	82	89	96	102	130	144	171	198
IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
	31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
	41	48	54	61	68	75	102	116	144	171
VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
	21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
	27	34	41	48	54	61	89	102	116	144
VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
	15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
	20	27	34	41	48	54	75	89	102	116
VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
	12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
	14-	20	27	34	41	48	61	75	89	102
V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
	6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
	12	14	17	20	29	43	54	68	82	96
IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m

1		3-	6-	12+	13-	15-	22-	33-	43-	53-	63-
2		9	12	14	17	20	29	43	57	70	84
3	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
4		1-	3-	4-	9-	12+	17-	22-	33-	43-	51-
5		3-	8-	12	12	16	22	29	43	57	68
6	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
7		0-90	2-	3-	4-	12+	14-	17-	22-	33-	43-
8		Days	6-	9-	12	14	18	22	29	43	57
9	I			3m	4m	5m	8m	13m	16m	20m	2y2m
10		0-60	0-90	2-	2-	3-	4-	12+	14-	17-	22-
11		Days	Days	5-	6-	8-	12	14-	18	22	29))

TABLE 1

Sentencing Grid

SERIOUSNESS

LEVEL

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9	10 or more
<u>XVI</u>	<u>Life Sentence without Parole/Death Penalty</u>										
<u>XV</u>	<u>225-</u> <u>337</u>	<u>233-</u> <u>350</u>	<u>243-</u> <u>365</u>	<u>262-</u> <u>393</u>	<u>272-</u> <u>408</u>	<u>289-</u> <u>435</u>	<u>289-</u> <u>435</u>	<u>315-</u> <u>473</u>	<u>345-</u> <u>518</u>	<u>383-</u> <u>575</u>	<u>383-</u> <u>862</u>
<u>XIV</u>	<u>123-</u> <u>220</u>	<u>134-</u> <u>234</u>	<u>144-</u> <u>244</u>	<u>154-</u> <u>254</u>	<u>165-</u> <u>265</u>	<u>175-</u> <u>275</u>	<u>195-</u> <u>295</u>	<u>216-</u> <u>316</u>	<u>257-</u> <u>357</u>	<u>298-</u> <u>397</u>	<u>298-</u> <u>595</u>
<u>XIII</u>	<u>115-</u> <u>172</u>	<u>125-</u> <u>187</u>	<u>134-</u> <u>202</u>	<u>144-</u> <u>216</u>	<u>154-</u> <u>230</u>	<u>163-</u> <u>245</u>	<u>182-</u> <u>273</u>	<u>201-</u> <u>301</u>	<u>238-</u> <u>357</u>	<u>277-</u> <u>416</u>	<u>277-</u> <u>624</u>
<u>XII</u>	<u>88-</u> <u>132</u>	<u>95-</u> <u>143</u>	<u>103-</u> <u>155</u>	<u>112-</u> <u>168</u>	<u>120-</u> <u>180</u>	<u>128-</u> <u>194</u>	<u>151-</u> <u>227</u>	<u>166-</u> <u>248</u>	<u>193-</u> <u>290</u>	<u>222-</u> <u>333</u>	<u>222-</u> <u>500</u>
<u>XI</u>	<u>72-</u> <u>107</u>	<u>80-</u> <u>120</u>	<u>88-</u> <u>132</u>	<u>95-</u> <u>143</u>	<u>100-</u> <u>150</u>	<u>112-</u> <u>168</u>	<u>136-</u> <u>204</u>	<u>148-</u> <u>222</u>	<u>172-</u> <u>257</u>	<u>196-</u> <u>295</u>	<u>196-</u> <u>442</u>
<u>X</u>	<u>43-</u> <u>71</u>	<u>47-</u> <u>79</u>	<u>52-</u> <u>86</u>	<u>56-</u> <u>93</u>	<u>61-</u> <u>100</u>	<u>64-</u> <u>107</u>	<u>79-</u> <u>132</u>	<u>90-</u> <u>150</u>	<u>108-</u> <u>180</u>	<u>127-</u> <u>208</u>	<u>127-</u> <u>312</u>
<u>IX</u>	<u>26-</u> <u>43</u>	<u>29-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>38-</u> <u>64</u>	<u>43-</u> <u>71</u>	<u>47-</u> <u>79</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>90-</u> <u>150</u>	<u>108-</u> <u>180</u>	<u>108-</u> <u>270</u>
<u>VIII</u>	<u>17-</u> <u>28</u>	<u>21-</u> <u>36</u>	<u>26-</u> <u>43</u>	<u>30-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>38-</u> <u>64</u>	<u>56-</u> <u>93</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>90-</u> <u>150</u>	<u>90-</u> <u>225</u>
<u>VII</u>	<u>14-</u> <u>21</u>	<u>17-</u> <u>28</u>	<u>21-</u> <u>36</u>	<u>26-</u> <u>43</u>	<u>30-</u> <u>50</u>	<u>34-</u> <u>57</u>	<u>47-</u> <u>79</u>	<u>55-</u> <u>93</u>	<u>64-</u> <u>107</u>	<u>72-</u> <u>120</u>	<u>72-</u> <u>180</u>

1	VI	<u>10+-</u>	<u>14-</u>	<u>17-</u>	<u>21-</u>	<u>26-</u>	<u>30-</u>	<u>38-</u>	<u>47-</u>	<u>55-</u>	<u>64-</u>	<u>64-</u>
2		<u>17</u>	<u>21</u>	<u>28</u>	<u>36</u>	<u>43</u>	<u>50</u>	<u>64</u>	<u>79</u>	<u>93</u>	<u>107</u>	<u>157</u>
3	V	<u>6-</u>	<u>10+-</u>	<u>12+-</u>	<u>14-</u>	<u>17-</u>	<u>27-</u>	<u>34-</u>	<u>43-</u>	<u>52-</u>	<u>61-</u>	<u>61-</u>
4		<u>12</u>	<u>17</u>	<u>18</u>	<u>21</u>	<u>30</u>	<u>45</u>	<u>57</u>	<u>71</u>	<u>86</u>	<u>100</u>	<u>120</u>
5	IV	<u>3-</u>	<u>6-</u>	<u>10+-</u>	<u>12+-</u>	<u>14-</u>	<u>17-</u>	<u>27-</u>	<u>34-</u>	<u>44-</u>	<u>52-</u>	<u>52-</u>
6		<u>9</u>	<u>12</u>	<u>17</u>	<u>18</u>	<u>21</u>	<u>30</u>	<u>45</u>	<u>57</u>	<u>74</u>	<u>86</u>	<u>120</u>
7	III	<u>1-</u>	<u>3-</u>	<u>4-</u>	<u>9-</u>	<u>10+-</u>	<u>16-</u>	<u>17-</u>	<u>27-</u>	<u>36-</u>	<u>43-</u>	<u>43-</u>
8		<u>3</u>	<u>8</u>	<u>12</u>	<u>12</u>	<u>17</u>	<u>23</u>	<u>30</u>	<u>45</u>	<u>60</u>	<u>71</u>	<u>120</u>
9	II	<u>0-90</u>	<u>2-</u>	<u>3-</u>	<u>4-</u>	<u>10+-</u>	<u>13-</u>	<u>16-</u>	<u>17-</u>	<u>27-</u>	<u>36-</u>	<u>36-</u>
10		<u>Days</u>	<u>6</u>	<u>9</u>	<u>12</u>	<u>17</u>	<u>19</u>	<u>23</u>	<u>30</u>	<u>45</u>	<u>60</u>	<u>120</u>
11	I	<u>0-60</u>	<u>0-90</u>	<u>2-</u>	<u>2-</u>	<u>3-</u>	<u>4-</u>	<u>10+-</u>	<u>13-</u>	<u>16-</u>	<u>17-</u>	<u>17-</u>
12		<u>Days</u>	<u>Days</u>	<u>5</u>	<u>6</u>	<u>8</u>	<u>12</u>	<u>17</u>	<u>19</u>	<u>23</u>	<u>30</u>	<u>60</u>

13 Numbers in the first and second horizontal rows of each seriousness
14 category (~~((represent sentencing midpoints in years(y) and months(m).~~
15 ~~Numbers in the second and third rows))~~ represent standard sentence
16 ranges in months, or in days if so designated. 12+ equals one year and
17 one day. 10+ equals ten months and one day.

18 **Sec. 3.** RCW 9.94A.535 and 2005 c 68 s 3 are each amended to read
19 as follows:

20 The court may impose a sentence outside the standard sentence range
21 for an offense if it finds, considering the purpose of this chapter,
22 that there are substantial and compelling reasons justifying an
23 exceptional sentence. Facts supporting aggravated sentences, other
24 than the fact of a prior conviction, shall be determined pursuant to
25 the provisions of RCW 9.94A.537.

26 Whenever a sentence outside the standard sentence range is imposed,
27 the court shall set forth the reasons for its decision in written
28 findings of fact and conclusions of law. A sentence outside the
29 standard sentence range shall be a determinate sentence.

30 If the sentencing court finds that an exceptional sentence outside
31 the standard sentence range should be imposed, the sentence is subject
32 to review only as provided for in RCW 9.94A.585(4).

33 A departure from the standards in RCW 9.94A.589 (1) and (2)
34 governing whether sentences are to be served consecutively or
35 concurrently is an exceptional sentence subject to the limitations in

1 this section, and may be appealed by the offender or the state as set
2 forth in RCW 9.94A.585 (2) through (6).

3 (1) Mitigating Circumstances - Court to Consider

4 The court may impose an exceptional sentence below the standard
5 range if it finds that mitigating circumstances are established by a
6 preponderance of the evidence. The following are illustrative only and
7 are not intended to be exclusive reasons for exceptional sentences.

8 (a) To a significant degree, the victim was an initiator, willing
9 participant, aggressor, or provoker of the incident.

10 (b) Before detection, the defendant compensated, or made a good
11 faith effort to compensate, the victim of the criminal conduct for any
12 damage or injury sustained.

13 (c) The defendant committed the crime under duress, coercion,
14 threat, or compulsion insufficient to constitute a complete defense but
15 which significantly affected his or her conduct.

16 (d) The defendant, with no apparent predisposition to do so, was
17 induced by others to participate in the crime.

18 (e) The defendant's capacity to appreciate the wrongfulness of his
19 or her conduct, or to conform his or her conduct to the requirements of
20 the law, was significantly impaired. Voluntary use of drugs or alcohol
21 is excluded.

22 (f) The offense was principally accomplished by another person and
23 the defendant manifested extreme caution or sincere concern for the
24 safety or well-being of the victim.

25 (g) The operation of the multiple offense policy of RCW 9.94A.589
26 results in a presumptive sentence that is clearly excessive in light of
27 the purpose of this chapter, as expressed in RCW 9.94A.010.

28 (h) The defendant or the defendant's children suffered a continuing
29 pattern of physical or sexual abuse by the victim of the offense and
30 the offense is a response to that abuse.

31 (i) The offender score due to other current offenses, as opposed to
32 prior offenses, results in a presumptive sentence that is clearly
33 excessive.

34 (2) Aggravating Circumstances - Considered and Imposed by the Court

35 The trial court may impose an aggravated exceptional sentence
36 without a finding of fact by a jury under the following circumstances:

37 (a) The defendant and the state both stipulate that justice is best
38 served by the imposition of an exceptional sentence outside the

1 standard range, and the court finds the exceptional sentence to be
2 consistent with and in furtherance of the interests of justice and the
3 purposes of the sentencing reform act.

4 (b) The defendant's prior unscored misdemeanor or prior unscored
5 foreign criminal history results in a presumptive sentence that is
6 clearly too lenient in light of the purpose of this chapter, as
7 expressed in RCW 9.94A.010.

8 (c) The defendant has committed multiple current offenses and the
9 defendant's high offender score results in some of the current offenses
10 going unpunished.

11 (d) The failure to consider the defendant's prior criminal history
12 which was omitted from the offender score calculation pursuant to RCW
13 9.94A.525 results in a presumptive sentence that is clearly too
14 lenient.

15 (3) Aggravating Circumstances - Considered by a Jury - Imposed by
16 the Court

17 Except for circumstances listed in subsection (2) of this section,
18 the following circumstances are an exclusive list of factors that can
19 support a sentence above the standard range. Such facts should be
20 determined by procedures specified in RCW 9.94A.537.

21 (a) The defendant's conduct during the commission of the current
22 offense manifested deliberate cruelty to the victim.

23 (b) The defendant knew or should have known that the victim of the
24 current offense was particularly vulnerable or incapable of resistance.

25 (c) The current offense was a violent offense, and the defendant
26 knew that the victim of the current offense was pregnant.

27 (d) The current offense was a major economic offense or series of
28 offenses, so identified by a consideration of any of the following
29 factors:

30 (i) The current offense involved multiple victims or multiple
31 incidents per victim;

32 (ii) The current offense involved attempted or actual monetary loss
33 substantially greater than typical for the offense;

34 (iii) The current offense involved a high degree of sophistication
35 or planning or occurred over a lengthy period of time; or

36 (iv) The defendant used his or her position of trust, confidence,
37 or fiduciary responsibility to facilitate the commission of the current
38 offense.

1 (e) The current offense was a major violation of the Uniform
2 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
3 trafficking in controlled substances, which was more onerous than the
4 typical offense of its statutory definition: The presence of ANY of
5 the following may identify a current offense as a major VUCSA:

6 (i) The current offense involved at least three separate
7 transactions in which controlled substances were sold, transferred, or
8 possessed with intent to do so;

9 (ii) The current offense involved an attempted or actual sale or
10 transfer of controlled substances in quantities substantially larger
11 than for personal use;

12 (iii) The current offense involved the manufacture of controlled
13 substances for use by other parties;

14 (iv) The circumstances of the current offense reveal the offender
15 to have occupied a high position in the drug distribution hierarchy;

16 (v) The current offense involved a high degree of sophistication or
17 planning, occurred over a lengthy period of time, or involved a broad
18 geographic area of disbursement; or

19 (vi) The offender used his or her position or status to facilitate
20 the commission of the current offense, including positions of trust,
21 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
22 other medical professional).

23 (f) The current offense included a finding of sexual motivation
24 pursuant to RCW 9.94A.835.

25 (g) The offense was part of an ongoing pattern of sexual abuse of
26 the same victim under the age of eighteen years manifested by multiple
27 incidents over a prolonged period of time.

28 (h) The current offense involved domestic violence, as defined in
29 RCW 10.99.020, and one or more of the following was present:

30 (i) The offense was part of an ongoing pattern of psychological,
31 physical, or sexual abuse of the victim manifested by multiple
32 incidents over a prolonged period of time;

33 (ii) The offense occurred within sight or sound of the victim's or
34 the offender's minor children under the age of eighteen years; or

35 (iii) The offender's conduct during the commission of the current
36 offense manifested deliberate cruelty or intimidation of the victim.

37 (i) The offense resulted in the pregnancy of a child victim of
38 rape.

1 (j) The defendant knew that the victim of the current offense was
2 a youth who was not residing with a legal custodian and the defendant
3 established or promoted the relationship for the primary purpose of
4 victimization.

5 (k) The offense was committed with the intent to obstruct or impair
6 human or animal health care or agricultural or forestry research or
7 commercial production.

8 (l) The current offense is trafficking in the first degree or
9 trafficking in the second degree and any victim was a minor at the time
10 of the offense.

11 (m) The offense involved a high degree of sophistication or
12 planning.

13 (n) The defendant used his or her position of trust, confidence, or
14 fiduciary responsibility to facilitate the commission of the current
15 offense.

16 (o) The defendant committed a current sex offense, has a history of
17 sex offenses, and is not amenable to treatment.

18 (p) The offense involved an invasion of the victim's privacy.

19 (q) The defendant demonstrated or displayed an egregious lack of
20 remorse.

21 (r) The offense involved a destructive and foreseeable impact on
22 persons other than the victim.

23 (s) The defendant committed the offense to obtain or maintain his
24 or her membership or to advance his or her position in the hierarchy of
25 an organization, association, or identifiable group.

26 (t) The defendant committed the current offense shortly after being
27 released from incarceration.

28 (u) The current offense is a burglary and the victim of the
29 burglary was present in the building or residence when the crime was
30 committed.

31 (v) The offense was committed against a law enforcement officer who
32 was performing his or her official duties at the time of the offense,
33 the offender knew that the victim was a law enforcement officer, and
34 the victim's status as a law enforcement officer is not an element of
35 the offense.

36 (w) The defendant committed the offense against a victim who was
37 acting as a good samaritan.

1 (x) The defendant committed the offense against a public official
2 or officer of the court in retaliation of the public official's
3 performance of his or her duty to the criminal justice system.

4 (y) The victim's injuries substantially exceed the level of bodily
5 harm necessary to satisfy the elements of the offense. This aggravator
6 is not an exception to RCW 9.94A.530(2).

7 **Sec. 4.** RCW 9.94A.537 and 2005 c 68 s 4 are each amended to read
8 as follows:

9 (1) At any time prior to trial or entry of the guilty plea if
10 substantial rights of the defendant are not prejudiced, the state may
11 give notice that it is seeking a sentence above the standard sentencing
12 range. The notice shall state aggravating circumstances upon which the
13 requested sentence will be based.

14 (2) The facts supporting aggravating circumstances shall be proved
15 to a jury beyond a reasonable doubt. The jury's verdict on the
16 aggravating factor must be unanimous, and by special interrogatory. If
17 a jury is waived, proof shall be to the court beyond a reasonable
18 doubt, unless the defendant stipulates to the aggravating facts. A
19 jury may be empaneled to find aggravating facts if the defendant pleads
20 guilty to the underlying crime but not to the aggravating factor.

21 (3) Evidence regarding any facts supporting aggravating
22 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented
23 to the jury during the trial of the alleged crime, unless the state
24 alleges the aggravating circumstances listed in RCW 9.94A.535(3)
25 (e)(iv), (h)(i), (o), or (t). If one of these aggravating
26 circumstances is alleged, the trial court may conduct a separate
27 proceeding if the evidence supporting the aggravating fact is not part
28 of the res geste of the charged crime, if the evidence is not otherwise
29 admissible in trial of the charged crime, and if the court finds that
30 the probative value of the evidence to the aggravated fact is
31 substantially outweighed by its prejudicial effect on the jury's
32 ability to determine guilt or innocence for the underlying crime.

33 (4) If the court conducts a separate proceeding to determine the
34 existence of aggravating circumstances, the proceeding shall
35 immediately follow the trial on the underlying conviction, if possible.
36 If any person who served on the jury is unable to continue, the court
37 shall substitute an alternate juror.

1 (5) If the jury finds, unanimously and beyond a reasonable doubt,
2 one or more of the facts alleged by the state in support of an
3 aggravated sentence, the court may sentence the offender pursuant to
4 RCW 9.94A.535 to a term of confinement up to the maximum allowed under
5 RCW 9A.20.021 for the underlying conviction if it finds, considering
6 the purposes of this chapter, that the facts found are substantial and
7 compelling reasons justifying an exceptional sentence.

8 (6) If the defendant enters a guilty plea to the charged crime or
9 the case is remanded for a new sentencing hearing, the court may
10 empanel a jury for the purpose of considering any aggravating
11 circumstances alleged by the state. The trial on the aggravating
12 circumstances should occur within ninety days of the entry of the
13 guilty plea, or the filing of an appellate court mandate. Upon a
14 showing of good cause, the court may extend the time for the trial on
15 aggravating circumstances. The time limit for holding a sentencing
16 hearing, set forth in RCW 9.94A.500, shall not begin to run until the
17 jury renders a verdict on the aggravating circumstances.

18 **Sec. 5.** RCW 9.94A.190 and 2001 2nd sp.s. c 12 s 313 are each
19 amended to read as follows:

20 (1) A sentence that includes a term or terms of confinement
21 totaling more than one year, or a sentence set under RCW 9.94A.510
22 based on a sentence range with a minimum sentence of more than ten
23 months, shall be served in a facility or institution operated, or
24 utilized under contract, by the state. Except as provided in this
25 subsection or subsection (3) or (5) of this section, a sentence of not
26 more than one year of confinement shall be served in a facility
27 operated, licensed, or utilized under contract, by the county, or if
28 home detention or work crew has been ordered by the court, in the
29 residence of either the offender or a member of the offender's
30 immediate family.

31 (2) If a county uses a state partial confinement facility for the
32 partial confinement of a person sentenced to confinement for not more
33 than one year, the county shall reimburse the state for the use of the
34 facility as provided in this subsection. The office of financial
35 management shall set the rate of reimbursement based upon the average
36 per diem cost per offender in the facility. The office of financial
37 management shall determine to what extent, if any, reimbursement shall

1 be reduced or eliminated because of funds provided by the legislature
2 to the department for the purpose of covering the cost of county use of
3 state partial confinement facilities. The office of financial
4 management shall reestablish reimbursement rates each even-numbered
5 year.

6 (3) A person who is sentenced for a felony to a term of not more
7 than one year, and who is committed or returned to incarceration in a
8 state facility on another felony conviction, either under the
9 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
10 shall serve all terms of confinement, including a sentence of not more
11 than one year, in a facility or institution operated, or utilized under
12 contract, by the state, consistent with the provisions of RCW
13 9.94A.589.

14 (4) Notwithstanding any other provision of this section, a sentence
15 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
16 of over one year, regardless of length, shall be served in a facility
17 or institution operated, or utilized under contract, by the state.

18 (5) Sentences imposed pursuant to RCW 9.94A.712 shall be served in
19 a facility or institution operated, or utilized under contract, by the
20 state.

21 **Sec. 6.** RCW 9.94A.850 and 2005 c 282 s 19 are each amended to read
22 as follows:

23 (1) A sentencing guidelines commission is established as an agency
24 of state government.

25 (2) The legislature finds that the commission, having accomplished
26 its original statutory directive to implement this chapter, and having
27 expertise in sentencing practice and policies, shall:

28 (a) Evaluate state sentencing policy, to include whether the
29 sentencing ranges and standards are consistent with and further:

30 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

31 (ii) The intent of the legislature to emphasize confinement for the
32 violent offender and alternatives to confinement for the nonviolent
33 offender.

34 The commission shall provide the governor and the legislature with
35 its evaluation and recommendations under this subsection not later than
36 December 1, 1996, and every two years thereafter;

1 (b) Recommend to the legislature revisions or modifications to the
2 standard sentence ranges, state sentencing policy, prosecuting
3 standards, and other standards. If implementation of the revisions or
4 modifications would result in exceeding the capacity of correctional
5 facilities, then the commission shall accompany its recommendation with
6 an additional list of standard sentence ranges which are consistent
7 with correction capacity;

8 (c) Study the existing criminal code and from time to time make
9 recommendations to the legislature for modification;

10 (d)(i) Serve as a clearinghouse and information center for the
11 collection, preparation, analysis, and dissemination of information on
12 state and local adult and juvenile sentencing practices; (ii) develop
13 and maintain a computerized adult and juvenile sentencing information
14 system by individual superior court judge consisting of offender,
15 offense, history, and sentence information entered from judgment and
16 sentence forms for all adult felons; and (iii) conduct ongoing research
17 regarding adult and juvenile sentencing guidelines, use of total
18 confinement and alternatives to total confinement, plea bargaining, and
19 other matters relating to the improvement of the adult criminal justice
20 system and the juvenile justice system;

21 (e) Assume the powers and duties of the juvenile disposition
22 standards commission after June 30, 1996;

23 (f) Evaluate the effectiveness of existing disposition standards
24 and related statutes in implementing policies set forth in RCW
25 13.40.010 generally, specifically review the guidelines relating to the
26 confinement of minor and first-time offenders as well as the use of
27 diversion, and review the application of current and proposed juvenile
28 sentencing standards and guidelines for potential adverse impacts on
29 the sentencing outcomes of racial and ethnic minority youth;

30 (g) Solicit the comments and suggestions of the juvenile justice
31 community concerning disposition standards, and make recommendations to
32 the legislature regarding revisions or modifications of the standards.
33 The evaluations shall be submitted to the legislature on December 1 of
34 each odd-numbered year. The department of social and health services
35 shall provide the commission with available data concerning the
36 implementation of the disposition standards and related statutes and
37 their effect on the performance of the department's responsibilities
38 relating to juvenile offenders, and with recommendations for

1 modification of the disposition standards. The administrative office
2 of the courts shall provide the commission with available data on
3 diversion, including the use of youth court programs, and dispositions
4 of juvenile offenders under chapter 13.40 RCW; and

5 (h) Not later than December 1, 1997, and at least every two years
6 thereafter, based on available information, report to the governor and
7 the legislature on:

8 (i) Racial disproportionality in juvenile and adult sentencing,
9 and, if available, the impact that diversions, such as youth courts,
10 have on racial disproportionality in juvenile prosecution,
11 adjudication, and sentencing;

12 (ii) The capacity of state and local juvenile and adult facilities
13 and resources; and

14 (iii) Recidivism information on adult and juvenile offenders.

15 (3) Each of the commission's recommended standard sentence ranges
16 shall include one or more of the following: Total confinement, partial
17 confinement, community supervision, community restitution, and a fine.

18 (4) The standard sentence ranges of total and partial confinement
19 under this chapter, except as provided in RCW 9.94A.517, are subject to
20 the following limitations:

21 (a) If the maximum term in the range is one year or less, the
22 minimum term in the range shall be no less than one-third of the
23 maximum term in the range, except that if the maximum term in the range
24 is ninety days or less, the minimum term may be less than one-third of
25 the maximum;

26 (b) If the maximum term in the range is greater than one year, the
27 minimum term in the range shall be no less than (~~seventy-five~~) sixty
28 percent of the maximum term in the range, except that for murder in the
29 second degree in seriousness level XIV under RCW 9.94A.510, the minimum
30 term in the range shall be no less than fifty percent of the maximum
31 term in the range and except that for any offense with an offender
32 score of ten or more, the minimum term in the range shall be no less
33 than twenty-five percent of the maximum term in the range; and

34 (c) The maximum term of confinement in a range may not exceed the
35 statutory maximum for the crime as provided in RCW 9A.20.021.

36 (5)(a) Not later than December 31, 1999, the commission shall
37 propose to the legislature the initial community custody ranges to be
38 included in sentences under RCW 9.94A.715 for crimes committed on or

1 after July 1, 2000. Not later than December 31 of each year, the
2 commission may propose modifications to the ranges. The ranges shall
3 be based on the principles in RCW 9.94A.010, and shall take into
4 account the funds available to the department for community custody.
5 The minimum term in each range shall not be less than one-half of the
6 maximum term.

7 (b) The legislature may, by enactment of a legislative bill, adopt
8 or modify the community custody ranges proposed by the commission. If
9 the legislature fails to adopt or modify the initial ranges in its next
10 regular session after they are proposed, the proposed ranges shall take
11 effect without legislative approval for crimes committed on or after
12 July 1, 2000.

13 (c) When the commission proposes modifications to ranges pursuant
14 to this subsection, the legislature may, by enactment of a bill, adopt
15 or modify the ranges proposed by the commission for crimes committed on
16 or after July 1 of the year after they were proposed. Unless the
17 legislature adopts or modifies the commission's proposal in its next
18 regular session, the proposed ranges shall not take effect.

19 (6) The commission shall exercise its duties under this section in
20 conformity with chapter 34.05 RCW.

21 NEW SECTION. **Sec. 7.** (1) Savings to the state general fund
22 resulting from reductions in sentencing as a result of sections 2 and
23 6 of this act, shall be deposited in the criminal justice treatment
24 account. All moneys deposited pursuant to this act shall be
25 appropriated to the division of alcohol and substance abuse for
26 distribution pursuant to RCW 70.96A.350(5).

27 (2) Moneys allocated under this section shall be used to
28 supplement, not supplant, other federal, state, and local funds used
29 for substance abuse treatment.

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