

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1886

Chapter 348, Laws of 1991
(partial veto)

52nd Legislature
1991 Regular Session

VEHICULAR HOMICIDE OR ASSAULT--ALCOHOL AND DRUG
EVALUATION AND TREATMENT OF OFFENDERS

EFFECTIVE DATE: 7/1/91

Passed by the House March 13, 1991
Yeas 98 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Passed by the Senate April 11, 1991
Yeas 44 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 21, 1991, with
the exception of section 3,
which is vetoed.

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1886** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 21, 1991 - 11:20 a.m.

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1886

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives H. Myers, Padden, Cooper, Morris, Ogden, Peery, Tate, Ludwig, Fuhrman, Paris, Wineberry, May, Winsley, Sheldon, Rasmussen and Orr).

Read first time March 6, 1991.

1 AN ACT Relating to alcohol and drug evaluation and treatment for
2 individuals convicted of vehicular homicide or vehicular assault;
3 amending RCW 46.61.520, 9.94A.120, and 9.94A.030; adding a new section
4 to chapter 46.61 RCW; providing an effective date; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 46.61.520 and 1983 c 164 s 1 are each amended to read
8 as follows:

9 (1) When the death of any person ensues within three years as a
10 proximate result of injury proximately caused by the driving of any
11 vehicle by any person, the driver is guilty of vehicular homicide if
12 the driver was operating a motor vehicle:

13 (a) While under the influence of intoxicating liquor or any drug,
14 as defined by RCW 46.61.502(, or by the operation of any vehicle); or

15 (b) In a reckless manner; or

1 (c) With disregard for the safety of others(~~(, the person so~~
2 ~~operating such vehicle is guilty of vehicular homicide)~~).

3 (2) Vehicular homicide is a class B felony punishable under chapter
4 9A.20 RCW.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
6 to read as follows:

7 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
8 shall, as a condition of community supervision imposed under RCW
9 9.94A.383 or community placement imposed under RCW 9.94A.120(8),
10 complete a diagnostic evaluation by an alcohol or drug dependency
11 agency approved by the department of social and health services or a
12 qualified probation department, as defined under RCW 46.61.516 that has
13 been approved by the department of social and health services. This
14 report shall be forwarded to the department of licensing. If the
15 person is found to have an alcohol or drug problem that requires
16 treatment, the person shall complete treatment in a program approved by
17 the department of social and health services under chapter 70.96A RCW.
18 If the person is found not to have an alcohol or drug problem that
19 requires treatment, he or she shall complete a course in an information
20 school approved by the department of social and health services under
21 chapter 70.96A RCW. The convicted person shall pay all costs for any
22 evaluation, education, or treatment required by this section, unless
23 the person is eligible for an existing program offered or approved by
24 the department of social and health services. Nothing in this act
25 requires the addition of new treatment or assessment facilities nor
26 affects the department of social and health services use of existing
27 programs and facilities authorized by law.

28 (2) As provided for under RCW 46.20.285, the department shall
29 revoke the license, permit to drive, or a nonresident privilege of a

1 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
2 assault under RCW 46.61.522. The department shall determine the
3 eligibility of a person convicted of vehicular homicide under RCW
4 46.61.520(1)(a) or vehicular assault under 46.61.522(1)(b) to receive
5 a license based upon the report provided by the designated alcoholism
6 treatment facility or probation department, and shall deny
7 reinstatement until satisfactory progress in an approved program has
8 been established and the person is otherwise qualified.

19 **Sec. 3. RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read*
11 *as follows:*

12 *When a person is convicted of a felony, the court shall impose*
13 *punishment as provided in this section.*

14 *(1) Except as authorized in subsections (2), (5), and (7) of this*
15 *section, the court shall impose a sentence within the sentence range*
16 *for the offense.*

17 *(2) The court may impose a sentence outside the standard sentence*
18 *range for that offense if it finds, considering the purpose of this*
19 *chapter, that there are substantial and compelling reasons justifying*
20 *an exceptional sentence.*

21 *(3) Whenever a sentence outside the standard range is imposed, the*
22 *court shall set forth the reasons for its decision in written findings*
23 *of fact and conclusions of law. A sentence outside the standard range*
24 *shall be a determinate sentence.*

25 *(4) An offender convicted of the crime of murder in the first*
26 *degree shall be sentenced to a term of total confinement not less than*
27 *twenty years. An offender convicted of the crime of assault in the*
28 *first degree where the offender used force or means likely to result in*
29 *death or intended to kill the victim shall be sentenced to a term of*
30 *total confinement not less than five years. An offender convicted of*

1 *the crime of rape in the first degree shall be sentenced to a term of*
2 *total confinement not less than five years, and shall not be eligible*
3 *for furlough, work release or other authorized leave of absence from*
4 *the correctional facility during such minimum five-year term except for*
5 *the purpose of commitment to an inpatient treatment facility. The*
6 *foregoing minimum terms of total confinement are mandatory and shall*
7 *not be varied or modified as provided in subsection (2) of this*
8 *section.*

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

18 *(a) Devote time to a specific employment or occupation;*

19 *(b) Undergo available outpatient treatment for up to two years, or*
20 *inpatient treatment not to exceed the standard range of confinement for*
21 *that offense;*

22 *(c) Pursue a prescribed, secular course of study or vocational*
23 *training;*

24 *(d) Remain within prescribed geographical boundaries and notify the*
25 *court or the community corrections officer prior to any change in the*
26 *offender's address or employment;*

27 *(e) Report as directed to the court and a community corrections*
28 *officer; or*

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

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

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

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

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

27 (B) *Specific issues to be addressed in the treatment and*
28 *description of planned treatment modalities;*

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

4 (D) *Anticipated length of treatment; and*

5 (E) *Recommended crime-related prohibitions.*

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

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

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

24 (B) The court shall order treatment for any period up to three
25 years in duration. The court in its discretion shall order outpatient
26 sex offender treatment or inpatient sex offender treatment, if
27 available. A community mental health center may not be used for such
28 treatment unless it has an appropriate program designed for sex
29 offender treatment. The offender shall not change sex offender
30 treatment providers or treatment conditions without first notifying the

1 *prosecutor, the community corrections officer, and the court, and shall*
2 *not change providers without court approval after a hearing if the*
3 *prosecutor or community corrections officer object to the change. In*
4 *addition, as conditions of the suspended sentence, the court may impose*
5 *other sentence conditions including up to six months of confinement,*
6 *not to exceed the sentence range of confinement for that offense,*
7 *crime-related prohibitions, and requirements that the offender perform*
8 *any one or more of the following:*

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

10 *(II) Remain within prescribed geographical boundaries and notify*
11 *the court or the community corrections officer prior to any change in*
12 *the offender's address or employment;*

13 *(III) Report as directed to the court and a community corrections*
14 *officer;*

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

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

20 *(iii) The sex offender therapist shall submit quarterly reports on*
21 *the defendant's progress in treatment to the court and the parties.*
22 *The report shall reference the treatment plan and include at a minimum*
23 *the following: Dates of attendance, defendant's compliance with*
24 *requirements, treatment activities, the defendant's relative progress*
25 *in treatment, and any other material as specified by the court at*
26 *sentencing.*

27 *(iv) At the time of sentencing, the court shall set a treatment*
28 *termination hearing for three months prior to the anticipated date for*
29 *completion of treatment. Prior to the treatment termination hearing,*
30 *the treatment professional and community corrections officer shall*

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

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

20 (vi) After July 1, 1991, examinations and treatment ordered
21 pursuant to this subsection shall only be conducted by sex offender
22 treatment providers certified by the department of health pursuant to
23 chapter 18.155 RCW.

24 For purposes of this subsection, "victim" means any person who has
25 sustained emotional, psychological, physical, or financial injury to
26 person or property as a result of the crime charged. "Victim" also
27 means a parent or guardian of a victim who is a minor child unless the
28 parent or guardian is the perpetrator of the offense.

29 (b) When an offender is convicted of any felony sex offense
30 committed before July 1, 1987, and is sentenced to a term of

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

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

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

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

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

4 (iii) Report as directed to the court and a community corrections
5 officer;

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of community supervision,
8 the court may order the offender to serve out the balance of the
9 community supervision term in confinement in the custody of the
10 department of corrections.

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

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

20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his term of confinement, the department of
23 corrections may request the court to convert the balance of confinement
24 to community supervision and to place conditions on the offender
25 including crime-related prohibitions and requirements that the offender
26 perform any one or more of the following:

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

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

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

3 (iv) Undergo available outpatient treatment.

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

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

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

20 (8)(a) When a court sentences a person to a term of total
21 confinement to the custody of the department of corrections for an
22 offense categorized as a sex offense or a serious violent offense
23 committed after July 1, 1988, but before July 1, 1990, assault in the
24 second degree, any crime against a person where it is determined in
25 accordance with RCW 9.94A.125 that the defendant or an accomplice was
26 armed with a deadly weapon at the time of commission, or any felony
27 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
28 1988, the court shall in addition to the other terms of the sentence,
29 sentence the offender to a one-year term of community placement
30 beginning either upon completion of the term of confinement or at such

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

10 (b) When a court sentences a person to a term of total confinement
11 to the custody of the department of corrections for an offense
12 categorized as a sex offense or serious violent offense committed on or
13 after July 1, 1990, or vehicular homicide or vehicular assault
14 committed after June 30, 1991, the court shall in addition to other
15 terms of the sentence, sentence the offender to community placement for
16 two years or up to the period of earned early release awarded pursuant
17 to RCW 9.94A.150 (1) and (2), whichever is longer. The community
18 placement shall begin either upon completion of the term of confinement
19 or at such time as the offender is transferred to community custody in
20 lieu of earned early release in accordance with RCW 9.94A.150 (1) and
21 (2). When the court sentences an offender under this subsection to the
22 statutory maximum period of confinement then the community placement
23 portion of the sentence shall consist entirely of the community custody
24 to which the offender may become eligible, in accordance with RCW
25 9.94A.150 (1) and (2). Any period of community custody actually served
26 shall be credited against the community placement portion of the
27 sentence. Unless a condition is waived by the court, the terms of
28 community placement for offenders sentenced pursuant to this section
29 shall include the following conditions:

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

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

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

7 (iv) An offender in community custody shall not unlawfully possess
8 controlled substances; ((and))

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

11 (vi) Any condition required by section 2 of this act.

12 (c) The court may also order any of the following special
13 conditions:

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

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

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

20 (iv) The offender shall not consume alcohol;

21 (v) The residence location and living arrangements of a sex
22 offender shall be subject to the prior approval of the department of
23 corrections; or

24 (vi) The offender shall comply with any crime-related prohibitions.

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

29 (9) If the court imposes a sentence requiring confinement of thirty
30 days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

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

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

1 (12) All offenders sentenced to terms involving community
2 supervision, community service, community placement, or legal financial
3 obligation shall be under the supervision of the secretary of the
4 department of corrections or such person as the secretary may designate
5 and shall follow explicitly the instructions of the secretary including
6 reporting as directed to a community corrections officer, remaining
7 within prescribed geographical boundaries, and notifying the community
8 corrections officer of any change in the offender's address or
9 employment.

10 (13) The sentencing court shall give the offender credit for all
11 confinement time served before the sentencing if that confinement was
12 solely in regard to the offense for which the offender is being
13 sentenced.

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

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

26 (16) As a part of any sentence, the court may impose and enforce an
27 order that relates directly to the circumstances of the crime for which
28 the offender has been convicted, prohibiting the offender from having
29 any contact with other specified individuals or a specific class of
30 individuals for a period not to exceed the maximum allowable sentence

1 *for the crime, regardless of the expiration of the offender's term of*
2 *community supervision or community placement.*

3 *(17) In any sentence of partial confinement, the court may require*
4 *the defendant to serve the partial confinement in work release or in a*
5 *program of home detention.*

6 *(18) All court-ordered legal financial obligations collected by the*
7 *department and remitted to the county clerk shall be credited and paid*
8 *where restitution is ordered. Restitution shall be paid prior to any*
9 *other payments of monetary obligations.*

10 **Sec. 3 was vetoed, see message at end of chapter.*

11 **Sec. 4.** RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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

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

27 (4) "Community custody" means that portion of an inmate's sentence
28 of confinement in lieu of earned early release time served in the

1 community subject to controls placed on the inmate's movement and
2 activities by the department of corrections.

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

10 (6) "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender.

13 (7) "Community supervision" means a period of time during which a
14 convicted offender is subject to crime-related prohibitions and other
15 sentence conditions imposed by a court pursuant to this chapter (~~by a~~
16 ~~court~~) or section 2 of this act. For first-time offenders, the
17 supervision may include crime-related prohibitions and other conditions
18 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
19 compact for out-of-state supervision of parolees and probationers, RCW
20 9.95.270, community supervision is the functional equivalent of
21 probation and should be considered the same as probation by other
22 states.

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

25 (9) "Conviction" means an adjudication of guilt pursuant to Titles
26 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
27 acceptance of a plea of guilty.

28 (10) "Court-ordered legal financial obligation" means a sum of
29 money that is ordered by a superior court of the state of Washington
30 for legal financial obligations which may include restitution to the

1 victim, statutorily imposed crime victims' compensation fees as
2 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
3 drug funds, court-appointed attorneys' fees, and costs of defense,
4 fines, and any other financial obligation that is assessed to the
5 offender as a result of a felony conviction.

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

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

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

28 (13) "Department" means the department of corrections.

29 (14) "Determinate sentence" means a sentence that states with
30 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community service work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through "earned early release" can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

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

19 (16) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
22 controlled substance (RCW 69.50.403);

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

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

29 (17) "Escape" means:

1 (a) Escape in the first degree (RCW 9A.76.110), escape in the
2 second degree (RCW 9A.76.120), willful failure to return from furlough
3 (RCW 72.66.060), willful failure to return from work release (RCW
4 72.65.070), or willful failure to comply with any limitations on the
5 inmate's movements while in community custody (RCW 72.09.310); or

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

9 (18) "Felony traffic offense" means:

10 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
11 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
12 and-run injury-accident (RCW 46.52.020(4)); or

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

16 (19) "Fines" means the requirement that the offender pay a specific
17 sum of money over a specific period of time to the court.

18 (20)(a) "First-time offender" means any person who is convicted of
19 a felony (i) not classified as a violent offense or a sex offense under
20 this chapter, or (ii) that is not the manufacture, delivery, or
21 possession with intent to manufacture or deliver a controlled substance
22 classified in schedule I or II that is a narcotic drug, and except as
23 provided in (b) of this subsection, who previously has never been
24 convicted of a felony in this state, federal court, or another state,
25 and who has never participated in a program of deferred prosecution for
26 a felony offense.

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

1 (21) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (22) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case has been transferred by
6 the appropriate juvenile court to a criminal court pursuant to RCW
7 13.40.110. Throughout this chapter, the terms "offender" and
8 "defendant" are used interchangeably.

9 (23) "Partial confinement" means confinement for no more than one
10 year in a facility or institution operated or utilized under contract
11 by the state or any other unit of government, or, if home detention has
12 been ordered by the court, in the residence of either the defendant or
13 a member of the defendant's immediate family, for a substantial
14 portion of each day with the balance of the day spent in the community.
15 Partial confinement includes work release and home detention as defined
16 in this section.

17 (24) "Postrelease supervision" is that portion of an offender's
18 community placement that is not community custody.

19 (25) "Restitution" means the requirement that the offender pay a
20 specific sum of money over a specific period of time to the court as
21 payment of damages. The sum may include both public and private costs.
22 The imposition of a restitution order does not preclude civil redress.

23 (26) "Serious traffic offense" means:

24 (a) Driving while intoxicated (RCW 46.61.502), actual physical
25 control while intoxicated (RCW 46.61.504), reckless driving (RCW
26 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

1 (27) "Serious violent offense" is a subcategory of violent offense
2 and means:

3 (a) Murder in the first degree, homicide by abuse, murder in the
4 second degree, assault in the first degree, kidnapping in the first
5 degree, or rape in the first degree, or an attempt, criminal
6 solicitation, or criminal conspiracy to commit one of these felonies;
7 or

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

11 (28) "Sentence range" means the sentencing court's discretionary
12 range in imposing a nonappealable sentence.

13 (29) "Sex offense" means:

14 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
15 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
16 attempt, criminal solicitation, or criminal conspiracy to commit such
17 crimes;

18 (b) A felony with a finding of sexual motivation under RCW
19 9.94A.127; or

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

23 (30) "Sexual motivation" means that one of the purposes for which
24 the defendant committed the crime was for the purpose of his or her
25 sexual gratification.

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

1 (32) "Victim" means any person who has sustained emotional,
2 psychological, physical, or financial injury to person or property as
3 a direct result of the crime charged.

4 (33) "Violent offense" means:

5 (a) Any of the following felonies, as now existing or hereafter
6 amended: Any felony defined under any law as a class A felony or an
7 attempt to commit a class A felony, criminal solicitation of or
8 criminal conspiracy to commit a class A felony, manslaughter in the
9 first degree, manslaughter in the second degree, indecent liberties if
10 committed by forcible compulsion, kidnapping in the second degree,
11 arson in the second degree, assault in the second degree, extortion in
12 the first degree, robbery in the second degree, vehicular assault, and
13 vehicular homicide, when proximately caused by the driving of any
14 vehicle by any person while under the influence of intoxicating liquor
15 or any drug as defined by RCW 46.61.502, or by the operation of any
16 vehicle in a reckless manner;

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

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

23 (34) "Work release" means a program of partial confinement
24 available to offenders who are employed or engaged as a student in a
25 regular course of study at school. Participation in work release shall
26 be conditioned upon the offender attending work or school at regularly
27 defined hours and abiding by the rules of the work release facility.

28 (35) "Home detention" means a program of partial confinement
29 available to offenders wherein the offender is confined in a private
30 residence subject to electronic surveillance. Home detention may not

1 be imposed for offenders convicted of a violent offense, any sex
2 offense, any drug offense, reckless burning in the first or second
3 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
4 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
5 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
6 detention may be imposed for offenders convicted of possession of a
7 controlled substance (RCW 69.50.401(d)) or forged prescription for a
8 controlled substance (RCW 69.50.403) if the offender fulfills the
9 participation conditions set forth in this subsection and is monitored
10 for drug use by treatment alternatives to street crime (TASC) or a
11 comparable court or agency-referred program. Home detention may be
12 imposed for offenders convicted of burglary in the second degree as
13 defined in RCW 9A.52.030 or residential burglary conditioned upon the
14 offender: (a) Successfully completing twenty-one days in a work
15 release program, (b) having no convictions for burglary in the second
16 degree or residential burglary during the preceding two years and not
17 more than two prior convictions for burglary or residential burglary,
18 (c) having no convictions for a violent felony offense during the
19 preceding two years and not more than two prior convictions for a
20 violent felony offense, (d) having no prior charges of escape, and (e)
21 fulfilling the other conditions of the home detention program.
22 Participation in a home detention program shall be conditioned upon:
23 (a) The offender obtaining or maintaining current employment or
24 attending a regular course of school study at regularly defined hours,
25 or the offender performing parental duties to offspring or minors
26 normally in the custody of the offender, (b) abiding by the rules of
27 the home detention program, and (c) compliance with court-ordered legal
28 financial obligations. The home detention program may also be made
29 available to offenders whose charges and convictions do not otherwise
30 disqualify them if medical or health-related conditions, concerns or

1 treatment would be better addressed under the home detention program,
2 or where the health and welfare of the offender, other inmates, or
3 staff would be jeopardized by the offender's incarceration.
4 Participation in the home detention program for medical or health-
5 related reasons is conditioned on the offender abiding by the rules of
6 the home detention program and complying with court-ordered
7 restitution.

8 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect July 1, 1991.

Passed the House March 13, 1991.

Passed the Senate April 11, 1991.

Approved by the Governor May 21, 1991, with the exception of
certain items which were vetoed.

Filed in Office of Secretary of State May 21, 1991.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 3,
3 Substitute House Bill No. 1886 entitled:

4 "AN ACT Relating to alcohol and drug evaluation and treatment for
5 individuals convicted of vehicular homicide or vehicular assault."

6 Section 3 of this bill requires that an individual sentenced to the
7 custody of the department of corrections for vehicular homicide or
8 vehicular assault also be sentenced to the community placement program.
9 RCW 9.94A.150 regulates the conversion of earned early release time to
10 community custody for those offenders sentenced to this program. That
11 statute is specific as to the offenses for which an individual can be
12 denied earned early release and placed in community custody.

13 Substitute House Bill No. 1886 did not amend RCW 9.94A.150 to
14 include vehicular homicide and vehicular assault in the list of
15 eligible offenses. As a result, the status of offenders who earn early
16 release will be ambiguous at the time they are eligible for release
17 from confinement. Because of this confusion, I am vetoing section 3.

18 With the exception of section 3, Substitute House Bill No. 1886 is
19 approved."