
SUBSTITUTE SENATE BILL 5451

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senator Hargrove)

Read first time 03/02/93.

1 AN ACT Relating to persons convicted of felonies; amending RCW
2 9.94A.390, 9.95.0011, 9.96.050, and 72.09.110; reenacting and amending
3 RCW 9.94A.030, 9.94A.120, 9.94A.440, and 9A.20.021; adding a new
4 section to chapter 72.09 RCW; creating new sections; and prescribing
5 penalties.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that crowded prisons
8 are clearly one of the most pressing problems facing the criminal
9 justice system today. Even the most conservative estimates indicate
10 that despite our aggressive prison construction plan we will not be
11 able to build enough prison beds to keep pace with expected growth in
12 the prison population over the next ten years. The huge increase in
13 our prison population is not only the result of more individuals
14 committing serious crimes but also because most offenders released from
15 prison will return again. Our corrections system has become a high-
16 cost institution that perpetually recycles inmates without deterring
17 crime. As a result of these conditions, serious concerns have been
18 raised about our current corrections philosophy. Attention must be
19 directed towards implementing a long-range corrections strategy that

1 focuses on inmate responsibility through work training, the development
2 of mature and marketable job skills, and requiring inmates to pay for
3 the cost of their incarceration.

4 The combined cost of housing, maintaining, and supervising inmates
5 in our state corrections facilities is increasing beyond our capability
6 to pay. The legislature recognizes that the responsibility for
7 criminal activity must fall squarely on the criminal. Society should
8 not have to pay the price for crimes twice, once for the criminal act
9 and then again by feeding, clothing, and housing the offender. The
10 corrections system must be the first place where criminal offenders are
11 given the opportunity to be responsible for paying for their criminal
12 activity, not just through the loss of their freedom, but also by
13 working while in prison and contributing an appropriate portion of
14 their wages to the cost of their incarceration. Allowing offenders to
15 become responsible through working in meaningful jobs for real wages
16 can be a beneficial opportunity for corrections. Everyone profits from
17 a successful corrections industry program -- the prison system,
18 taxpayers, the community, families, and the inmate. Most important, an
19 inmate who is drug-free and has mature job skills is significantly more
20 likely not to return to prison.

21 It is the purpose and intent of this act to outline a comprehensive
22 strategy for reducing upwardly spiraling prison costs through an inmate
23 work responsibility program, preserving scarce prison cell space for
24 our most dangerous offenders, and providing judges with alternatives to
25 incarceration, including drug rehabilitation, that must be used without
26 jeopardizing public safety.

27 **Sec. 2.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
28 each reenacted and amended to read as follows:

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

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

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

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

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

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

16 (6) "Community service" means compulsory service, without compensa-
17 tion, performed for the benefit of the community by the offender.

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

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

29 (9) "Conviction" means an adjudication of guilt pursuant to Titles
30 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
31 acceptance of a plea of guilty.

32 (10) "Court-ordered legal financial obligation" means a sum of
33 money that is ordered by a superior court of the state of Washington
34 for 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
39 offender as a result of a felony conviction.

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

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

13 (b) "Criminal history" shall always include juvenile convictions
14 for sex offenses and shall also include a defendant's other prior
15 convictions in juvenile court if: (i) The conviction was for an
16 offense which is a felony or a serious traffic offense and is criminal
17 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
18 fifteen years of age or older at the time the offense was committed;
19 and (iii) with respect to prior juvenile class B and C felonies or
20 serious traffic offenses, the defendant was less than twenty-three
21 years of age at the time the offense for which he or she is being
22 sentenced was committed.

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

27 (14) "Day reporting" means reporting at least once per day to a
28 specific location designated by the department or the sentencing judge
29 together with the requirement that the offender's location throughout
30 each day be reported to the department.

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

32 (~~(14)~~) (16) "Determinate sentence" means a sentence that states
33 with exactitude the number of actual years, months, or days of total
34 confinement, of partial confinement, of community supervision, the
35 number of actual hours or days of community service work, or dollars or
36 terms of a legal financial obligation. The fact that an offender
37 through "earned early release" can reduce the actual period of
38 confinement shall not affect the classification of the sentence as a
39 determinate sentence.

1 (~~(15)~~) (17) "Disposable earnings" means that part of the earnings
2 of an individual remaining after the deduction from those earnings of
3 any amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (~~(16)~~) (18) "Drug offense" means:

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

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

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

23 (~~(17)~~) (19) "Escape" means:

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

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

32 (~~(18)~~) (20) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (~~(19)~~) (21) "Fines" means the requirement that the offender pay
2 a specific sum of money over a specific period of time to the court.

3 (~~(20)~~) (22)(a) "First-time offender" means any person who is
4 convicted of a felony (i) not classified as a violent offense or a sex
5 offense under this chapter, or (ii) that is not the manufacture,
6 delivery, or possession with intent to manufacture or deliver a
7 controlled substance classified in schedule I or II that is a narcotic
8 drug or the selling for profit (~~{of}~~) of any controlled substance or
9 counterfeit substance classified in schedule I, RCW 69.50.204, except
10 leaves and flowering tops of marijuana, and except as provided in (b)
11 of this subsection, who previously has never been convicted of a felony
12 in this state, federal court, or another state, and who has never
13 participated in a program of deferred prosecution for a felony offense.

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

17 (~~(21)~~) (23) "Home detention" means a program of partial
18 confinement available to offenders in which the offender is confined in
19 a private residence subject to electronic surveillance. Home detention
20 may not be imposed for offenders convicted of a violent offense, a sex
21 offense, a drug offense, reckless burning in the first or second degree
22 as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree
23 as defined in RCW 9A.36.031, assault of a child in the third degree,
24 unlawful imprisonment as defined in RCW 9A.40.040, or harassment as
25 defined in RCW 9A.46.020. Home detention may be imposed for offenders
26 convicted of possession of a controlled substance (RCW 69.50.401(d)) or
27 forged prescription for a controlled substance (RCW 69.50.403) if the
28 offender fulfills the participation conditions set forth in this
29 subsection and is monitored for drug use by treatment alternatives to
30 street crime (TASC) or a comparable court or agency-referred program.

31 (a) Home detention may be imposed for offenders convicted of
32 burglary in the second degree as defined in RCW 9A.52.030 or
33 residential burglary conditioned upon the offender: (i) Successfully
34 completing twenty-one days in a work release program, (ii) having no
35 convictions for burglary in the second degree or residential burglary
36 during the preceding two years and not more than two prior convictions
37 for burglary or residential burglary, (iii) having no convictions for
38 a violent felony offense during the preceding two years and not more
39 than two prior convictions for a violent felony offense, (iv) having no

1 prior charges of escape, and (v) fulfilling the other conditions of the
2 home detention program.

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

19 (24) "Inpatient treatment" means participation in a treatment
20 program certified by the state that requires the offender to be in
21 residence at the facility.

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

24 ~~((+22+))~~ (26) "Offender" means a person who has committed a felony
25 established by state law and is eighteen years of age or older or is
26 less than eighteen years of age but whose case has been transferred by
27 the 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 ~~((+23+))~~ (27) "Outpatient treatment" means participation in a
31 treatment program certified by the state or recommended by the
32 department that does not require the offender to be present for more
33 than twelve hours per day.

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

1 detention, work crew, and a combination of work crew and home detention
2 as defined in this section.

3 ~~((24))~~ (29) "Postrelease supervision" is that portion of an
4 offender's community placement that is not community custody.

5 ~~((25))~~ (30) "Restitution" means the requirement that the offender
6 pay a specific sum of money over a specific period of time to the court
7 as payment of damages. The sum may include both public and private
8 costs. The imposition of a restitution order does not preclude civil
9 redress.

10 ~~((26))~~ (31) "Serious traffic offense" means:

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

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

19 ~~((27))~~ (32) "Serious violent offense" is a subcategory of violent
20 offense and means:

21 (a) Murder in the first degree, homicide by abuse, murder in the
22 second degree, assault in the first degree, kidnapping in the first
23 degree, or rape in the first degree, assault of a child in the first
24 degree, or an attempt, criminal solicitation, or criminal conspiracy to
25 commit one of these felonies; or

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

29 ~~((28))~~ (33) "Sentence range" means the sentencing court's
30 discretionary range in imposing a nonappealable sentence.

31 ~~((29))~~ (34) "Sex offense" means:

32 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
33 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
34 attempt, criminal solicitation, or criminal conspiracy to commit such
35 crimes;

36 (b) A felony with a finding of sexual motivation under RCW
37 9.94A.127; or

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

4 (~~(30)~~) (35) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(31)~~) (36) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(32)~~) (37) "Victim" means any person who has sustained
12 emotional, psychological, physical, or financial injury to person or
13 property as a direct result of the crime charged.

14 (~~(33)~~) (38) "Violent offense" means:

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

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

30 (c) 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 violent
32 offense under (a) or (b) of this subsection.

33 (~~(34)~~) (39) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the community
35 of not less than thirty-five hours per week that complies with RCW
36 9.94A.135. The civic improvement tasks shall be performed on public
37 property or on private property owned or operated by nonprofit
38 entities, except that, for emergency purposes only, work crews may
39 perform snow removal on any private property. The civic improvement

1 tasks shall have minimal negative impact on existing private industries
2 or the labor force in the county where the service or labor is
3 performed. The civic improvement tasks shall not affect employment
4 opportunities for people with developmental disabilities contracted
5 through sheltered workshops as defined in RCW 82.04.385. Only those
6 offenders sentenced to a facility operated or utilized under contract
7 by a county are eligible to participate on a work crew. Offenders
8 sentenced for a sex offense as defined in subsection ~~((29))~~ (34) of
9 this section are not eligible for the work crew program.

10 ~~((35))~~ (40) "Work release" means a program of partial confinement
11 available to offenders who are employed or engaged as a student in a
12 regular course of study at school. Participation in work release shall
13 be conditioned upon the offender attending work or school at regularly
14 defined hours and abiding by the rules of the work release facility.

15 ~~((36))~~ "Home detention" means a program of partial confinement
16 available to offenders wherein the offender is confined in a private
17 residence subject to electronic surveillance. Home detention may not
18 be imposed for offenders convicted of a violent offense, any sex
19 offense, any drug offense, reckless burning in the first or second
20 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
21 degree as defined in RCW 9A.36.031, assault of a child in the third
22 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
23 harassment as defined in RCW 9A.46.020. Home detention may be imposed
24 for offenders convicted of possession of a controlled substance (RCW
25 69.50.401(d)) or forged prescription for a controlled substance (RCW
26 69.50.403) if the offender fulfills the participation conditions set
27 forth in this subsection and is monitored for drug use by treatment
28 alternatives to street crime (TASC) or a comparable court or agency-
29 referred program.

30 (a) Home detention may be imposed for offenders convicted of
31 burglary in the second degree as defined in RCW 9A.52.030 or
32 residential burglary conditioned upon the offender: (i) Successfully
33 completing twenty one days in a work release program, (ii) having no
34 convictions for burglary in the second degree or residential burglary
35 during the preceding two years and not more than two prior convictions
36 for burglary or residential burglary, (iii) having no convictions for
37 a violent felony offense during the preceding two years and not more
38 than two prior convictions for a violent felony offense, (iv) having no

1 prior charges of escape, and (v) fulfilling the other conditions of the
2 home detention program.

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

19 **Sec. 3.** RCW 9.94A.120 and 1992 c 145 s 7 and 1992 c 75 s 2 are
20 each reenacted and amended to read as follows:

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

23 (1) Except as authorized in subsections (2), (4), (5), ~~((and))~~ (7),
24 (8), and (21) of this section, the court shall impose a sentence within
25 the sentence range for the offense.

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

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

34 (4)(a) An offender convicted of the crime of murder in the first
35 degree shall be sentenced to a term of total confinement not less than
36 twenty years.

37 (b) An offender convicted of the crime of assault in the first
38 degree or assault of a child in the first degree where the offender

1 used force or means likely to result in death or intended to kill the
2 victim shall be sentenced to a term of total confinement not less than
3 five years.

4 (c) An offender convicted of the crime of rape in the first degree
5 shall be sentenced to a term of total confinement not less than five
6 years, and shall not be eligible for furlough, work release or other
7 authorized leave of absence from the correctional facility during such
8 minimum five-year term except for the purpose of commitment to an
9 inpatient treatment facility.

10 (d) An offender shall be sentenced to a minimum term of confinement
11 of not less than fifteen years if the offender (i) while committed to
12 a state correctional facility for murder in the first or second degree,
13 homicide by abuse, assault in the first or second degree, rape in the
14 first or second degree, kidnapping in the first degree, robbery in the
15 first degree, arson in the first degree, or burglary in the first
16 degree; (ii) commits the crime of murder in the second degree, assault
17 in the first or second degree, rape in the first or second degree,
18 arson in the first or second degree, or robbery in the first or second
19 degree. The sentence shall be served consecutive to any term of
20 confinement remaining on the offense or offenses for which the offender
21 was committed to the state institution as provided in RCW 9.94A.400 (2)
22 and (5). An offender who commits murder in the first degree while
23 committed to a state institution for the conviction of one of the
24 offenses listed in (d)(ii) of this subsection shall serve his or her
25 sentence consecutive to any term of confinement remaining on the
26 offense or offenses for which the offender was committed to the state
27 institution. RCW 9A.20.021(1)(b), which provides that the statutory
28 maximum for class B felonies is ten years, does not apply to the crimes
29 identified in (d)(ii) of this subsection when committed in a state
30 correctional facility by an offender who is committed to the state
31 institution for a crime listed in (d)(i) of this subsection. In these
32 circumstances, the statutory maximum is a term of life imprisonment.

33 The foregoing minimum terms of total confinement, specified in (a),
34 (b), (c), and (d) of this subsection, are mandatory and shall not be
35 varied or modified as provided in subsection (2) of this section.

36 (5) In sentencing a first-time offender the court may waive the
37 imposition of a sentence within the sentence range and impose a
38 sentence which may include up to ninety days of confinement in a
39 facility operated or utilized under contract by the county and a

1 requirement that the offender refrain from committing new offenses.
2 The sentence may also include up to ~~((two))~~ one year~~((s))~~ of community
3 supervision, which, in addition to crime-related prohibitions, may
4 include requirements that the offender perform any one or more of the
5 following:

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

7 (b) Undergo available outpatient treatment for up to ~~((two years))~~
8 one year, or inpatient treatment not to exceed the standard range of
9 confinement for that offense;

10 (c) Pursue a prescribed, secular course of study or vocational
11 training;

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

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

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

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

27 (7)(a) An offender is eligible for the special drug offender
28 sentencing alternative if:

29 (i) The offender is convicted of the manufacture, delivery, or
30 possession with intent to manufacture or deliver a controlled substance
31 classified in schedule I or II that is a narcotic drug and the
32 violation does not involve a sentence enhancement under RCW
33 9.94A.310(3);

34 (ii) The offender has no prior or other current convictions for a
35 felony in this state, another state, or the United States;

36 (iii) The offender has not previously been sentenced under this
37 special drug offender sentencing alternative;

38 (iv) The offense involved only a small quantity of the particular
39 controlled substance, as determined by the sentencing judge upon

1 consideration of such factors as the weight, purity, packaging, sale
2 price, and street value of the controlled substance.

3 (b) If the sentencing judge determines that the offender is
4 eligible for this option and that the offender and the community will
5 benefit from the use of the special drug offender sentencing
6 alternative, the judge may waive imposition of a sentence within the
7 standard range and impose a sentence that must include a period of
8 total confinement in a state facility for one-half of the midpoint of
9 the standard range. No more than three months of the sentence may be
10 served in a work release status. The court shall also impose one year
11 of community custody that must include crime-related prohibitions, a
12 condition to not use illegal controlled substances, and to submit to
13 urinalysis or other testing to monitor that status. In addition, the
14 court may impose any of the following conditions:

15 (i) Devote time to a specific employment or training;

16 (ii) Participate in outpatient substance abuse treatment;

17 (iii) Remain within prescribed geographical boundaries and notify
18 the court or the community corrections officer before any change in the
19 offender's address or employment;

20 (iv) Report as directed to a community corrections officer;

21 (v) Pay all court-ordered legal financial obligations;

22 (vi) Perform community service work;

23 (vii) Pay a day fine;

24 (viii) Stay out of areas designated by the sentencing judge;

25 (ix) Undergo day reporting.

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

38 (8)(a)(i) When an offender is convicted of a sex offense other than
39 a violation of RCW 9A.44.050 or a sex offense that is also a serious

1 violent offense and has no prior convictions for a sex offense or any
2 other felony sex offenses in this or any other state, the sentencing
3 court, on its own motion or the motion of the state or the defendant,
4 may order an examination to determine whether the defendant is amenable
5 to treatment.

6 The report of the examination shall include at a minimum the
7 following: The defendant's version of the facts and the official
8 version of the facts, the defendant's offense history, an assessment of
9 problems in addition to alleged deviant behaviors, the offender's
10 social and employment situation, and other evaluation measures used.
11 The report shall set forth the sources of the evaluator's information.

12 The examiner shall assess and report regarding the defendant's
13 amenability to treatment and relative risk to the community. A
14 proposed treatment plan shall be provided and shall include, at a
15 minimum:

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

17 (B) Specific issues to be addressed in the treatment and
18 description of planned treatment modalities;

19 (C) Monitoring plans, including any requirements regarding living
20 conditions, lifestyle requirements, and monitoring by family members
21 and others;

22 (D) Anticipated length of treatment; and

23 (E) Recommended crime-related prohibitions.

24 The court on its own motion may order, or on a motion by the state
25 shall order, a second examination regarding the offender's amenability
26 to treatment. The evaluator shall be selected by the party making the
27 motion. The defendant shall pay the cost of any second examination
28 ordered unless the court finds the defendant to be indigent in which
29 case the state shall pay the cost.

30 (ii) After receipt of the reports, the court shall consider whether
31 the offender and the community will benefit from use of this special
32 sexual offender sentencing alternative and consider the victim's
33 opinion whether the offender should receive a treatment disposition
34 under this subsection. If the court determines that this special sex
35 offender sentencing alternative is appropriate, the court shall then
36 impose a sentence within the sentence range. If this sentence is less
37 than eight years of confinement, the court may suspend the execution of
38 the sentence and impose the following conditions of suspension:

1 (A) The court shall place the defendant on community supervision
2 for the length of the suspended sentence or three years, whichever is
3 greater; and

4 (B) The court shall order treatment for any period up to three
5 years in duration. The court in its discretion shall order outpatient
6 sex offender treatment or inpatient sex offender treatment, if
7 available. A community mental health center may not be used for such
8 treatment unless it has an appropriate program designed for sex
9 offender treatment. The offender shall not change sex offender
10 treatment providers or treatment conditions without first notifying the
11 prosecutor, the community corrections officer, and the court, and shall
12 not change providers without court approval after a hearing if the
13 prosecutor or community corrections officer object to the change. In
14 addition, as conditions of the suspended sentence, the court may impose
15 other sentence conditions including up to six months of confinement,
16 not to exceed the sentence range of confinement for that offense,
17 crime-related prohibitions, and requirements that the offender perform
18 any one or more of the following:

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

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

23 (III) Report as directed to the court and a community corrections
24 officer;

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

28 (V) Make recoupment to the victim for the cost of any counseling
29 required as a result of the offender's crime.

30 (iii) The sex offender therapist shall submit quarterly reports on
31 the defendant's progress in treatment to the court and the parties.
32 The report shall reference the treatment plan and include at a minimum
33 the following: Dates of attendance, defendant's compliance with
34 requirements, treatment activities, the defendant's relative progress
35 in treatment, and any other material as specified by the court at
36 sentencing.

37 (iv) At the time of sentencing, the court shall set a treatment
38 termination hearing for three months prior to the anticipated date for
39 completion of treatment. Prior to the treatment termination hearing,

1 the treatment professional and community corrections officer shall
2 submit written reports to the court and parties regarding the
3 defendant's compliance with treatment and monitoring requirements, and
4 recommendations regarding termination from treatment, including
5 proposed community supervision conditions. Either party may request
6 and the court may order another evaluation regarding the advisability
7 of termination from treatment. The defendant shall pay the cost of any
8 additional evaluation ordered unless the court finds the defendant to
9 be indigent in which case the state shall pay the cost. At the
10 treatment termination hearing the court may: (A) Modify conditions of
11 community supervision, and either (B) terminate treatment, or (C)
12 extend treatment for up to the remaining period of community
13 supervision.

14 (v) The court may revoke the suspended sentence at any time during
15 the period of community supervision and order execution of the sentence
16 if: (A) The defendant violates the conditions of the suspended
17 sentence, or (B) the court finds that the defendant is failing to make
18 satisfactory progress in treatment. All confinement time served during
19 the period of community supervision shall be credited to the offender
20 if the suspended sentence is revoked.

21 (vi) Except as provided in (a)(vii) of this subsection, after July
22 1, 1991, examinations and treatment ordered pursuant to this subsection
23 shall only be conducted by sex offender treatment providers certified
24 by the department of health pursuant to chapter 18.155 RCW.

25 (vii) A sex offender therapist who examines or treats a sex
26 offender pursuant to this subsection (~~((+7))~~) (8) does not have to be
27 certified by the department of health pursuant to chapter 18.155 RCW if
28 the court finds that: (A) The offender has already moved to another
29 state or plans to move to another state for reasons other than
30 circumventing the certification requirements; (B) no certified
31 providers are available for treatment within a reasonable geographical
32 distance of the offender's home; and (C) the evaluation and treatment
33 plan comply with this subsection (~~((+7))~~) (8) and the rules adopted by
34 the department of health.

35 For purposes of this subsection, "victim" means any person who has
36 sustained emotional, psychological, physical, or financial injury to
37 person or property as a result of the crime charged. "Victim" also
38 means a parent or guardian of a victim who is a minor child unless the
39 parent or guardian is the perpetrator of the offense.

1 (b) When an offender is convicted of any felony sex offense
2 committed before July 1, 1987, and is sentenced to a term of
3 confinement of more than one year but less than six years, the
4 sentencing court may, on its own motion or on the motion of the
5 offender or the state, order the offender committed for up to thirty
6 days to the custody of the secretary of social and health services for
7 evaluation and report to the court on the offender's amenability to
8 treatment at these facilities. If the secretary of social and health
9 services cannot begin the evaluation within thirty days of the court's
10 order of commitment, the offender shall be transferred to the state for
11 confinement pending an opportunity to be evaluated at the appropriate
12 facility. The court shall review the reports and may order that the
13 term of confinement imposed be served in the sexual offender treatment
14 program at the location determined by the secretary of social and
15 health services or the secretary's designee, only if the report
16 indicates that the offender is amenable to the treatment program
17 provided at these facilities. The offender shall be transferred to the
18 state pending placement in the treatment program. Any offender who has
19 escaped from the treatment program shall be referred back to the
20 sentencing court.

21 If the offender does not comply with the conditions of the
22 treatment program, the secretary of social and health services may
23 refer the matter to the sentencing court. The sentencing court shall
24 commit the offender to the department of corrections to serve the
25 balance of the term of confinement.

26 If the offender successfully completes the treatment program before
27 the expiration of the term of confinement, the court may convert the
28 balance of confinement to community supervision and may place
29 conditions on the offender including crime-related prohibitions and
30 requirements that the offender perform any one or more of the
31 following:

- 32 (i) Devote time to a specific employment or occupation;
- 33 (ii) Remain within prescribed geographical boundaries and notify
34 the court or the community corrections officer prior to any change in
35 the offender's address or employment;
- 36 (iii) Report as directed to the court and a community corrections
37 officer;
- 38 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of community supervision,
2 the court may order the offender to serve out the balance of the
3 community supervision term in confinement in the custody of the
4 department of corrections.

5 After June 30, 1993, this subsection (b) shall cease to have
6 effect.

7 (c) When an offender commits any felony sex offense on or after
8 July 1, 1987, and is sentenced to a term of confinement of more than
9 one year but less than six years, the sentencing court may, on its own
10 motion or on the motion of the offender or the state, request the
11 department of corrections to evaluate whether the offender is amenable
12 to treatment and the department may place the offender in a treatment
13 program within a correctional facility operated by the department.

14 Except for an offender who has been convicted of a violation of RCW
15 9A.44.040 or 9A.44.050, if the offender completes the treatment program
16 before the expiration of his or her term of confinement, the department
17 of corrections may request the court to convert the balance of
18 confinement to community supervision and to place conditions on the
19 offender including crime-related prohibitions and requirements that the
20 offender perform any one or more of the following:

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

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

25 (iii) Report as directed to the court and a community corrections
26 officer;

27 (iv) Undergo available outpatient treatment.

28 If the offender violates any of the terms of his or her community
29 supervision, the court may order the offender to serve out the balance
30 of his community supervision term in confinement in the custody of the
31 department of corrections.

32 Nothing in (c) of this subsection shall confer eligibility for such
33 programs for offenders convicted and sentenced for a sex offense
34 committed prior to July 1, 1987. This subsection (c) does not apply to
35 any crime committed after July 1, 1990.

36 (d) Offenders convicted and sentenced for a sex offense committed
37 prior to July 1, 1987, may, subject to available funds, request an
38 evaluation by the department of corrections to determine whether they
39 are amenable to treatment. If the offender is determined to be

1 amenable to treatment, the offender may request placement in a
2 treatment program within a correctional facility operated by the
3 department. Placement in such treatment program is subject to
4 available funds.

5 ~~((+8))~~ (9)(a) When a court sentences a person to a term of total
6 confinement to the custody of the department of corrections for an
7 offense categorized as a sex offense or a serious violent offense
8 committed after July 1, 1988, but before July 1, 1990, assault in the
9 second degree, assault of a child in the second degree, any crime
10 against a person where it is determined in accordance with RCW
11 9.94A.125 that the defendant or an accomplice was armed with a deadly
12 weapon at the time of commission, or any felony offense under chapter
13 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
14 in addition to the other terms of the sentence, sentence the offender
15 to a one-year term of community placement beginning either upon
16 completion of the term of confinement or at such time as the offender
17 is transferred to community custody in lieu of earned early release in
18 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
19 offender under this subsection to the statutory maximum period of
20 confinement then the community placement portion of the sentence shall
21 consist entirely of such community custody to which the offender may
22 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
23 period of community custody actually served shall be credited against
24 the community placement portion of the sentence.

25 (b) When a court sentences a person to a term of total confinement
26 to the custody of the department of corrections for an offense
27 categorized as a sex offense or serious violent offense committed on or
28 after July 1, 1990, the court shall in addition to other terms of the
29 sentence, sentence the offender to community placement for two years or
30 up to the period of earned early release awarded pursuant to RCW
31 9.94A.150 (1) and (2), whichever is longer. The community placement
32 shall begin either upon completion of the term of confinement or at
33 such time as the offender is transferred to community custody in lieu
34 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
35 When the court sentences an offender under this subsection to the
36 statutory maximum period of confinement then the community placement
37 portion of the sentence shall consist entirely of the community custody
38 to which the offender may become eligible, in accordance with RCW
39 9.94A.150 (1) and (2). Any period of community custody actually served

1 shall be credited against the community placement portion of the
2 sentence. Unless a condition is waived by the court, the terms of
3 community placement for offenders sentenced pursuant to this section
4 shall include the following conditions:

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

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

9 (iii) The offender shall not consume controlled substances except
10 pursuant to lawfully issued prescriptions;

11 (iv) An offender in community custody shall not unlawfully possess
12 controlled substances;

13 (v) The offender shall pay supervision fees as determined by the
14 department of corrections; and

15 (vi) The residence location and living arrangements are subject to
16 the prior approval of the department of corrections during the period
17 of community placement.

18 (c) The court may also order any of the following special
19 conditions:

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

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

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

26 (iv) The offender shall not consume alcohol; or

27 (v) The offender shall comply with any crime-related prohibitions.

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

32 ~~((+9))~~ (10) If the court imposes a sentence requiring confinement
33 of thirty days or less, the court may, in its discretion, specify that
34 the sentence be served on consecutive or intermittent days. A sentence
35 requiring more than thirty days of confinement shall be served on
36 consecutive days. Local jail administrators may schedule court-ordered
37 intermittent sentences as space permits.

38 ~~((+10))~~ (11) If a sentence imposed includes payment of a legal
39 financial obligation, the sentence shall specify the total amount of

1 the legal financial obligation owed, and shall require the offender to
2 pay a specified monthly sum toward that legal financial obligation.
3 Restitution to victims shall be paid prior to any other payments of
4 monetary obligations. Any legal financial obligation that is imposed
5 by the court may be collected by the department, which shall deliver
6 the amount paid to the county clerk for credit. The offender's
7 compliance with payment of legal financial obligations shall be
8 supervised by the department. All monetary payments ordered shall be
9 paid no later than ten years after the last date of release from
10 confinement pursuant to a felony conviction or the date the sentence
11 was entered. Independent of the department, the party or entity to
12 whom the legal financial obligation is owed shall have the authority to
13 utilize any other remedies available to the party or entity to collect
14 the legal financial obligation. Nothing in this section makes the
15 department, the state, or any of its employees, agents, or other
16 persons acting on their behalf liable under any circumstances for the
17 payment of these legal financial obligations. If an order includes
18 restitution as one of the monetary assessments, the county clerk shall
19 make disbursements to victims named in the order.

20 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
21 9.94A.142(1), a court may not impose a sentence providing for a term of
22 confinement or community supervision or community placement which
23 exceeds the statutory maximum for the crime as provided in chapter
24 9A.20 RCW.

25 ~~((12))~~ (13) All offenders sentenced to terms involving community
26 supervision, community service, community placement, or legal financial
27 obligation shall be under the supervision of the secretary of the
28 department of corrections or such person as the secretary may designate
29 and shall follow explicitly the instructions of the secretary including
30 reporting as directed to a community corrections officer, remaining
31 within prescribed geographical boundaries, notifying the community
32 corrections officer of any change in the offender's address or
33 employment, and paying the supervision fee assessment.

34 ~~((13))~~ (14) All offenders sentenced to terms involving community
35 supervision, community service, or community placement under the
36 supervision of the department of corrections shall not own, use, or
37 possess firearms or ammunition. Offenders who own, use, or are found
38 to be in actual or constructive possession of firearms or ammunition
39 shall be subject to the appropriate violation process and sanctions.

1 "Constructive possession" as used in this subsection means the power
2 and intent to control the firearm or ammunition. "Firearm" as used in
3 this subsection means a weapon or device from which a projectile may be
4 fired by an explosive such as gunpowder.

5 ~~((14))~~ (15) The sentencing court shall give the offender credit
6 for all confinement time served before the sentencing if that
7 confinement was solely in regard to the offense for which the offender
8 is being sentenced.

9 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)
10 and (2) governing whether sentences are to be served consecutively or
11 concurrently is an exceptional sentence subject to the limitations in
12 subsections (2) and (3) of this section, and may be appealed by the
13 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

14 ~~((16))~~ (17) The court shall order restitution whenever the
15 offender is convicted of a felony that results in injury to any person
16 or damage to or loss of property, whether the offender is sentenced to
17 confinement or placed under community supervision, unless extraordinary
18 circumstances exist that make restitution inappropriate in the court's
19 judgment. The court shall set forth the extraordinary circumstances in
20 the record if it does not order restitution.

21 ~~((17))~~ (18) As a part of any sentence, the court may impose and
22 enforce an order that relates directly to the circumstances of the
23 crime for which the offender has been convicted, prohibiting the
24 offender from having any contact with other specified individuals or a
25 specific class of individuals for a period not to exceed the maximum
26 allowable sentence for the crime, regardless of the expiration of the
27 offender's term of community supervision or community placement.

28 ~~((18))~~ (19) In any sentence of partial confinement, the court may
29 require the defendant to serve the partial confinement in work release,
30 in a program of home detention, on work crew, or in a combined program
31 of work crew and home detention.

32 ~~((19))~~ (20) All court-ordered legal financial obligations
33 collected by the department and remitted to the county clerk shall be
34 credited and paid where restitution is ordered. Restitution shall be
35 paid prior to any other payments of monetary obligations.

36 (21) An offender shall be sentenced to a minimum term of
37 confinement of not less than fifteen years or a determinate term within
38 the standard range, whichever is greater, if the offender (a) while
39 committed to a state correctional facility for murder in the first or

1 second degree, homicide by abuse, assault in the first or second
2 degree, rape in the first or second degree, kidnapping in the first
3 degree, robbery in the first degree, arson in the first degree, or
4 burglary in the first degree; (b) commits the crime of murder in the
5 second degree, assault in the first or second degree, rape in the first
6 or second degree, arson in the first or second degree, or robbery in
7 the first or second degree. The court may impose an exceptional
8 sentence above the mandatory minimum term or the standard range for the
9 offense based on the existence of aggravating factors as provided in
10 RCW 9.94A.390, but may not impose an exceptional sentence below the
11 mandatory minimum or standard range. The term imposed shall be served
12 consecutive to any term of confinement remaining on the offense or
13 offenses for which the offender was committed to the state institution
14 as provided in RCW 9.94A.400 (2) and (5). An offender who commits
15 murder in the first degree while committed to a state institution for
16 the conviction of one of the offenses listed in (b) of this subsection
17 shall serve his or her sentence consecutive to any term of confinement
18 remaining on the offense or offenses for which the offender was
19 committed to the state institution. RCW 9A.20.021(1)(b), which
20 provides that the statutory maximum for class B felonies is ten years,
21 does not apply to the crimes identified in (b) of this subsection when
22 committed in a state correctional facility by an offender who is
23 committed to the state institution for a crime listed in (a) of this
24 subsection. In these circumstances, the statutory maximum is a term of
25 life imprisonment.

26 **Sec. 4.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
27 as follows:

28 If the sentencing court finds that an exceptional sentence outside
29 the standard range should be imposed in accordance with RCW
30 9.94A.120(2), the sentence is subject to review only as provided for in
31 RCW 9.94A.210(4).

32 The following are illustrative factors which the court may consider
33 in the exercise of its discretion to impose an exceptional sentence.
34 The following are illustrative only and are not intended to be
35 exclusive reasons for exceptional sentences.

36 (1) Mitigating Circumstances

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

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

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

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

9 (e) The defendant's capacity to appreciate the wrongfulness of his
10 or her conduct or to conform his or her conduct to the requirements of
11 the law, was significantly impaired (voluntary use of drugs or alcohol
12 is excluded).

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

16 (g) The operation of the multiple offense policy of RCW 9.94A.400
17 results in a presumptive sentence that is clearly excessive in light of
18 the purpose of this chapter, as expressed in RCW 9.94A.010.

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

22 (2) Aggravating Circumstances

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

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

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

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

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

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

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

1 (d) 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; or

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; or

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

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

16 (v) The current offense involved a high degree of sophistication or
17 planning or 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)(~~(i-or)~~).

23 (e) The defendant is being sentenced for an offense involving the
24 use or threatened use of physical violence and poses a future danger of
25 violent behavior that will not be sufficiently mitigated by a period of
26 incarceration within the standard range. This finding may be made upon
27 conviction of any violent offense and must be supported by:

28 (i) A history of similar misconduct. This history may be
29 established by prior criminal convictions or other competent evidence;
30 and

31 (ii) A finding that the defendant is not amenable to treatment.
32 The following are among the factors the court may consider in making
33 such a finding:

34 (A) The opinion of a mental health professional that the defendant
35 would likely not be amenable to treatment;

36 (B) The defendant has been refused treatment at all available
37 facilities;

38 (C) The defendant refuses to cooperate with necessary evaluations
39 to determine the usefulness of treatment; or

1 (D) The current offense was committed less than six months after
2 the defendant was released from incarceration for a similar offense.

3 (f) The current offense included a finding of sexual motivation
4 pursuant to RCW 9.94A.127((+)).

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

8 ((+)) (h) The operation of the multiple offense policy of RCW
9 9.94A.400 results in a presumptive sentence that is clearly too lenient
10 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

11 **Sec. 5.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
12 each reenacted and amended to read as follows:

13 (1) Decision not to prosecute.

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

19 GUIDELINE/COMMENTARY:

20 Examples

21 The following are examples of reasons not to prosecute which could
22 satisfy the standard.

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

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

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

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

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

34 (iv) The statute has not been recently reconsidered by the
35 legislature.

36 This reason is not to be construed as the basis for declining cases
37 because the law in question is unpopular or because it is difficult to
38 enforce.

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

4 (d) Confinement on Other Charges - Except for crimes committed by
5 prisoners in state correctional facilities as provided in RCW
6 9.94A.120(21), it may be proper to decline to charge because the
7 accused has been sentenced on another charge to a lengthy period of
8 confinement; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Notification

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

18 (2) Decision to prosecute.

19 STANDARD:

20 Crimes against persons will be filed if sufficient admissible
21 evidence exists, which, when considered with the most plausible,
22 reasonably foreseeable defense that could be raised under the evidence,
23 would justify conviction by a reasonable and objective fact-finder.
24 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
25 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
26 9A.64.020 the prosecutor should avoid prefiling agreements or
27 diversions intended to place the accused in a program of treatment or
28 counseling, so that treatment, if determined to be beneficial, can be
29 provided pursuant to RCW 9.94A.120(~~(7)~~)(8).

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

35 See table below for the crimes within these categories.

1 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

2 CRIMES AGAINST PERSONS

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

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

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

1 ALL OTHER UNCLASSIFIED FELONIES

2 Selection of Charges/Degree of Charge

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

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

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

9 (2) The prosecutor should not overcharge to obtain a guilty plea.

10 Overcharging includes:

11 (a) Charging a higher degree;

12 (b) Charging additional counts.

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

19 GUIDELINES/COMMENTARY:

20 Police Investigation

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

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

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

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

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

35 Exceptions

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

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

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

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

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

10 Investigation Techniques

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

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

17 Pre-Filing Discussions with Defendant

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

21 **Sec. 6.** RCW 9.95.0011 and 1989 c 259 s 4 are each amended to read
22 as follows:

23 (1) The indeterminate ((sentencing)) sentence review board shall
24 cease to exist on June 30, 1998. Prior to June 30, 1998, the board
25 shall review each inmate convicted of crimes committed before July 1,
26 1984, and prepare a report. This report shall include a recommendation
27 regarding the offender's suitability for parole, appropriate parole
28 conditions, and, for those persons committed under a mandatory life
29 sentence, duration of confinement.

30 (2) ((The governor, through the office of financial management,
31 shall recommend to the legislature alternatives for carrying out the
32 duties of)) To facilitate termination of the board on June 30, 1998,
33 the board shall prepare a detailed plan and recommendations for the
34 transfer of jurisdiction over inmates and parolees remaining subject to
35 the indeterminate sentencing system. The plan shall consider ex post
36 facto issues and public safety concerns. In developing
37 recommendations, the ((office of financial management)) board shall
38 consult with the ((indeterminate sentence review board)) office of

1 financial management, the attorney general, the Washington association
2 of prosecuting attorneys, the Washington defender association, the
3 department of corrections, and the administrator for the courts.
4 Recommendations shall include an indication of to whom jurisdiction
5 over the inmates and parolees should be transferred, a detailed fiscal
6 analysis, and if necessary, recommended formulas and procedures for the
7 reimbursement of costs to local governments ((if necessary)). The plan
8 and recommendations shall be presented to the ((1997)) legislature no
9 later than December 1, 1995.

10 **Sec. 7.** RCW 9.96.050 and 1980 c 75 s 1 are each amended to read as
11 follows:

12 When a prisoner on parole has performed the obligations of his or
13 her release for such time as shall satisfy the indeterminate sentence
14 review board ((of prison terms and paroles)) that his or her final
15 release is not incompatible with the best interests of society and the
16 welfare of the paroled individual, the board may make a final order of
17 discharge and issue a certificate of discharge to the prisoner. The
18 board retains the jurisdiction to issue a certificate of discharge
19 after the expiration of the prisoner's or parolee's maximum statutory
20 sentence((: PROVIDED, That no such order of discharge shall be made in
21 any case within a period of less than one year from the date on which
22 the board has conditionally discharged the parolee from active
23 supervision by a probation and parole officer, except where the
24 parolee's maximum statutory sentence expires earlier)). If not granted
25 earlier, the board shall make a final order of discharge three years
26 from the date of parole unless the parolee is on suspended or revoked
27 status at the expiration of the three years. Such discharge,
28 regardless of when issued, shall have the effect of restoring all civil
29 rights lost by operation of law upon conviction, and the certification
30 of discharge shall so state. This restoration of civil rights does not
31 restore the right to receive, possess, own, or transport firearms.

32 The discharge provided for in this section shall be considered as
33 a part of the sentence of the convicted person and shall not in any
34 manner be construed as affecting the powers of the governor to pardon
35 any such person.

36 **Sec. 8.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read
37 as follows:

1 (1) Felony. No person convicted of a classified felony shall be
2 punished by confinement or fine exceeding the following:

3 (a) For a class A felony, by confinement in a state correctional
4 institution for a term of life imprisonment, or by a fine in an amount
5 fixed by the court of fifty thousand dollars, or by both such
6 confinement and fine;

7 (b) Except as provided in RCW 9.94A.120(4)(d) and (21) for a class
8 B felony, by confinement in a state correctional institution for a term
9 of ten years, or by a fine in an amount fixed by the court of twenty
10 thousand dollars, or by both such confinement and fine;

11 (c) For a class C felony, by confinement in a state correctional
12 institution for five years, or by a fine in an amount fixed by the
13 court of ten thousand dollars, or by both such confinement and fine.

14 (2) Gross Misdemeanor. Every person convicted of a gross
15 misdemeanor defined in Title 9A RCW shall be punished by imprisonment
16 in the county jail for a maximum term fixed by the court of not more
17 than one year, or by a fine in an amount fixed by the court of not more
18 than five thousand dollars, or by both such imprisonment and fine.

19 (3) Misdemeanor. Every person convicted of a misdemeanor defined
20 in Title 9A RCW shall be punished by imprisonment in the county jail
21 for a maximum term fixed by the court of not more than ninety days, or
22 by a fine in an amount fixed by the court of not more than one thousand
23 dollars, or by both such imprisonment and fine.

24 (4) This section applies to only those crimes committed on or after
25 July 1, 1984.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 72.09 RCW
27 to read as follows:

28 (1) The secretary shall increase inmate participation in class I
29 and class II correctional industries work programs incrementally until
30 a combined total of twenty-five percent of all eligible physically and
31 mentally able inmates are employed in class I and class II programs by
32 December 30, 1997, and fifty percent by December 30, 1999. "Eligible
33 physically and mentally able inmates" includes all inmates in
34 department facilities except inmates determined to be incapable of
35 working in correctional industries work programs due to one of the
36 following reasons only:

37 (a) The inmate has a chronic mental deficiency or is mentally
38 retarded and participation in work programs is impossible;

1 (b) The inmate has a physical disability or illness making
2 participation in work programs impossible;

3 (c) The inmate is housed in an intensive management unit.

4 (2) The department shall deduct at least fifty percent from the
5 gross wages of each inmate working in correctional industries. This
6 amount shall be first used to pay any court-ordered legal financial
7 obligations the defendant is required to pay. Upon full payment of
8 legal financial obligations, the deduction shall be deposited into a
9 department personal inmate savings account until the account reaches at
10 least two hundred fifty dollars. Thereafter, all inmates working in
11 class I, class II, class III, and class IV correctional industries
12 programs shall pay fifty percent of their gross wages earned, up to six
13 dollars per hour, toward the cost of incarceration so long as the
14 inmate has retained at least two hundred fifty dollars in a department
15 personal inmate savings account.

16 (3) The department shall explore other methods of recovering a
17 portion of the cost of the inmate's incarceration and for encouraging
18 participation in work programs, including development of incentive
19 programs that offer inmates benefits and amenities paid for only from
20 wages earned while working in a correctional industries work program.

21 (4) The department shall develop the necessary administrative
22 structure to recover inmates' wages and keep records of the amount
23 inmates pay for the costs of incarceration and amenities. All funds
24 gained from this section shall be deposited in a dedicated fund with
25 the department and shall be used only for the purpose of enhancing and
26 maintaining the correctional industries program until December 31,
27 2000, and thereafter all funds shall be deposited in the general fund.

28 **Sec. 10.** RCW 72.09.110 and 1991 c 133 s 1 are each amended to read
29 as follows:

30 All inmates working in prison industries shall participate in the
31 cost of corrections, including costs to develop and implement
32 correctional industries programs(~~(. The secretary shall develop a~~
33 ~~formula which can be used to determine the extent to which the wages of~~
34 ~~these inmates will be deducted for this purpose. The amount so~~
35 ~~deducted shall be placed in the general fund and shall be a reasonable~~
36 ~~amount which will not unduly discourage the incentive to work)), by
37 means of deductions from their gross wages. The secretary may direct
38 the state treasurer to deposit a portion of these moneys in the crime~~

1 victims compensation account. (~~Except~~) The secretary shall direct
2 that all moneys received by an inmate(~~(7)~~) for testifying in any
3 judicial proceeding(~~(7-90)~~) shall be deposited into the crime victims
4 compensation account.

5 When the secretary finds it appropriate and not unduly destructive
6 of the work incentive, the secretary (~~shall~~) may also provide
7 deductions for (~~restitution7~~) savings(~~(7)~~) and family support.

8 NEW SECTION. Sec. 11. By January 1, 1994, the secretary of
9 corrections shall submit a report to the chief clerk of the house of
10 representatives and secretary of the senate containing an
11 identification and description of any impediments which the secretary
12 believes might prevent the department from achieving compliance with
13 the inmate work participation percentages specified in section 9 of
14 this act. The secretary also shall include, in the report, alternative
15 ways to remove any identified impediments. The chief clerk and
16 secretary shall distribute the report to the appropriate standing
17 committees.

18 NEW SECTION. Sec. 12. 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.

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