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SENATE BILL 5451

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State of Washington

53rd Legislature

1993 Regular Session

By Senator Hargrove

Read first time 01/29/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to persons convicted of felonies; amending RCW  
2 9.95.0011, 9.96.050, and 72.09.110; reenacting and amending RCW  
3 9.94A.030, 9.94A.120, 9.94A.380, 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(8) 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) "Drug or alcohol monitoring" means the obligation to  
24 remain free of any nonprescribed controlled substance or of any  
25 alcoholic beverage and to submit to periodic testing in a program to  
26 monitor that status as directed by the department, such as drug  
27 monitoring under a treatment alternatives to street crime (TASC) or  
28 comparable program.

29       (20) "Education or training" means participation in a formal  
30 program of education or training that has state certification.

31       (21) "Escape" means:

32       (a) Escape in the first degree (RCW 9A.76.110), escape in the  
33 second degree (RCW 9A.76.120), willful failure to return from furlough  
34 (RCW 72.66.060), willful failure to return from work release (RCW  
35 72.65.070), or willful failure to be available for supervision by the  
36 department while in community custody (RCW 72.09.310); or

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

1       (~~(18)~~) (22) "Felony traffic offense" means:

2       (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
4 and-run injury-accident (RCW 46.52.020(4)); or

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

8       (~~(19)~~) (23) "Fines" means the requirement that the offender pay  
9 a specific sum of money over a specific period of time to the court.

10       (~~(20)~~) (24)(a) "First-time offender" means any person who is  
11 convicted of a felony (i) not classified as a violent offense or a sex  
12 offense under this chapter, or (ii) that is not the manufacture,  
13 delivery, or possession with intent to manufacture or deliver a  
14 controlled substance classified in schedule I or II that is a narcotic  
15 drug or the selling for profit (~~{of}~~) of any controlled substance or  
16 counterfeit substance classified in schedule I, RCW 69.50.204, except  
17 leaves and flowering tops of marihuana, and except as provided in (b)  
18 of this subsection, who previously has never been convicted of a felony  
19 in this state, federal court, or another state, and who has never  
20 participated in a program of deferred prosecution for a felony offense.

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

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

38       (a) Home detention may be imposed for offenders convicted of  
39 burglary in the second degree as defined in RCW 9A.52.030 or

1 residential burglary conditioned upon the offender: (i) Successfully  
2 completing twenty-one days in a work release program, (ii) having no  
3 convictions for burglary in the second degree or residential burglary  
4 during the preceding two years and not more than two prior convictions  
5 for burglary or residential burglary, (iii) having no convictions for  
6 a violent felony offense during the preceding two years and not more  
7 than two prior convictions for a violent felony offense, (iv) having no  
8 prior charges of escape, and (v) fulfilling the other conditions of the  
9 home detention program.

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

26 (26) "Inpatient treatment" means participation in a treatment  
27 program certified by the state that requires the offender to be in  
28 residence at the facility.

29 (27) "Nonviolent offense" means an offense which is not a violent  
30 offense.

31 ~~((22))~~ (28) "Offender" means a person who has committed a felony  
32 established by state law and is eighteen years of age or older or is  
33 less than eighteen years of age but whose case has been transferred by  
34 the appropriate juvenile court to a criminal court pursuant to RCW  
35 13.40.110. Throughout this chapter, the terms "offender" and  
36 "defendant" are used interchangeably.

37 ~~((23))~~ (29) "Outpatient treatment" means participation in a  
38 treatment program certified by the state or recommended by the

1 department that does not require the offender to be present for more  
2 than twelve hours per day.

3       ~~(30)~~ (30) "Partial confinement" means confinement for no more than one  
4 year in a facility or institution operated or utilized under contract  
5 by the state or any other unit of government, or, if home detention or  
6 work crew has been ordered by the court, in an approved residence, for  
7 a substantial portion of each day with the balance of the day spent in  
8 the community. Partial confinement includes work release, home  
9 detention, work crew, and a combination of work crew and home detention  
10 as defined in this section.

11       ~~((24))~~ (31) "Postrelease supervision" is that portion of an  
12 offender's community placement that is not community custody.

13       ~~((25))~~ (32) "Restitution" means the requirement that the offender  
14 pay a specific sum of money over a specific period of time to the court  
15 as payment of damages. The sum may include both public and private  
16 costs. The imposition of a restitution order does not preclude civil  
17 redress.

18       ~~((26))~~ (33) "Serious traffic offense" means:

19       (a) Driving while under the influence of intoxicating liquor or any  
20 drug (RCW 46.61.502), actual physical control while under the influence  
21 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
22 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
23 or

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

27       ~~((27))~~ (34) "Serious violent offense" is a subcategory of violent  
28 offense and means:

29       (a) Murder in the first degree, homicide by abuse, murder in the  
30 second degree, assault in the first degree, kidnapping in the first  
31 degree, or rape in the first degree, assault of a child in the first  
32 degree, or an attempt, criminal solicitation, or criminal conspiracy to  
33 commit one of these felonies; or

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

37       ~~((28))~~ (35) "Sentence range" means the sentencing court's  
38 discretionary range in imposing a nonappealable sentence.

39       ~~((29))~~ (36) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
2 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
3 attempt, criminal solicitation, or criminal conspiracy to commit such  
4 crimes;

5 (b) A felony with a finding of sexual motivation under RCW  
6 9.94A.127; or

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

10 (~~(30)~~) (37) "Sexual motivation" means that one of the purposes  
11 for which the defendant committed the crime was for the purpose of his  
12 or her sexual gratification.

13 (~~(31)~~) (38) "Total confinement" means confinement inside the  
14 physical boundaries of a facility or institution operated or utilized  
15 under contract by the state or any other unit of government for twenty-  
16 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

17 (~~(32)~~) (39) "Victim" means any person who has sustained  
18 emotional, psychological, physical, or financial injury to person or  
19 property as a direct result of the crime charged.

20 (~~(33)~~) (40) "Violent offense" means:

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

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

36 (c) 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 violent  
38 offense under (a) or (b) of this subsection.

1        ~~((34))~~ (41) "Work crew" means a program of partial confinement  
2 consisting of civic improvement tasks for the benefit of the community  
3 of not less than thirty-five hours per week that complies with RCW  
4 9.94A.135. The civic improvement tasks shall be performed on public  
5 property or on private property owned or operated by nonprofit  
6 entities, except that, for emergency purposes only, work crews may  
7 perform snow removal on any private property. The civic improvement  
8 tasks shall have minimal negative impact on existing private industries  
9 or the labor force in the county where the service or labor is  
10 performed. The civic improvement tasks shall not affect employment  
11 opportunities for people with developmental disabilities contracted  
12 through sheltered workshops as defined in RCW 82.04.385. Only those  
13 offenders sentenced to a facility operated or utilized under contract  
14 by a county are eligible to participate on a work crew. Offenders  
15 sentenced for a sex offense as defined in subsection ~~((29))~~ (36) of  
16 this section are not eligible for the work crew program.

17        ~~((35))~~ (42) "Work release" means a program of partial confinement  
18 available to offenders who are employed or engaged as a student in a  
19 regular course of study at school. Participation in work release shall  
20 be conditioned upon the offender attending work or school at regularly  
21 defined hours and abiding by the rules of the work release facility.

22        ~~((36) "Home detention" means a program of partial confinement~~  
23 ~~available to offenders wherein the offender is confined in a private~~  
24 ~~residence subject to electronic surveillance. Home detention may not~~  
25 ~~be imposed for offenders convicted of a violent offense, any sex~~  
26 ~~offense, any drug offense, reckless burning in the first or second~~  
27 ~~degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third~~  
28 ~~degree as defined in RCW 9A.36.031, assault of a child in the third~~  
29 ~~degree, unlawful imprisonment as defined in RCW 9A.40.040, or~~  
30 ~~harassment as defined in RCW 9A.46.020. Home detention may be imposed~~  
31 ~~for offenders convicted of possession of a controlled substance (RCW~~  
32 ~~69.50.401(d)) or forged prescription for a controlled substance (RCW~~  
33 ~~69.50.403) if the offender fulfills the participation conditions set~~  
34 ~~forth in this subsection and is monitored for drug use by treatment~~  
35 ~~alternatives to street crime (TASC) or a comparable court or agency-~~  
36 ~~referred program.~~

37        ~~(a) Home detention may be imposed for offenders convicted of~~  
38 ~~burglary in the second degree as defined in RCW 9A.52.030 or~~  
39 ~~residential burglary conditioned upon the offender: (i) Successfully~~

1 completing twenty one days in a work release program, (ii) having no  
2 convictions for burglary in the second degree or residential burglary  
3 during the preceding two years and not more than two prior convictions  
4 for burglary or residential burglary, (iii) having no convictions for  
5 a violent felony offense during the preceding two years and not more  
6 than two prior convictions for a violent felony offense, (iv) having no  
7 prior charges of escape, and (v) fulfilling the other conditions of the  
8 home detention program.

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

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

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

29 (1) Except as authorized in subsections (2), (4), (5), ~~((and (7))~~)  
30 (8), (9), and (22) of this section, the court shall impose a sentence  
31 within the sentence range for the offense.

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

36 (3) Whenever a sentence outside the standard range is imposed, the  
37 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range  
2 shall be a determinate sentence.

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

6 (b) An offender convicted of the crime of assault in the first  
7 degree or assault of a child in the first degree where the offender  
8 used force or means likely to result in death or intended to kill the  
9 victim shall be sentenced to a term of total confinement not less than  
10 five years.

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

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

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

4       (5) In sentencing a first-time offender the court may waive the  
5 imposition of a sentence within the sentence range and impose a  
6 sentence which may include up to ninety days of confinement in a  
7 facility operated or utilized under contract by the county and a  
8 requirement that the offender refrain from committing new offenses.  
9 The sentence may also include up to ~~((two))~~ one year~~((s))~~ of community  
10 supervision, which, in addition to crime-related prohibitions, may  
11 include requirements that the offender perform any one or more of the  
12 following:

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

14       ~~((b))~~ ~~((Undergo available outpatient treatment for up to two years,~~  
15 ~~or inpatient treatment not to exceed the standard range of confinement~~  
16 ~~for that offense;~~

17       ~~((c))~~ Pursue a prescribed, secular course of study or vocational  
18 training;

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

22       ~~((e))~~ (d) Report as directed to the court and a community  
23 corrections officer; or

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

26       (6) When sentencing an offender for whom the judge has opted to use  
27 the first-time offender waiver or any other offender whose standard  
28 range would result in a sentence served in a county facility, the  
29 sentencing judge may convert as much of the total confinement allowed  
30 by the standard range to any available sentencing options provided in  
31 RCW 9.94A.380 as the judge finds are appropriate for the offender. The  
32 conversion of total confinement to the sentencing options must be in  
33 accord with the equivalencies established in RCW 9.94A.380. The  
34 sentencing judge may impose all or a portion of any remaining total  
35 confinement allowed by the standard range. The aggregate sentence of  
36 total confinement and conversions to sentencing options may not exceed  
37 the standard range, except as provided in subsection (2) of this  
38 section relating to exceptional sentences.

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

9       ~~((7))~~ (8)(a) An offender is eligible for the special drug  
10 offender sentencing alternative if:

11       (i) The offender is convicted of the manufacture, delivery, or  
12 possession with intent to manufacture or deliver a controlled substance  
13 classified in schedule I or II that is a narcotic drug and the  
14 violation does not involve a sentence enhancement under RCW  
15 9.94A.310(3);

16       (ii) The offender has no prior or other current convictions for a  
17 violent offense or a sex offense, and no prior or other current  
18 convictions involving a sentence enhancement under RCW 9.94A.310(3);

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

21       (iv) The offender has a substance-abuse problem involving illegal  
22 controlled substances, and the primary objective of the violation  
23 committed was to support that addiction.

24       (b) If the sentencing judge determines that the offender is  
25 eligible for this option and that the offender and the community will  
26 benefit from the use of the special drug offender sentencing  
27 alternative, the judge may waive imposition of a sentence within the  
28 standard range and impose a sentence that must include a period of  
29 total confinement in a state facility for one-half of the midpoint of  
30 the standard range. During incarceration in the state facility, the  
31 offender must be involved in substance abuse treatment provided by the  
32 department. No more than three months of the sentence may be served in  
33 a work release status. The court shall also impose one year of  
34 community custody that must include crime-related prohibitions, a  
35 condition to not use illegal controlled substances, and to submit to  
36 urinalysis or other testing to monitor that status. In addition, the  
37 court may impose any of the following conditions:

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

39       (ii) Participate in outpatient substance abuse treatment;

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

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

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

6 (vi) Perform community service work;

7 (vii) Pay a day fine;

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

9 (ix) Undergo day supervision.

10 (c) If the offender violates any of the sentence conditions in (b)  
11 of this subsection, the department shall impose sanctions  
12 administratively, with notice to the prosecuting attorney and the  
13 sentencing court. Upon motion of the court or the prosecuting  
14 attorney, a violation hearing shall be held by the court. If the court  
15 finds that conditions have been willfully violated, the court may  
16 impose confinement consisting of the remaining one-half of the midpoint  
17 of the standard range. All total confinement served during the period  
18 of community custody shall be credited to the offender, regardless of  
19 whether the total confinement is served as a result of the original  
20 sentence, as a result of a sanction imposed by the department of  
21 corrections, or as a result of a violation found by the court.

22 (9)(a)(i) When an offender is convicted of a sex offense other than  
23 a violation of RCW 9A.44.050 or a sex offense that is also a serious  
24 violent offense and has no prior convictions for a sex offense or any  
25 other felony sex offenses in this or any other state, the sentencing  
26 court, on its own motion or the motion of the state or the defendant,  
27 may order an examination to determine whether the defendant is amenable  
28 to treatment.

29 The report of the examination shall include at a minimum the  
30 following: The defendant's version of the facts and the official  
31 version of the facts, the defendant's offense history, an assessment of  
32 problems in addition to alleged deviant behaviors, the offender's  
33 social and employment situation, and other evaluation measures used.  
34 The report shall set forth the sources of the evaluator's information.

35 The examiner shall assess and report regarding the defendant's  
36 amenability to treatment and relative risk to the community. A  
37 proposed treatment plan shall be provided and shall include, at a  
38 minimum:

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

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

3 (C) Monitoring plans, including any requirements regarding living  
4 conditions, lifestyle requirements, and monitoring by family members  
5 and others;

6 (D) Anticipated length of treatment; and

7 (E) Recommended crime-related prohibitions.

8 The court on its own motion may order, or on a motion by the state  
9 shall order, a second examination regarding the offender's amenability  
10 to treatment. The evaluator shall be selected by the party making the  
11 motion. The defendant shall pay the cost of any second examination  
12 ordered unless the court finds the defendant to be indigent in which  
13 case the state shall pay the cost.

14 (ii) After receipt of the reports, the court shall consider whether  
15 the offender and the community will benefit from use of this special  
16 sexual offender sentencing alternative and consider the victim's  
17 opinion whether the offender should receive a treatment disposition  
18 under this subsection. If the court determines that this special sex  
19 offender sentencing alternative is appropriate, the court shall then  
20 impose a sentence within the sentence range. If this sentence is less  
21 than eight years of confinement, the court may suspend the execution of  
22 the sentence and impose the following conditions of suspension:

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

26 (B) The court shall order treatment for any period up to three  
27 years in duration. The court in its discretion shall order outpatient  
28 sex offender treatment or inpatient sex offender treatment, if  
29 available. A community mental health center may not be used for such  
30 treatment unless it has an appropriate program designed for sex  
31 offender treatment. The offender shall not change sex offender  
32 treatment providers or treatment conditions without first notifying the  
33 prosecutor, the community corrections officer, and the court, and shall  
34 not change providers without court approval after a hearing if the  
35 prosecutor or community corrections officer object to the change. In  
36 addition, as conditions of the suspended sentence, the court may impose  
37 other sentence conditions including up to six months of confinement,  
38 not to exceed the sentence range of confinement for that offense,

1 crime-related prohibitions, and requirements that the offender perform  
2 any one or more of the following:

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

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

7 (III) Report as directed to the court and a community corrections  
8 officer;

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

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

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

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

37 (v) The court may revoke the suspended sentence at any time during  
38 the period of community supervision and order execution of the sentence  
39 if: (A) The defendant violates the conditions of the suspended

1 sentence, or (B) the court finds that the defendant is failing to make  
2 satisfactory progress in treatment. All confinement time served during  
3 the period of community supervision shall be credited to the offender  
4 if the suspended sentence is revoked.

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

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

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

24 (b) When an offender is convicted of any felony sex offense  
25 committed before July 1, 1987, and is sentenced to a term of  
26 confinement of more than one year but less than six years, the  
27 sentencing court may, on its own motion or on the motion of the  
28 offender or the state, order the offender committed for up to thirty  
29 days to the custody of the secretary of social and health services for  
30 evaluation and report to the court on the offender's amenability to  
31 treatment at these facilities. If the secretary of social and health  
32 services cannot begin the evaluation within thirty days of the court's  
33 order of commitment, the offender shall be transferred to the state for  
34 confinement pending an opportunity to be evaluated at the appropriate  
35 facility. The court shall review the reports and may order that the  
36 term of confinement imposed be served in the sexual offender treatment  
37 program at the location determined by the secretary of social and  
38 health services or the secretary's designee, only if the report  
39 indicates that the offender is amenable to the treatment program

1 provided at these facilities. The offender shall be transferred to the  
2 state pending placement in the treatment program. Any offender who has  
3 escaped from the treatment program shall be referred back to the  
4 sentencing court.

5 If the offender does not comply with the conditions of the  
6 treatment program, the secretary of social and health services may  
7 refer the matter to the sentencing court. The sentencing court shall  
8 commit the offender to the department of corrections to serve the  
9 balance of the term of confinement.

10 If the offender successfully completes the treatment program before  
11 the expiration of the term of confinement, the court may convert the  
12 balance of confinement to community supervision and may place  
13 conditions on the offender including crime-related prohibitions and  
14 requirements that the offender perform any one or more of the  
15 following:

- 16 (i) Devote time to a specific employment or occupation;
- 17 (ii) Remain within prescribed geographical boundaries and notify  
18 the court or the community corrections officer prior to any change in  
19 the offender's address or employment;
- 20 (iii) Report as directed to the court and a community corrections  
21 officer;
- 22 (iv) Undergo available outpatient treatment.

23 If the offender violates any of the terms of community supervision,  
24 the court may order the offender to serve out the balance of the  
25 community supervision term in confinement in the custody of the  
26 department of corrections.

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

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

36 Except for an offender who has been convicted of a violation of RCW  
37 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
38 before the expiration of his or her term of confinement, the department  
39 of corrections may request the court to convert the balance of

1 confinement to community supervision and to place conditions on the  
2 offender including crime-related prohibitions and requirements that the  
3 offender perform any one or more of the following:

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

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

8 (iii) Report as directed to the court and a community corrections  
9 officer;

10 (iv) Undergo available outpatient treatment.

11 If the offender violates any of the terms of his or her community  
12 supervision, the court may order the offender to serve out the balance  
13 of his community supervision term in confinement in the custody of the  
14 department of corrections.

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

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

27 ~~((+8))~~ (10)(a) When a court sentences a person to a term of total  
28 confinement to the custody of the department of corrections for an  
29 offense categorized as a sex offense or a serious violent offense  
30 committed after July 1, 1988, but before July 1, 1990, assault in the  
31 second degree, assault of a child in the second degree, any crime  
32 against a person where it is determined in accordance with RCW  
33 9.94A.125 that the defendant or an accomplice was armed with a deadly  
34 weapon at the time of commission, or any felony offense under chapter  
35 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall  
36 in addition to the other terms of the sentence, sentence the offender  
37 to a one-year term of community placement beginning either upon  
38 completion of the term of confinement or at such time as the offender  
39 is transferred to community custody in lieu of earned early release in

1 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
2 offender under this subsection to the statutory maximum period of  
3 confinement then the community placement portion of the sentence shall  
4 consist entirely of such community custody to which the offender may  
5 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
6 period of community custody actually served shall be credited against  
7 the community placement portion of the sentence.

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

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

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

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

33 (iv) An offender in community custody shall not unlawfully possess  
34 controlled substances;

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

37 (vi) The residence location and living arrangements are subject to  
38 the prior approval of the department of corrections during the period  
39 of community placement.

1 (c) The court may also order any of the following special  
2 conditions:

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

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

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

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

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

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

15 (~~(9)~~) (11) If the court imposes a sentence requiring confinement  
16 of thirty days or less, the court may, in its discretion, specify that  
17 the sentence be served on consecutive or intermittent days. A sentence  
18 requiring more than thirty days of confinement shall be served on  
19 consecutive days. Local jail administrators may schedule court-ordered  
20 intermittent sentences as space permits.

21 (~~(10)~~) (12) If a sentence imposed includes payment of a legal  
22 financial obligation, the sentence shall specify the total amount of  
23 the legal financial obligation owed, and shall require the offender to  
24 pay a specified monthly sum toward that legal financial obligation.  
25 Restitution to victims shall be paid prior to any other payments of  
26 monetary obligations. Any legal financial obligation that is imposed  
27 by the court may be collected by the department, which shall deliver  
28 the amount paid to the county clerk for credit. The offender's  
29 compliance with payment of legal financial obligations shall be  
30 supervised by the department. All monetary payments ordered shall be  
31 paid no later than ten years after the last date of release from  
32 confinement pursuant to a felony conviction or the date the sentence  
33 was entered. Independent of the department, the party or entity to  
34 whom the legal financial obligation is owed shall have the authority to  
35 utilize any other remedies available to the party or entity to collect  
36 the legal financial obligation. Nothing in this section makes the  
37 department, the state, or any of its employees, agents, or other  
38 persons acting on their behalf liable under any circumstances for the  
39 payment of these legal financial obligations. If an order includes

1 restitution as one of the monetary assessments, the county clerk shall  
2 make disbursements to victims named in the order.

3 ~~((11))~~ (13) Except as provided under RCW 9.94A.140(1) and  
4 9.94A.142(1), a court may not impose a sentence providing for a term of  
5 confinement or community supervision or community placement which  
6 exceeds the statutory maximum for the crime as provided in chapter  
7 9A.20 RCW.

8 ~~((12))~~ (14) All offenders sentenced to terms involving community  
9 supervision, community service, community placement, or legal financial  
10 obligation shall be under the supervision of the secretary of the  
11 department of corrections or such person as the secretary may designate  
12 and shall follow explicitly the instructions of the secretary including  
13 reporting as directed to a community corrections officer, remaining  
14 within prescribed geographical boundaries, notifying the community  
15 corrections officer of any change in the offender's address or  
16 employment, and paying the supervision fee assessment.

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

27 ~~((14))~~ (16) The sentencing court shall give the offender credit  
28 for all confinement time served before the sentencing if that  
29 confinement was solely in regard to the offense for which the offender  
30 is being sentenced.

31 ~~((15))~~ (17) A departure from the standards in RCW 9.94A.400 (1)  
32 and (2) governing whether sentences are to be served consecutively or  
33 concurrently is an exceptional sentence subject to the limitations in  
34 subsections (2) and (3) of this section, and may be appealed by the  
35 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

36 ~~((16))~~ (18) The court shall order restitution whenever the  
37 offender is convicted of a felony that results in injury to any person  
38 or damage to or loss of property, whether the offender is sentenced to  
39 confinement or placed under community supervision, unless extraordinary

1 circumstances exist that make restitution inappropriate in the court's  
2 judgment. The court shall set forth the extraordinary circumstances in  
3 the record if it does not order restitution.

4 ~~((17))~~ (19) As a part of any sentence, the court may impose and  
5 enforce an order that relates directly to the circumstances of the  
6 crime for which the offender has been convicted, prohibiting the  
7 offender from having any contact with other specified individuals or a  
8 specific class of individuals for a period not to exceed the maximum  
9 allowable sentence for the crime, regardless of the expiration of the  
10 offender's term of community supervision or community placement.

11 ~~((18))~~ (20) In any sentence of partial confinement, the court may  
12 require the defendant to serve the partial confinement in work release,  
13 in a program of home detention, on work crew, or in a combined program  
14 of work crew and home detention.

15 ~~((19))~~ (21) All court-ordered legal financial obligations  
16 collected by the department and remitted to the county clerk shall be  
17 credited and paid where restitution is ordered. Restitution shall be  
18 paid prior to any other payments of monetary obligations.

19 (22) An offender shall be sentenced to a minimum term of  
20 confinement of not less than fifteen years or a determinate term within  
21 the standard range, whichever is greater, if the offender (a) while  
22 committed to a state correctional facility for murder in the first or  
23 second degree, homicide by abuse, assault in the first or second  
24 degree, rape in the first or second degree, kidnapping in the first  
25 degree, robbery in the first degree, arson in the first degree, or  
26 burglary in the first degree; (b) commits the crime of murder in the  
27 second degree, assault in the first or second degree, rape in the first  
28 or second degree, arson in the first or second degree, or robbery in  
29 the first or second degree. The court may impose an exceptional  
30 sentence above the mandatory minimum term or the standard range for the  
31 offense based on the existence of aggravating factors as provided in  
32 RCW 9.94A.390, but may not impose an exceptional sentence below the  
33 mandatory minimum or standard range. The term imposed shall be served  
34 consecutive to any term of confinement remaining on the offense or  
35 offenses for which the offender was committed to the state institution  
36 as provided in RCW 9.94A.400 (2) and (5). An offender who commits  
37 murder in the first degree while committed to a state institution for  
38 the conviction of one of the offenses listed in (b) of this subsection  
39 shall serve his or her sentence consecutive to any term of confinement

1 remaining on the offense or offenses for which the offender was  
2 committed to the state institution. RCW 9A.20.021(1)(b), which  
3 provides that the statutory maximum for class B felonies is ten years,  
4 does not apply to the crimes identified in (b) of this subsection when  
5 committed in a state correctional facility by an offender who is  
6 committed to the state institution for a crime listed in (a) of this  
7 subsection. In these circumstances, the statutory maximum is a term of  
8 life imprisonment.

9 **Sec. 4.** RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are  
10 each reenacted and amended to read as follows:

11 (1) Alternatives to total confinement are available for offenders  
12 with sentences of one year or less. ((These alternatives include the  
13 following sentence conditions that the court may order as substitutes  
14 for total confinement:—(1) One day of partial confinement may be  
15 substituted for one day of total confinement; (2) in addition, for  
16 offenders convicted of nonviolent offenses only, eight hours of  
17 community service may be substituted for one day of total confinement,  
18 with a maximum conversion limit of two hundred forty hours or thirty  
19 days. Community service hours must be completed within the period of  
20 community supervision or a time period specified by the court, which  
21 shall not exceed twenty-four months, pursuant to a schedule determined  
22 by the department.

23 For sentences of nonviolent offenders for one year or less, the  
24 court shall consider and give priority to available alternatives to  
25 total confinement and shall state its reasons in writing on the  
26 judgment and sentence form if the alternatives are not used.)) When  
27 imposing alternatives to total confinement, the judge shall do so by  
28 converting total confinement according to the following conversion  
29 equivalencies:

30 (a) Partial confinement at the rate of one day of partial  
31 confinement for one day of total confinement;

32 (b) Community service at the rate of eight hours of community  
33 service for one day of total confinement;

34 (c) Work crew at the rate of seven hours of work crew for one day  
35 of total confinement;

36 (d) Work release at the rate of one day of work release for one day  
37 of total confinement;

1 (e) Home detention at the rate of one day of home detention for one  
2 day of total confinement;

3 (f) Day reporting at the rate of two days of day reporting for one  
4 day of total confinement;

5 (g) Drug or alcohol monitoring at the rate of five days of drug or  
6 alcohol monitoring for one day of total confinement;

7 (h) Inpatient treatment at the rate of one day of inpatient  
8 treatment for one day of total confinement;

9 (i) Day fine at the rate of one day of day fine for one day of  
10 total confinement;

11 (j) Education or training at the rate of five hours of education or  
12 training for one day of total confinement;

13 (k) Outpatient treatment at the rate of two days of outpatient  
14 treatment for one day of total confinement.

15 (2) Sentencing alternatives must be completed within the time  
16 period specified by the court, under a schedule determined by the  
17 department.

18 (3) The department shall determine the rules for calculating the  
19 value of a day fine based on the offender's income and reasonable  
20 obligations that the offender has for the support of the offender and  
21 any dependents. The department shall develop the rules in consultation  
22 with the administrator for the courts, the office of financial  
23 management, and the sentencing guidelines commission.

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

26 (1) Decision not to prosecute.

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

32 GUIDELINE/COMMENTARY:

33 Examples

34 The following are examples of reasons not to prosecute which could  
35 satisfy the standard.

36 (a) Contrary to Legislative Intent - It may be proper to decline to  
37 charge where the application of criminal sanctions would be clearly

1 contrary to the intent of the legislature in enacting the particular  
2 statute.

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

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

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

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

10 (iv) The statute has not been recently reconsidered by the  
11 legislature.

12 This reason is not to be construed as the basis for declining cases  
13 because the law in question is unpopular or because it is difficult to  
14 enforce.

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

18 (d) Confinement on Other Charges - Except for crimes committed by  
19 prisoners in state correctional facilities as provided in RCW  
20 9.94A.120(22), it may be proper to decline to charge because the  
21 accused has been sentenced on another charge to a lengthy period of  
22 confinement; and

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

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

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

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

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

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

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

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

1 (f) High Disproportionate Cost of Prosecution - It may be proper to  
2 decline to charge where the cost of locating or transporting, or the  
3 burden on, prosecution witnesses is highly disproportionate to the  
4 importance of prosecuting the offense in question. This reason should  
5 be limited to minor cases and should not be relied upon in serious  
6 cases.

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

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

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

20 (i) Assault cases where the victim has suffered little or no  
21 injury;

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

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

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

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

29 Notification

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

32 (2) Decision to prosecute.

33 STANDARD:

34 Crimes against persons will be filed if sufficient admissible  
35 evidence exists, which, when considered with the most plausible,  
36 reasonably foreseeable defense that could be raised under the evidence,  
37 would justify conviction by a reasonable and objective fact-finder.  
38 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
39 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and

1 9A.64.020 the prosecutor should avoid pre-filing agreements or  
2 diversions intended to place the accused in a program of treatment or  
3 counseling, so that treatment, if determined to be beneficial, can be  
4 provided pursuant to RCW 9.94A.120(~~(7)~~)(9).

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

10 See table below for the crimes within these categories.

11 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

12 CRIMES AGAINST PERSONS

- 13 Aggravated Murder
- 14 1st Degree Murder
- 15 2nd Degree Murder
- 16 1st Degree Kidnaping
- 17 1st Degree Assault
- 18 1st Degree Assault of a Child
- 19 1st Degree Rape
- 20 1st Degree Robbery
- 21 1st Degree Rape of a Child
- 22 1st Degree Arson
- 23 2nd Degree Kidnaping
- 24 2nd Degree Assault
- 25 2nd Degree Assault of a Child
- 26 2nd Degree Rape
- 27 2nd Degree Robbery
- 28 1st Degree Burglary
- 29 1st Degree Manslaughter
- 30 2nd Degree Manslaughter
- 31 1st Degree Extortion
- 32 Indecent Liberties
- 33 Incest
- 34 2nd Degree Rape of a Child
- 35 Vehicular Homicide
- 36 Vehicular Assault
- 37 3rd Degree Rape
- 38 3rd Degree Rape of a Child

1 1st Degree Child Molestation  
2 2nd Degree Child Molestation  
3 3rd Degree Child Molestation  
4 2nd Degree Extortion  
5 1st Degree Promoting Prostitution  
6 Intimidating a Juror  
7 Communication with a Minor  
8 Intimidating a Witness  
9 Intimidating a Public Servant  
10 Bomb Threat (if against person)  
11 3rd Degree Assault  
12 3rd Degree Assault of a Child  
13 Unlawful Imprisonment  
14 Promoting a Suicide Attempt  
15 Riot (if against person)  
  
16 CRIMES AGAINST PROPERTY/OTHER CRIMES  
17 2nd Degree Arson  
18 1st Degree Escape  
19 2nd Degree Burglary  
20 1st Degree Theft  
21 1st Degree Perjury  
22 1st Degree Introducing Contraband  
23 1st Degree Possession of Stolen Property  
24 Bribery  
25 Bribing a Witness  
26 Bribe received by a Witness  
27 Bomb Threat (if against property)  
28 1st Degree Malicious Mischief  
29 2nd Degree Theft  
30 2nd Degree Escape  
31 2nd Degree Introducing Contraband  
32 2nd Degree Possession of Stolen Property  
33 2nd Degree Malicious Mischief  
34 1st Degree Reckless Burning  
35 Taking a Motor Vehicle without Authorization  
36 Forgery  
37 2nd Degree Perjury  
38 2nd Degree Promoting Prostitution  
39 Tampering with a Witness

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

10 ALL OTHER UNCLASSIFIED FELONIES

11 Selection of Charges/Degree of Charge

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

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

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

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

20 (a) Charging a higher degree;

21 (b) Charging additional counts.

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

28 GUIDELINES/COMMENTARY:

29 Police Investigation

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

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

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

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

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

#### 6 Exceptions

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

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

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

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

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

#### 19 Investigation Techniques

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

22 (1) Polygraph testing;

23 (2) Hypnosis;

24 (3) Electronic surveillance;

25 (4) Use of informants.

#### 26 Pre-Filing Discussions with Defendant

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

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

32 (1) The indeterminate ((sentencing)) sentence review board shall  
33 cease to exist on June 30, 1998. Prior to June 30, 1998, the board  
34 shall review each inmate convicted of crimes committed before July 1,  
35 1984, and prepare a report. This report shall include a recommendation  
36 regarding the offender's suitability for parole, appropriate parole  
37 conditions, and, for those persons committed under a mandatory life  
38 sentence, duration of confinement.

1       (2) (~~The governor, through the office of financial management,~~  
2 ~~shall recommend to the legislature alternatives for carrying out the~~  
3 ~~duties of~~) To facilitate termination of the board on June 30, 1998,  
4 the board shall prepare a detailed plan and recommendations for the  
5 transfer of jurisdiction over inmates and parolees remaining subject to  
6 the indeterminate sentencing system. The plan shall consider ex post  
7 facto issues and public safety concerns. In developing  
8 recommendations, the (~~office of financial management~~) board shall  
9 consult with the (~~indeterminate sentence review board~~) office of  
10 financial management, the attorney general, the Washington association  
11 of prosecuting attorneys, the Washington defender association, the  
12 department of corrections, and the administrator for the courts.  
13 Recommendations shall include an indication of to whom jurisdiction  
14 over the inmates and parolees should be transferred, a detailed fiscal  
15 analysis, and if necessary, recommended formulas and procedures for the  
16 reimbursement of costs to local governments (~~if necessary~~). The plan  
17 and recommendations shall be presented to the (~~1997~~) legislature no  
18 later than December 1, 1995.

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

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

1 of discharge shall so state. This restoration of civil rights does not  
2 restore the right to receive, possess, own, or transport firearms.

3 The discharge provided for in this section shall be considered as  
4 a part of the sentence of the convicted person and shall not in any  
5 manner be construed as affecting the powers of the governor to pardon  
6 any such person.

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

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

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

15 (b) Except as provided in RCW 9.94A.120(4)(d) and (22) for a class  
16 B felony, by confinement in a state correctional institution for a term  
17 of ten years, or by a fine in an amount fixed by the court of twenty  
18 thousand dollars, or by both such confinement and fine;

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

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

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

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

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

36 (1) The secretary shall increase inmate participation in class I  
37 and class II correctional industries work programs incrementally until

1 a combined total of twenty-five percent of all eligible physically and  
2 mentally able inmates are employed in class I and class II programs by  
3 December 30, 1997, and fifty percent by December 30, 1999. "Eligible  
4 physically and mentally able inmates" includes all inmates in  
5 department facilities except inmates determined to be incapable of  
6 working in correctional industries work programs due to one of the  
7 following reasons only:

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

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

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

13 (2) The department shall deduct at least fifty percent from the  
14 gross wages of each inmate working in correctional industries. This  
15 amount shall be first used to pay any court-ordered restitution the  
16 defendant is required to pay. Upon full payment of restitution, the  
17 deduction shall be deposited into a department personal inmate savings  
18 account until the account reaches at least two hundred fifty dollars.  
19 Thereafter, all inmates working in class I, class II, class III, and  
20 class IV correctional industries programs shall pay fifty percent of  
21 their gross wages earned, up to six dollars per hour, toward the cost  
22 of incarceration so long as the inmate has retained at least two  
23 hundred fifty dollars in a department personal inmate savings account.

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

29 (4) The department shall develop the necessary administrative  
30 structure to recover inmates' wages and keep records of the amount  
31 inmates pay for the costs of incarceration and amenities. All funds  
32 gained from this section shall be deposited in a dedicated fund with  
33 the department and shall be used only for the purpose of enhancing and  
34 maintaining the correctional industries program until December 31,  
35 2000, and thereafter all funds shall be deposited in the general fund.

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

1 All inmates working in prison industries shall participate in the  
2 cost of corrections, including costs to develop and implement  
3 correctional industries programs(~~(. The secretary shall develop a~~  
4 ~~formula which can be used to determine the extent to which the wages of~~  
5 ~~these inmates will be deducted for this purpose. The amount so~~  
6 ~~deducted shall be placed in the general fund and shall be a reasonable~~  
7 ~~amount which will not unduly discourage the incentive to work)), by  
8 means of deductions from their gross wages. The secretary may direct  
9 the state treasurer to deposit a portion of these moneys in the crime  
10 victims compensation account. (~~Except~~) The secretary shall direct  
11 that all moneys received by an inmate((~~7~~)) for testifying in any  
12 judicial proceeding((~~7-90~~)) shall be deposited into the crime victims  
13 compensation account.~~

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

17 NEW SECTION. Sec. 11. By January 1, 1994, the secretary of  
18 corrections shall submit a report to the chief clerk of the house of  
19 representatives and secretary of the senate containing an  
20 identification and description of any impediments which the secretary  
21 believes might prevent the department from achieving compliance with  
22 the inmate work participation percentages specified in section 9 of  
23 this act. The secretary also shall include, in the report, alternative  
24 ways to remove any identified impediments. The chief clerk and  
25 secretary shall distribute the report to the appropriate standing  
26 committees.

27 NEW SECTION. Sec. 12. If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

--- END ---