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SENATE BILL 5476

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State of Washington                      59th Legislature                      2005 Regular Session

By Senators Kline, Brandland, Fairley, Esser, Kastama, Shin, Pridemore, Weinstein, Haugen, Berkey, Prentice, Rockefeller and Kohl-Welles

Read first time 01/26/2005. Referred to Committee on Judiciary.

1            AN ACT Relating to advisory sentencing guidelines; amending RCW  
2 9.94A.030, 9.94A.480, 9.94A.530, and 9.94A.535; reenacting and amending  
3 RCW 9.94A.505; adding new sections to chapter 9.94A RCW; creating a new  
4 section; and declaring an emergency.

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

6            NEW SECTION.    **Sec. 1.** It is the intent of the legislature to  
7 restore the ability to impose an aggravated sentence lost by the  
8 superior court as a result of the decision of the United States supreme  
9 court in *Blakely v. State of Washington*, 542 U.S. ... (2004). The  
10 legislature finds that as the seriousness level of the crime and the  
11 criminal history of the offender increase, the need for an  
12 individualized and informed assessment of the circumstances of the  
13 crime, the offender, and the victim, by the judiciary, is necessary for  
14 justice to be obtained. The legislature further finds that the  
15 exercise of the judiciary's sentencing discretion over a broader range  
16 based upon the assessment of these circumstances is consistent with the  
17 policies supporting Washington's sentencing reform act.

1        NEW SECTION.    **Sec. 2.**    A new section is added to chapter 9.94A RCW  
2 to read as follows:

3        (1) For offenders convicted of an aggravated offense or for  
4 aggravated offenders, the standard sentencing range shall be advisory  
5 only. Notwithstanding any other provision of law, the maximum sentence  
6 that a court may impose for an aggravated offense or upon an aggravated  
7 offender is the maximum sentence for the current offense under chapter  
8 9A.20 RCW, unless it is imposed on any offender sentenced under RCW  
9 9.94A.712.

10       (2) In making its determination of the sentence length to be  
11 imposed, the court shall consider the risk assessment prepared by the  
12 department of corrections, the presentence report and other materials  
13 provided by the offender, and any information provided by the victim or  
14 victims of the crime.

15       (3) A sentence imposed under this section shall be a determinate  
16 sentence unless it is imposed on an offender sentenced under RCW  
17 9.94A.712. The sentence may be appealed by the offender or the state  
18 as set forth in RCW 9.94A.585 (2) through (6).

19       **Sec. 3.**    RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read  
20 as follows:

21       Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

23       (1) "Aggravated offender" means an offender who has been convicted,  
24 in this state or any other state, of three or more felonies prior to  
25 the current conviction and who is not a persistent offender. At least  
26 one of the prior convictions or the current conviction must be for a  
27 sex offense or violent offense as defined by Washington law.

28       (2) "Aggravated offense" means an offense that is ranked at  
29 seriousness level VII or higher in RCW 9.94A.515.

30       (3) "Board" means the indeterminate sentence review board created  
31 under chapter 9.95 RCW.

32       ((+2)) (4) "Collect," or any derivative thereof, "collect and  
33 remit," or "collect and deliver," when used with reference to the  
34 department, means that the department, either directly or through a  
35 collection agreement authorized by RCW 9.94A.760, is responsible for  
36 monitoring and enforcing the offender's sentence with regard to the  
37 legal financial obligation, receiving payment thereof from the

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

4 ~~((3))~~ (5) "Commission" means the sentencing guidelines  
5 commission.

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

10 ~~((5))~~ (7) "Community custody" means that portion of an offender's  
11 sentence of confinement in lieu of earned release time or imposed  
12 pursuant to RCW ~~((9.94A.505(2)(b),))~~ 9.94A.650 through 9.94A.670,  
13 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
14 community subject to controls placed on the offender's movement and  
15 activities by the department. For offenders placed on community  
16 custody for crimes committed on or after July 1, 2000, the department  
17 shall assess the offender's risk of reoffense and may establish and  
18 modify conditions of community custody, in addition to those imposed by  
19 the court, based upon the risk to community safety.

20 ~~((6))~~ (8) "Community custody range" means the minimum and maximum  
21 period of community custody included as part of a sentence under RCW  
22 9.94A.715, as established by the commission or the legislature under  
23 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

24 ~~((7))~~ (9) "Community placement" means that period during which  
25 the offender is subject to the conditions of community custody and/or  
26 postrelease supervision, which begins either upon completion of the  
27 term of confinement (postrelease supervision) or at such time as the  
28 offender is transferred to community custody in lieu of earned release.  
29 Community placement may consist of entirely community custody, entirely  
30 postrelease supervision, or a combination of the two.

31 ~~((8))~~ (10) "Community restitution" means compulsory service,  
32 without compensation, performed for the benefit of the community by the  
33 offender.

34 ~~((9))~~ (11) "Community supervision" means a period of time during  
35 which a convicted offender is subject to crime-related prohibitions and  
36 other sentence conditions imposed by a court pursuant to this chapter  
37 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any  
38 offender has a chemical dependency that has contributed to his or her

1 offense, the conditions of supervision may, subject to available  
2 resources, include treatment. For purposes of the interstate compact  
3 for out-of-state supervision of parolees and probationers, RCW  
4 9.95.270, community supervision is the functional equivalent of  
5 probation and should be considered the same as probation by other  
6 states.

7 ~~((+10+))~~ (12) "Confinement" means total or partial confinement.

8 ~~((+11+))~~ (13) "Conviction" means an adjudication of guilt pursuant  
9 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
10 guilty, and acceptance of a plea of guilty.

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

18 ~~((+13+))~~ (15) "Criminal history" means the list of a defendant's  
19 prior convictions and juvenile adjudications, whether in this state, in  
20 federal court, or elsewhere.

21 (a) The history shall include, where known, for each conviction (i)  
22 whether the defendant has been placed on probation and the length and  
23 terms thereof; and (ii) whether the defendant has been incarcerated and  
24 the length of incarceration.

25 (b) A conviction may be removed from a defendant's criminal history  
26 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
27 a similar out-of-state statute, or if the conviction has been vacated  
28 pursuant to a governor's pardon.

29 (c) The determination of a defendant's criminal history is distinct  
30 from the determination of an offender score. A prior conviction that  
31 was not included in an offender score calculated pursuant to a former  
32 version of the sentencing reform act remains part of the defendant's  
33 criminal history.

34 ~~((+14+))~~ (16) "Day fine" means a fine imposed by the sentencing  
35 court that equals the difference between the offender's net daily  
36 income and the reasonable obligations that the offender has for the  
37 support of the offender and any dependents.

1       (~~(15)~~) (17) "Day reporting" means a program of enhanced  
2 supervision designed to monitor the offender's daily activities and  
3 compliance with sentence conditions, and in which the offender is  
4 required to report daily to a specific location designated by the  
5 department or the sentencing court.

6       (~~(16)~~) (18) "Department" means the department of corrections.

7       (~~(17)~~) (19) "Determinate sentence" means a sentence that states  
8 with exactitude the number of actual years, months, or days of total  
9 confinement, of partial confinement, of community supervision, the  
10 number of actual hours or days of community restitution work, or  
11 dollars or terms of a legal financial obligation. The fact that an  
12 offender through earned release can reduce the actual period of  
13 confinement shall not affect the classification of the sentence as a  
14 determinate sentence.

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

27       (~~(19)~~) (21) "Drug offender sentencing alternative" is a  
28 sentencing option available to persons convicted of a felony offense  
29 other than a violent offense or a sex offense and who are eligible for  
30 the option under RCW 9.94A.660.

31       (~~(20)~~) (22) "Drug offense" means:

32       (a) Any felony violation of chapter 69.50 RCW except possession of  
33 a controlled substance (RCW 69.50.4013) or forged prescription for a  
34 controlled substance (RCW 69.50.403);

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

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

4 (~~(+21+)~~) (23) "Earned release" means earned release from  
5 confinement as provided in RCW 9.94A.728.

6 (~~(+22+)~~) (24) "Escape" means:

7 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
8 first degree (RCW 9A.76.110), escape in the second degree (RCW  
9 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
10 willful failure to return from work release (RCW 72.65.070), or willful  
11 failure to be available for supervision by the department while in  
12 community custody (RCW 72.09.310); or

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

16 (~~(+23+)~~) (25) "Felony traffic offense" means:

17 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
18 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
19 and-run injury-accident (RCW 46.52.020(4)); or

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

23 (~~(+24+)~~) (26) "Fine" means a specific sum of money ordered by the  
24 sentencing court to be paid by the offender to the court over a  
25 specific period of time.

26 (~~(+25+)~~) (27) "First-time offender" means any person who has no  
27 prior convictions for a felony and is eligible for the first-time  
28 offender waiver under RCW 9.94A.650.

29 (~~(+26+)~~) (28) "Home detention" means a program of partial  
30 confinement available to offenders wherein the offender is confined in  
31 a private residence subject to electronic surveillance.

32 (~~(+27+)~~) (29) "Legal financial obligation" means a sum of money  
33 that is ordered by a superior court of the state of Washington for  
34 legal financial obligations which may include restitution to the  
35 victim, statutorily imposed crime victims' compensation fees as  
36 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
37 drug funds, court-appointed attorneys' fees, and costs of defense,  
38 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for  
2 vehicular assault while under the influence of intoxicating liquor or  
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
5 legal financial obligations may also include payment to a public agency  
6 of the expense of an emergency response to the incident resulting in  
7 the conviction, subject to RCW 38.52.430.

8 ~~((+28+))~~ (30) "Most serious offense" means any of the following  
9 felonies or a felony attempt to commit any of the following felonies:

10 (a) Any felony defined under any law as a class A felony or  
11 criminal solicitation of or criminal conspiracy to commit a class A  
12 felony;

13 (b) Assault in the second degree;

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

15 (d) Child molestation in the second degree;

16 (e) Controlled substance homicide;

17 (f) Extortion in the first degree;

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

19 (h) Indecent liberties;

20 (i) Kidnapping in the second degree;

21 (j) Leading organized crime;

22 (k) Manslaughter in the first degree;

23 (l) Manslaughter in the second degree;

24 (m) Promoting prostitution in the first degree;

25 (n) Rape in the third degree;

26 (o) Robbery in the second degree;

27 (p) Sexual exploitation;

28 (q) Vehicular assault, when caused by the operation or driving of  
29 a vehicle by a person while under the influence of intoxicating liquor  
30 or any drug or by the operation or driving of a vehicle in a reckless  
31 manner;

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

36 (s) Any other class B felony offense with a finding of sexual  
37 motivation;

1 (t) Any other felony with a deadly weapon verdict under RCW  
2 9.94A.602;

3 (u) Any felony offense in effect at any time prior to December 2,  
4 1993, that is comparable to a most serious offense under this  
5 subsection, or any federal or out-of-state conviction for an offense  
6 that under the laws of this state would be a felony classified as a  
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW  
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
15 if: (A) The crime was committed against a child under the age of  
16 fourteen; or (B) the relationship between the victim and perpetrator is  
17 included in the definition of indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
20 through July 27, 1997.

21 ((+29+)) (31) "Nonviolent offense" means an offense which is not a  
22 violent offense.

23 ((+30+)) (32) "Offender" means a person who has committed a felony  
24 established by state law and is eighteen years of age or older or is  
25 less than eighteen years of age but whose case is under superior court  
26 jurisdiction under RCW 13.04.030 or has been transferred by the  
27 appropriate juvenile court to a criminal court pursuant to RCW  
28 13.40.110. Throughout this chapter, the terms "offender" and  
29 "defendant" are used interchangeably.

30 ((+31+)) (33) "Partial confinement" means confinement for no more  
31 than one year in a facility or institution operated or utilized under  
32 contract by the state or any other unit of government, or, if home  
33 detention or work crew has been ordered by the court, in an approved  
34 residence, for a substantial portion of each day with the balance of  
35 the day spent in the community. Partial confinement includes work  
36 release, home detention, work crew, and a combination of work crew and  
37 home detention.

38 ((+32+)) (34) "Persistent offender" is an offender who:



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

3 (ii) Has, before the commission of the offense under (a) of this  
4 subsection, been convicted as an offender on at least two separate  
5 occasions, whether in this state or elsewhere, of felonies that under  
6 the laws of this state would be considered most serious offenses and  
7 would be included in the offender score under RCW 9.94A.525; provided  
8 that of the two or more previous convictions, at least one conviction  
9 must have occurred before the commission of any of the other most  
10 serious offenses for which the offender was previously convicted; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
12 of a child in the first degree, child molestation in the first degree,  
13 rape in the second degree, rape of a child in the second degree, or  
14 indecent liberties by forcible compulsion; (B) any of the following  
15 offenses with a finding of sexual motivation: Murder in the first  
16 degree, murder in the second degree, homicide by abuse, kidnapping in  
17 the first degree, kidnapping in the second degree, assault in the first  
18 degree, assault in the second degree, assault of a child in the first  
19 degree, or burglary in the first degree; or (C) an attempt to commit  
20 any crime listed in this subsection (~~(+32+)~~) (34)(b)(i); and

21 (ii) Has, before the commission of the offense under (b)(i) of this  
22 subsection, been convicted as an offender on at least one occasion,  
23 whether in this state or elsewhere, of an offense listed in (b)(i) of  
24 this subsection or any federal or out-of-state offense or offense under  
25 prior Washington law that is comparable to the offenses listed in  
26 (b)(i) of this subsection. A conviction for rape of a child in the  
27 first degree constitutes a conviction under (b)(i) of this subsection  
28 only when the offender was sixteen years of age or older when the  
29 offender committed the offense. A conviction for rape of a child in  
30 the second degree constitutes a conviction under (b)(i) of this  
31 subsection only when the offender was eighteen years of age or older  
32 when the offender committed the offense.

33 (~~(+33+)~~) (35) "Postrelease supervision" is that portion of an  
34 offender's community placement that is not community custody.

35 (~~(+34+)~~) (36) "Restitution" means a specific sum of money ordered  
36 by the sentencing court to be paid by the offender to the court over a  
37 specified period of time as payment of damages. The sum may include  
38 both public and private costs.

1       (~~(35)~~) (37) "Risk assessment" means the application of an  
2 objective instrument supported by research and adopted by the  
3 department for the purpose of assessing an offender's risk of  
4 reoffense, taking into consideration the nature of the harm done by the  
5 offender, place and circumstances of the offender related to risk, the  
6 offender's relationship to any victim, and any information provided to  
7 the department by victims. The results of a risk assessment shall not  
8 be based on unconfirmed or unconfirmable allegations.

9       (~~(36)~~) (38) "Serious traffic offense" means:

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

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

18       (~~(37)~~) (39) "Serious violent offense" is a subcategory of violent  
19 offense and means:

20       (a)(i) Murder in the first degree;

21       (ii) Homicide by abuse;

22       (iii) Murder in the second degree;

23       (iv) Manslaughter in the first degree;

24       (v) Assault in the first degree;

25       (vi) Kidnapping in the first degree;

26       (vii) Rape in the first degree;

27       (viii) Assault of a child in the first degree; or

28       (ix) An attempt, criminal solicitation, or criminal conspiracy to  
29 commit one of these felonies; or

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

33       (~~(38)~~) (40) "Sex offense" means:

34       (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
35 RCW 9A.44.130(11);

36       (ii) A violation of RCW 9A.64.020;

37       (iii) A felony that is a violation of chapter 9.68A RCW other than  
38 RCW 9.68A.070 or 9.68A.080; or

1 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
2 criminal solicitation, or criminal conspiracy to commit such crimes;

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

6 (c) A felony with a finding of sexual motivation under RCW  
7 9.94A.835 or 13.40.135; or

8 (d) Any federal or out-of-state conviction for an offense that  
9 under the laws of this state would be a felony classified as a sex  
10 offense under (a) of this subsection.

11 (~~(39)~~) (41) "Sexual motivation" means that one of the purposes  
12 for which the defendant committed the crime was for the purpose of his  
13 or her sexual gratification.

14 (~~(40)~~) (42) "Standard sentence range" means the sentencing  
15 court's discretionary range in imposing a nonappealable sentence.

16 (~~(41)~~) (43) "Statutory maximum sentence" means the maximum length  
17 of time for which an offender may be confined as punishment for a crime  
18 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
19 the crime, or other statute defining the maximum penalty for a crime.

20 (~~(42)~~) (44) "Total confinement" means confinement inside the  
21 physical boundaries of a facility or institution operated or utilized  
22 under contract by the state or any other unit of government for twenty-  
23 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

24 (~~(43)~~) (45) "Transition training" means written and verbal  
25 instructions and assistance provided by the department to the offender  
26 during the two weeks prior to the offender's successful completion of  
27 the work ethic camp program. The transition training shall include  
28 instructions in the offender's requirements and obligations during the  
29 offender's period of community custody.

30 (~~(44)~~) (46) "Victim" means any person who has sustained  
31 emotional, psychological, physical, or financial injury to person or  
32 property as a direct result of the crime charged.

33 (~~(45)~~) (47) "Violent offense" means:

34 (a) Any of the following felonies:

35 (i) Any felony defined under any law as a class A felony or an  
36 attempt to commit a class A felony;

37 (ii) Criminal solicitation of or criminal conspiracy to commit a  
38 class A felony;

1 (iii) Manslaughter in the first degree;  
2 (iv) Manslaughter in the second degree;  
3 (v) Indecent liberties if committed by forcible compulsion;  
4 (vi) Kidnapping in the second degree;  
5 (vii) Arson in the second degree;  
6 (viii) Assault in the second degree;  
7 (ix) Assault of a child in the second degree;  
8 (x) Extortion in the first degree;  
9 (xi) Robbery in the second degree;  
10 (xii) Drive-by shooting;  
11 (xiii) Vehicular assault, when caused by the operation or driving  
12 of a vehicle by a person while under the influence of intoxicating  
13 liquor or any drug or by the operation or driving of a vehicle in a  
14 reckless manner; and  
15 (xiv) Vehicular homicide, when proximately caused by the driving of  
16 any vehicle by any person while under the influence of intoxicating  
17 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
18 any vehicle in a reckless manner;  
19 (b) Any conviction for a felony offense in effect at any time prior  
20 to July 1, 1976, that is comparable to a felony classified as a violent  
21 offense in (a) of this subsection; and  
22 (c) 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 violent  
24 offense under (a) or (b) of this subsection.  
25 (~~(46)~~) (48) "Work crew" means a program of partial confinement  
26 consisting of civic improvement tasks for the benefit of the community  
27 that complies with RCW 9.94A.725.  
28 (~~(47)~~) (49) "Work ethic camp" means an alternative incarceration  
29 program as provided in RCW 9.94A.690 designed to reduce recidivism and  
30 lower the cost of corrections by requiring offenders to complete a  
31 comprehensive array of real-world job and vocational experiences,  
32 character-building work ethics training, life management skills  
33 development, substance abuse rehabilitation, counseling, literacy  
34 training, and basic adult education.  
35 (~~(48)~~) (50) "Work release" means a program of partial confinement  
36 available to offenders who are employed or engaged as a student in a  
37 regular course of study at school.

1       **Sec. 4.** RCW 9.94A.480 and 2002 c 290 s 16 are each amended to read  
2 as follows:

3       (1) A current, newly created or reworked judgment and sentence  
4 document for each felony sentencing shall record any and all  
5 recommended sentencing agreements or plea agreements and the sentences  
6 for any and all felony crimes kept as public records under RCW  
7 9.94A.475 shall contain the clearly printed name and legal signature of  
8 the sentencing judge. The judgment and sentence document as defined in  
9 this section shall also provide additional space for the sentencing  
10 judge's reasons, if any, for going either above or below the  
11 presumptive or advisory sentence range for any and all felony crimes  
12 covered as public records under RCW 9.94A.475. Both the sentencing  
13 judge and the prosecuting attorney's office shall each retain or  
14 receive a completed copy of each sentencing document as defined in this  
15 section for their own records.

16       (2) The sentencing guidelines commission shall be sent a completed  
17 copy of the judgment and sentence document upon conviction for each  
18 felony sentencing under subsection (1) of this section and shall  
19 compile a yearly and cumulative judicial record of each sentencing  
20 judge in regards to his or her sentencing practices for any and all  
21 felony crimes involving:

22       (a) Any violent offense as defined in this chapter;

23       (b) Any most serious offense as defined in this chapter;

24       (c) Any felony with any deadly weapon special verdict under RCW  
25 9.94A.602;

26       (d) Any felony with any deadly weapon enhancements under RCW  
27 9.94A.533 (3) or (4), or both; and/or

28       (e) The felony crimes of possession of a machine gun, possessing a  
29 stolen firearm, drive-by shooting, theft of a firearm, unlawful  
30 possession of a firearm in the first or second degree, and/or use of a  
31 machine gun in a felony.

32       (3) The sentencing guidelines commission shall compare each  
33 individual judge's sentencing practices to the standard ~~(( $\otimes$ ))~~  
34 presumptive, or advisory sentence range for any and all felony crimes  
35 listed in subsection (2) of this section for the appropriate offense  
36 level as defined in RCW 9.94A.515 or 9.94A.518, offender score as  
37 defined in RCW 9.94A.525, and any applicable deadly weapon enhancements  
38 as defined in RCW 9.94A.533 (3) or (4), or both. These comparative

1 records shall be retained and made available to the public for review  
2 in a current, newly created or reworked official published document by  
3 the sentencing guidelines commission.

4 (4) Any and all felony sentences which are either above or below  
5 the standard ~~((or))~~, presumptive, or advisory sentence range in  
6 subsection (3) of this section shall also mark whether the prosecuting  
7 attorney in the case also recommended a similar sentence, if any, which  
8 was either above or below the standard, presumptive, or advisory  
9 sentence range and shall also indicate if the sentence was in  
10 conjunction with an approved alternative sentencing option including a  
11 first-time offender waiver, sex offender sentencing alternative, or  
12 other prescribed sentencing option.

13 (5) If any completed judgment and sentence document as defined in  
14 subsection (1) of this section is not sent to the sentencing guidelines  
15 commission as required in subsection (2) of this section, the  
16 sentencing guidelines commission shall have the authority and shall  
17 undertake reasonable and necessary steps to assure that all past,  
18 current, and future sentencing documents as defined in subsection (1)  
19 of this section are received by the sentencing guidelines commission.

20 **Sec. 5.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and  
21 2002 c 175 s 6 are each reenacted and amended to read as follows:

22 (1) When a person is convicted of a felony, the court shall impose  
23 punishment as provided in this chapter.

24 (2)(a) The court shall impose a sentence as provided in the  
25 following sections and as applicable in the case:

26 (i) Unless another term of confinement applies, the court shall  
27 impose a sentence within the standard sentence range established in RCW  
28 9.94A.510 or 9.94A.517;

29 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

30 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

31 (iv) RCW 9.94A.545, relating to community custody for offenders  
32 whose term of confinement is one year or less;

33 (v) RCW 9.94A.570, relating to persistent offenders;

34 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

35 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

36 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
37 alternative;

1 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
2 alternative;

3 (x) RCW 9.94A.712, relating to certain sex offenses;

4 (xi) RCW 9.94A.535, relating to exceptional sentences;

5 (xii) RCW 9.94A.589, relating to consecutive and concurrent  
6 sentences;

7 (xiii) Section 2 of this act relating to aggravated offenses and  
8 aggravated offenders.

9 (b) If a standard sentence range has not been established for the  
10 offender's crime, the court shall impose a determinate sentence which  
11 may include not more than one year of confinement; community  
12 restitution work; until July 1, 2000, a term of community supervision  
13 not to exceed one year and on and after July 1, 2000, a term of  
14 community custody not to exceed one year, subject to conditions and  
15 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other  
16 legal financial obligations. The court may impose a sentence which  
17 provides more than one year of confinement if the court finds reasons  
18 justifying an exceptional sentence as provided in RCW 9.94A.535.

19 (3) If the court imposes a sentence requiring confinement of thirty  
20 days or less, the court may, in its discretion, specify that the  
21 sentence be served on consecutive or intermittent days. A sentence  
22 requiring more than thirty days of confinement shall be served on  
23 consecutive days. Local jail administrators may schedule court-ordered  
24 intermittent sentences as space permits.

25 (4) If a sentence imposed includes payment of a legal financial  
26 obligation, it shall be imposed as provided in RCW 9.94A.750,  
27 9.94A.753, 9.94A.760, and 43.43.7541.

28 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
29 court may not impose a sentence providing for a term of confinement or  
30 community supervision, community placement, or community custody which  
31 exceeds the statutory maximum for the crime as provided in chapter  
32 9A.20 RCW.

33 (6) The sentencing court shall give the offender credit for all  
34 confinement time served before the sentencing if that confinement was  
35 solely in regard to the offense for which the offender is being  
36 sentenced.

37 (7) The court shall order restitution as provided in RCW 9.94A.750  
38 and 9.94A.753.

1 (8) As a part of any sentence, the court may impose and enforce  
2 crime-related prohibitions and affirmative conditions as provided in  
3 this chapter.

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

15 (10) In any sentence of partial confinement, the court may require  
16 the offender to serve the partial confinement in work release, in a  
17 program of home detention, on work crew, or in a combined program of  
18 work crew and home detention.

19 (11) In sentencing an offender convicted of a crime of domestic  
20 violence, as defined in RCW 10.99.020, if the offender has a minor  
21 child, or if the victim of the offense for which the offender was  
22 convicted has a minor child, the court may, as part of any term of  
23 community supervision, community placement, or community custody, order  
24 the offender to participate in a domestic violence perpetrator program  
25 approved under RCW 26.50.150.

26 **Sec. 6.** RCW 9.94A.530 and 2002 c 290 s 18 are each amended to read  
27 as follows:

28 (1) The intersection of the column defined by the offender score  
29 and the row defined by the offense seriousness score determines the  
30 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW  
31 9.94A.517, (Table 3)). The additional time for deadly weapon findings  
32 or for (~~those offenses enumerated~~) other adjustments as specified in  
33 RCW 9.94A.533(~~((4) that were committed in a state correctional facility~~  
34 ~~or county jail~~)) shall be added to the entire standard sentence range.  
35 The court may impose any sentence within the range that it deems  
36 appropriate. All standard sentence ranges are expressed in terms of  
37 total confinement.



1 (2) In determining any sentence other than a sentence above the  
2 standard range, the trial court may rely on no more information than is  
3 admitted by the plea agreement, or admitted, acknowledged, or proved in  
4 a trial or at the time of sentencing, or proven pursuant to section 8  
5 of this act. Acknowledgement includes not objecting to information  
6 stated in the presentence reports. Where the defendant disputes  
7 material facts, the court must either not consider the fact or grant an  
8 evidentiary hearing on the point. The facts shall be deemed proved at  
9 the hearing by a preponderance of the evidence, except as otherwise  
10 specified in section 8 of this act.

11 (3) In determining any sentence above the standard sentence range,  
12 the court shall follow the procedures set forth in section 8 of this  
13 act. Facts that establish the elements of a more serious crime or  
14 additional crimes may not be used to go outside the standard sentence  
15 range except upon stipulation or when specifically provided for in RCW  
16 9.94A.535(2) (d), (e), (g), and (h).

17 **Sec. 7.** RCW 9.94A.535 and 2003 c 267 s 4 are each amended to read  
18 as follows:

19 The court may impose a sentence outside the standard sentence range  
20 for an offense if it finds, considering the purpose of this chapter,  
21 that there are substantial and compelling reasons justifying an  
22 exceptional sentence. Facts supporting aggravated sentences, other  
23 than the fact of a prior conviction, shall be determined pursuant to  
24 the provisions of section 8 of this act.

25 Whenever a sentence outside the standard sentence range is imposed,  
26 the court shall set forth the reasons for its decision in written  
27 findings of fact and conclusions of law. A sentence outside the  
28 standard sentence range shall be a determinate sentence (~~unless it is~~  
29 ~~imposed on an offender sentenced under RCW 9.94A.712. An exceptional~~  
30 ~~sentence imposed on an offender sentenced under RCW 9.94A.712 shall be~~  
31 ~~to a minimum term set by the court and a maximum term equal to the~~  
32 ~~statutory maximum sentence for the offense of conviction under chapter~~  
33 ~~9A.20 RCW)).~~

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

1 A departure from the standards in RCW 9.94A.589 (1) and (2)  
2 governing whether sentences are to be served consecutively or  
3 concurrently is an exceptional sentence subject to the limitations in  
4 this section, and may be appealed by the offender or the state as set  
5 forth in RCW 9.94A.585 (2) through (6).

6 ~~((The following are illustrative factors which the court may  
7 consider in the exercise of its discretion to impose an exceptional  
8 sentence. The following are illustrative only and are not intended to  
9 be exclusive reasons for exceptional sentences.))~~

10 (1) Mitigating Circumstances - Court to Consider  
11 The court may impose an exceptional sentence below the standard range  
12 if it finds that mitigating circumstances are established by a  
13 preponderance of the evidence. The following are illustrative only and  
14 are not intended to be exclusive reasons for exceptional sentences.

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

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

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

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

25 (e) The defendant's capacity to appreciate the wrongfulness of his  
26 or her conduct, or to conform his or her conduct to the requirements of  
27 the law, was significantly impaired. Voluntary use of drugs or alcohol  
28 is excluded.

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

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

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

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

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

3 (a) The defendant and the state both stipulate that justice is best  
4 served by the imposition of an exceptional sentence outside the  
5 standard range, and the court finds the exceptional sentence to be  
6 consistent with and in furtherance of the interests of justice and the  
7 purposes of the sentencing reform act.

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

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

15 (d) The failure to consider the defendant's prior criminal history  
16 which was omitted from the offender score calculation pursuant to RCW  
17 9.94A.525 results in a presumptive sentence that is clearly too  
18 lenient.

19 (3) Aggravating Circumstances - Considered By A Jury - Imposed by  
20 the Court

21 Except for circumstances listed in subsection (2) of this section,  
22 the following circumstances are an exclusive list of factors that can  
23 support a sentence above the standard range. Such facts should be  
24 determined by procedures specified in section 8 of this act.

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

27 (b) The defendant knew or should have known that the victim of the  
28 current offense was particularly vulnerable or incapable of resistance  
29 (~~due to extreme youth, advanced age, disability, or ill health~~).

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

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

35 (i) The current offense involved multiple victims or multiple  
36 incidents per victim;

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

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

3 (iv) The defendant used his or her position of trust, confidence,  
4 or fiduciary responsibility to facilitate the commission of the current  
5 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~(i) ((The operation of the multiple offense policy of RCW 9.94A.589  
6 results in a presumptive sentence that is clearly too lenient in light  
7 of the purpose of this chapter, as expressed in RCW 9.94A.010.~~

8 ~~(j) The defendant's prior unscored misdemeanor or prior unscored  
9 foreign criminal history results in a presumptive sentence that is  
10 clearly too lenient in light of the purpose of this chapter, as  
11 expressed in RCW 9.94A.010.~~

12 ~~(k))~~ The offense resulted in the pregnancy of a child victim of  
13 rape.

14 ~~((l))~~ (j) The defendant knew that the victim of the current  
15 offense was a youth who was not residing with a legal custodian and the  
16 defendant established or promoted the relationship for the primary  
17 purpose of victimization.

18 ~~((m))~~ (k) The offense was committed with the intent to obstruct  
19 or impair human or animal health care or agricultural or forestry  
20 research or commercial production.

21 ~~((n))~~ (l) The current offense is trafficking in the first degree  
22 or trafficking in the second degree and any victim was a minor at the  
23 time of the offense.

24 (m) The offense involved a high degree of sophistication or  
25 planning.

26 (n) The defendant used his or her position of trust, confidence, or  
27 fiduciary responsibility to facilitate the commission of the current  
28 offense.

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

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

32 (q) The defendant demonstrated or displayed an egregious lack of  
33 remorse.

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

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

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

3       (u) The current offense is a burglary and the victim of the  
4 burglary was present in the building or residence when the crime was  
5 committed.

6       (v) The offense was committed against a law enforcement officer who  
7 was performing his or her official duties at the time of the offense,  
8 the offender knew that the victim was a law enforcement officer, and  
9 the victim's status as a law enforcement officer is not an element of  
10 the offense.

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

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

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

19       NEW SECTION. Sec. 8. A new section is added to chapter 9.94A RCW  
20 to read as follows:

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

26       (2) The facts supporting aggravating circumstances shall be proved  
27 to a jury beyond a reasonable doubt. The jury's verdict on the  
28 aggravating factor must be unanimous, and by special interrogatory. If  
29 a jury is waived, proof shall be to the court beyond a reasonable  
30 doubt, unless the defendant stipulates to the aggravating facts.

31       (3) Evidence regarding any facts supporting aggravating  
32 circumstances under RCW 9.94A.535(3) (a) through (y), shall be  
33 presented to the jury during the trial of the alleged crime, unless the  
34 state alleges the aggravating circumstances listed in RCW 9.94A.535(3)  
35 (e)(iv), (h)(i), (o), or (t). If one of these aggravating  
36 circumstances is alleged, the trial court may conduct a separate  
37 proceeding if the evidence supporting the aggravating fact is not part

1 of the res geste of the charged crime, if the evidence is not otherwise  
2 admissible in trial of the charged crime, and if the court finds that  
3 the probative value of the evidence to the aggravated fact is  
4 substantially outweighed by its prejudicial effect on the jury's  
5 ability to determine guilt or innocence for the underlying crime.

6 (4) If the court conducts a separate proceeding to determine the  
7 existence of aggravating circumstances, the proceeding shall  
8 immediately follow the trial on the underlying conviction, if possible.  
9 If any person who served on the jury is unable to continue, the court  
10 shall substitute an alternate juror.

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

18 NEW SECTION. **Sec. 9.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 10.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 immediately.

--- END ---