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**SUBSTITUTE HOUSE BILL 2227**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Law & Justice (originally sponsored by Representatives Sterk, Sheahan, L. Thomas, Honeyford, Robertson, Stevens, Koster, Carlson, Thompson and Costa)

Read first time 01/18/96.

1       AN ACT Relating to felony traffic offenses; amending RCW 9.94A.120,  
2 9.94A.150, 9.94A.400, 46.20.285, 46.61.520, and 46.61.522; creating a  
3 new section; and prescribing penalties.

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

5       **Sec. 1.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read  
6 as follows:

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

9       (1) Except as authorized in subsections (2), (4), (5), (6), and (8)  
10 of this section, the court shall impose a sentence within the sentence  
11 range for the offense.

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

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

1 (4) A persistent offender shall be sentenced to a term of total  
2 confinement for life without the possibility of parole or, when  
3 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
4 first degree, sentenced to death, notwithstanding the maximum sentence  
5 under any other law. An offender convicted of the crime of murder in  
6 the first degree shall be sentenced to a term of total confinement not  
7 less than twenty years. An offender convicted of the crime of assault  
8 in the first degree or assault of a child in the first degree where the  
9 offender used force or means likely to result in death or intended to  
10 kill the victim shall be sentenced to a term of total confinement not  
11 less than five years. An offender convicted of the crime of rape in  
12 the first degree shall be sentenced to a term of total confinement not  
13 less than five years. The foregoing minimum terms of total confinement  
14 are mandatory and shall not be varied or modified as provided in  
15 subsection (2) of this section. In addition, all offenders subject to  
16 the provisions of this subsection shall not be eligible for community  
17 custody, earned early release time, furlough, home detention, partial  
18 confinement, work crew, work release, or any other form of early  
19 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
20 or any other form of authorized leave of absence from the correctional  
21 facility while not in the direct custody of a corrections officer or  
22 officers during such minimum terms of total confinement except in the  
23 case of an offender in need of emergency medical treatment or for the  
24 purpose of commitment to an inpatient treatment facility in the case of  
25 an offender convicted of the crime of rape in the first degree.

26 (5) In sentencing a first-time offender the court may waive the  
27 imposition of a sentence within the sentence range and impose a  
28 sentence which may include up to ninety days of confinement in a  
29 facility operated or utilized under contract by the county and a  
30 requirement that the offender refrain from committing new offenses.  
31 The sentence may also include up to two years of community supervision,  
32 which, in addition to crime-related prohibitions, may include  
33 requirements that the offender perform any one or more of the  
34 following:

- 35 (a) Devote time to a specific employment or occupation;
- 36 (b) Undergo available outpatient treatment for up to two years, or  
37 inpatient treatment not to exceed the standard range of confinement for  
38 that offense;

1 (c) Pursue a prescribed, secular course of study or vocational  
2 training;

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

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

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

10 (6)(a) An offender is eligible for the special drug offender  
11 sentencing alternative if:

12 (i) The offender is convicted of the manufacture, delivery, or  
13 possession with intent to manufacture or deliver a controlled substance  
14 classified in Schedule I or II that is a narcotic drug or a felony that  
15 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
16 criminal solicitation, or criminal conspiracy to commit such crimes,  
17 and the violation does not involve a sentence enhancement under RCW  
18 9.94A.310 (3) or (4);

19 (ii) The offender has no prior convictions for a felony in this  
20 state, another state, or the United States; and

21 (iii) The offense involved only a small quantity of the particular  
22 controlled substance as determined by the judge upon consideration of  
23 such factors as the weight, purity, packaging, sale price, and street  
24 value of the controlled substance.

25 (b) If the midpoint of the standard range is greater than one year  
26 and the sentencing judge determines that the offender is eligible for  
27 this option and that the offender and the community will benefit from  
28 the use of the special drug offender sentencing alternative, the judge  
29 may waive imposition of a sentence within the standard range and impose  
30 a sentence that must include a period of total confinement in a state  
31 facility for one-half of the midpoint of the standard range. During  
32 incarceration in the state facility, offenders sentenced under this  
33 subsection shall undergo a comprehensive substance abuse assessment and  
34 receive, within available resources, treatment services appropriate for  
35 the offender. The treatment services shall be designed by the division  
36 of alcohol and substance abuse of the department of social and health  
37 services, in cooperation with the department of corrections. If the  
38 midpoint of the standard range is twenty-four months or less, no more  
39 than three months of the sentence may be served in a work release

1 status. The court shall also impose one year of concurrent community  
2 custody and community supervision that must include appropriate  
3 outpatient substance abuse treatment, crime-related prohibitions  
4 including a condition not to use illegal controlled substances, and a  
5 requirement to submit to urinalysis or other testing to monitor that  
6 status. The court may require that the monitoring for controlled  
7 substances be conducted by the department or by a treatment  
8 alternatives to (({a})) street crime program or a comparable court or  
9 agency-referred program. The offender may be required to pay thirty  
10 dollars per month while on community custody to offset the cost of  
11 monitoring. In addition, the court shall impose three or more of the  
12 following conditions:

- 13 (i) Devote time to a specific employment or training;
- 14 (ii) Remain within prescribed geographical boundaries and notify  
15 the court or the community corrections officer before any change in the  
16 offender's address or employment;
- 17 (iii) Report as directed to a community corrections officer;
- 18 (iv) Pay all court-ordered legal financial obligations;
- 19 (v) Perform community service work;
- 20 (vi) Stay out of areas designated by the sentencing judge.

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

35 (d) The department shall determine the rules for calculating the  
36 value of a day fine based on the offender's income and reasonable  
37 obligations which the offender has for the support of the offender and  
38 any dependents. These rules shall be developed in consultation with

1 the administrator for the courts, the office of financial management,  
2 and the commission.

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

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

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

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

- 28 (A) Frequency and type of contact between offender and therapist;
- 29 (B) Specific issues to be addressed in the treatment and  
30 description of planned treatment modalities;
- 31 (C) Monitoring plans, including any requirements regarding living  
32 conditions, lifestyle requirements, and monitoring by family members  
33 and others;
- 34 (D) Anticipated length of treatment; and
- 35 (E) Recommended crime-related prohibitions.

36 The court on its own motion may order, or on a motion by the state  
37 shall order, a second examination regarding the offender's amenability  
38 to treatment. The evaluator shall be selected by the party making the  
39 motion. The defendant shall pay the cost of any second examination

1 ordered unless the court finds the defendant to be indigent in which  
2 case the state shall pay the cost.

3 (ii) After receipt of the reports, the court shall consider whether  
4 the offender and the community will benefit from use of this special  
5 sexual offender sentencing alternative and consider the victim's  
6 opinion whether the offender should receive a treatment disposition  
7 under this subsection. If the court determines that this special sex  
8 offender sentencing alternative is appropriate, the court shall then  
9 impose a sentence within the sentence range. If this sentence is less  
10 than eight years of confinement, the court may suspend the execution of  
11 the sentence and impose the following conditions of suspension:

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

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

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

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

34 (III) Report as directed to the court and a community corrections  
35 officer;

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

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

3 (iii) The sex offender therapist shall submit quarterly reports on  
4 the defendant's progress in treatment to the court and the parties.  
5 The report shall reference the treatment plan and include at a minimum  
6 the following: Dates of attendance, defendant's compliance with  
7 requirements, treatment activities, the defendant's relative progress  
8 in treatment, and any other material as specified by the court at  
9 sentencing.

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

26 (v) The court may revoke the suspended sentence at any time during  
27 the period of community supervision and order execution of the sentence  
28 if: (A) The defendant violates the conditions of the suspended  
29 sentence, or (B) the court finds that the defendant is failing to make  
30 satisfactory progress in treatment. All confinement time served during  
31 the period of community supervision shall be credited to the offender  
32 if the suspended sentence is revoked.

33 (vi) Except as provided in (a)(vii) of this subsection, after July  
34 1, 1991, examinations and treatment ordered pursuant to this subsection  
35 shall only be conducted by sex offender treatment providers certified  
36 by the department of health pursuant to chapter 18.155 RCW.

37 (vii) A sex offender therapist who examines or treats a sex  
38 offender pursuant to this subsection (8) does not have to be certified  
39 by the department of health pursuant to chapter 18.155 RCW if the court

1 finds that: (A) The offender has already moved to another state or  
2 plans to move to another state for reasons other than circumventing the  
3 certification requirements; (B) no certified providers are available  
4 for treatment within a reasonable geographical distance of the  
5 offender's home; and (C) the evaluation and treatment plan comply with  
6 this subsection (8) and the rules adopted by the department of health.

7 For purposes of this subsection, "victim" means any person who has  
8 sustained emotional, psychological, physical, or financial injury to  
9 person or property as a result of the crime charged. "Victim" also  
10 means a parent or guardian of a victim who is a minor child unless the  
11 parent or guardian is the perpetrator of the offense.

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

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

- 26 (i) Devote time to a specific employment or occupation;
- 27 (ii) Remain within prescribed geographical boundaries and notify  
28 the court or the community corrections officer prior to any change in  
29 the offender's address or employment;
- 30 (iii) Report as directed to the court and a community corrections  
31 officer;
- 32 (iv) Undergo available outpatient treatment.

33 If the offender violates any of the terms of his or her community  
34 supervision, the court may order the offender to serve out the balance  
35 of his or her community supervision term in confinement in the custody  
36 of the department of corrections.

37 Nothing in this subsection (8)(b) shall confer eligibility for such  
38 programs for offenders convicted and sentenced for a sex offense



1 committed prior to July 1, 1987. This subsection (8)(b) does not apply  
2 to any crime committed after July 1, 1990.

3 (c) Offenders convicted and sentenced for a sex offense committed  
4 prior to July 1, 1987, may, subject to available funds, request an  
5 evaluation by the department of corrections to determine whether they  
6 are amenable to treatment. If the offender is determined to be  
7 amenable to treatment, the offender may request placement in a  
8 treatment program within a correctional facility operated by the  
9 department. Placement in such treatment program is subject to  
10 available funds.

11 (9)(a) When a court sentences a person to a term of total  
12 confinement to the custody of the department of corrections for an  
13 offense categorized as a sex offense or a serious violent offense  
14 committed after July 1, 1988, but before July 1, 1990, assault in the  
15 second degree, assault of a child in the second degree, any crime  
16 against a person where it is determined in accordance with RCW  
17 9.94A.125 that the defendant or an accomplice was armed with a deadly  
18 weapon at the time of commission, or any felony offense under chapter  
19 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
20 committed on or after July 1, 1988, the court shall in addition to the  
21 other terms of the sentence, sentence the offender to a one-year term  
22 of community placement beginning either upon completion of the term of  
23 confinement or at such time as the offender is transferred to community  
24 custody in lieu of earned early release in accordance with RCW  
25 9.94A.150 (1) and (2). When the court sentences an offender under this  
26 subsection to the statutory maximum period of confinement then the  
27 community placement portion of the sentence shall consist entirely of  
28 such community custody to which the offender may become eligible, in  
29 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
30 custody actually served shall be credited against the community  
31 placement portion of the sentence.

32 (b) When a court sentences a person to a term of total confinement  
33 to the custody of the department of corrections for an offense  
34 categorized as a sex offense (~~(or)~~), serious violent offense, vehicular  
35 homicide, or vehicular assault, committed on or after July 1, 1990, the  
36 court shall in addition to other terms of the sentence, sentence the  
37 offender to community placement for two years or up to the period of  
38 earned early release awarded pursuant to RCW 9.94A.150 (1) and (2),  
39 whichever is longer. The community placement shall begin either upon

1 completion of the term of confinement or at such time as the offender  
2 is transferred to community custody in lieu of earned early release in  
3 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an  
4 offender under this subsection to the statutory maximum period of  
5 confinement then the community placement portion of the sentence shall  
6 consist entirely of the community custody to which the offender may  
7 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
8 period of community custody actually served shall be credited against  
9 the community placement portion of the sentence. Unless a condition is  
10 waived by the court, the terms of community placement for offenders  
11 sentenced pursuant to this section shall include the following  
12 conditions:

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

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

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

19 (iv) An offender in community custody shall not unlawfully possess  
20 controlled substances;

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

23 (vi) The residence location and living arrangements are subject to  
24 the prior approval of the department of corrections during the period  
25 of community placement.

26 (c) The court may also order any of the following special  
27 conditions:

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

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

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

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

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

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

1 (10) If the court imposes a sentence requiring confinement of  
2 thirty days or less, the court may, in its discretion, specify that the  
3 sentence be served on consecutive or intermittent days. A sentence  
4 requiring more than thirty days of confinement shall be served on  
5 consecutive days. Local jail administrators may schedule court-ordered  
6 intermittent sentences as space permits.

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

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

32 (13) All offenders sentenced to terms involving community  
33 supervision, community service, community placement, or legal financial  
34 obligation shall be under the supervision of the secretary of the  
35 department of corrections or such person as the secretary may designate  
36 and shall follow explicitly the instructions of the secretary including  
37 reporting as directed to a community corrections officer, remaining  
38 within prescribed geographical boundaries, notifying the community  
39 corrections officer of any change in the offender's address or

1 employment, and paying the supervision fee assessment. The department  
2 may require offenders to pay for special services rendered on or after  
3 July 25, 1993, including electronic monitoring, day reporting, and  
4 telephone reporting, dependent upon the offender's ability to pay. The  
5 department may pay for these services for offenders who are not able to  
6 pay.

7 (14) All offenders sentenced to terms involving community  
8 supervision, community service, or community placement under the  
9 supervision of the department of corrections shall not own, use, or  
10 possess firearms or ammunition. Offenders who own, use, or are found  
11 to be in actual or constructive possession of firearms or ammunition  
12 shall be subject to the appropriate violation process and sanctions.  
13 "Constructive possession" as used in this subsection means the power  
14 and intent to control the firearm or ammunition. "Firearm" as used in  
15 this subsection means a weapon or device from which a projectile may be  
16 fired by an explosive such as gunpowder.

17 (15) The sentencing court shall give the offender credit for all  
18 confinement time served before the sentencing if that confinement was  
19 solely in regard to the offense for which the offender is being  
20 sentenced.

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

26 (17) The court shall order restitution whenever the offender is  
27 convicted of a felony that results in injury to any person or damage to  
28 or loss of property, whether the offender is sentenced to confinement  
29 or placed under community supervision, unless extraordinary  
30 circumstances exist that make restitution inappropriate in the court's  
31 judgment. The court shall set forth the extraordinary circumstances in  
32 the record if it does not order restitution.

33 (18) As a part of any sentence, the court may impose and enforce an  
34 order that relates directly to the circumstances of the crime for which  
35 the offender has been convicted, prohibiting the offender from having  
36 any contact with other specified individuals or a specific class of  
37 individuals for a period not to exceed the maximum allowable sentence  
38 for the crime, regardless of the expiration of the offender's term of  
39 community supervision or community placement.

1 (19) In any sentence of partial confinement, the court may require  
2 the defendant to serve the partial confinement in work release, in a  
3 program of home detention, on work crew, or in a combined program of  
4 work crew and home detention.

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

9 **Sec. 2.** RCW 9.94A.150 and 1995 c 129 s 7 (Initiative Measure No.  
10 159) are each amended to read as follows:

11 No person serving a sentence imposed pursuant to this chapter and  
12 committed to the custody of the department shall leave the confines of  
13 the correctional facility or be released prior to the expiration of the  
14 sentence except as follows:

15 (1) Except as otherwise provided for in subsection (2) of this  
16 section, the term of the sentence of an offender committed to a  
17 correctional facility operated by the department, may be reduced by  
18 earned early release time in accordance with procedures that shall be  
19 developed and promulgated by the correctional agency having  
20 jurisdiction in which the offender is confined. The earned early  
21 release time shall be for good behavior and good performance, as  
22 determined by the correctional agency having jurisdiction. The  
23 correctional agency shall not credit the offender with earned early  
24 release credits in advance of the offender actually earning the  
25 credits. Any program established pursuant to this section shall allow  
26 an offender to earn early release credits for presentence  
27 incarceration. If an offender is transferred from a county jail to the  
28 department of corrections, the county jail facility shall certify to  
29 the department the amount of time spent in custody at the facility and  
30 the amount of earned early release time. In the case of an offender  
31 who has been convicted of a felony committed after July 23, 1995, that  
32 involves any applicable deadly weapon enhancements under RCW 9.94A.310  
33 (3) or (4), or both, shall not receive any good time credits or earned  
34 early release time for that portion of his or her sentence that results  
35 from any deadly weapon enhancements. In the case of an offender  
36 convicted of a serious violent offense or a sex offense that is a class  
37 A felony committed on or after July 1, 1990, the aggregate earned early  
38 release time may not exceed fifteen percent of the sentence. In no

1 other case shall the aggregate earned early release time exceed one-  
2 third of the total sentence;

3 (2) A person convicted of a sex offense or an offense categorized  
4 as a serious violent offense, assault in the second degree, vehicular  
5 homicide, vehicular assault, assault of a child in the second degree,  
6 any crime against a person where it is determined in accordance with  
7 RCW 9.94A.125 that the defendant or an accomplice was armed with a  
8 deadly weapon at the time of commission, or any felony offense under  
9 chapter 69.50 or 69.52 RCW may become eligible, in accordance with a  
10 program developed by the department, for transfer to community custody  
11 status in lieu of earned early release time pursuant to subsection (1)  
12 of this section;

13 (3) An offender may leave a correctional facility pursuant to an  
14 authorized furlough or leave of absence. In addition, offenders may  
15 leave a correctional facility when in the custody of a corrections  
16 officer or officers;

17 (4) The governor, upon recommendation from the clemency and pardons  
18 board, may grant an extraordinary release for reasons of serious health  
19 problems, senility, advanced age, extraordinary meritorious acts, or  
20 other extraordinary circumstances;

21 (5) No more than the final six months of the sentence may be served  
22 in partial confinement designed to aid the offender in finding work and  
23 reestablishing himself or herself in the community;

24 (6) The governor may pardon any offender;

25 (7) The department of corrections may release an offender from  
26 confinement any time within ten days before a release date calculated  
27 under this section; and

28 (8) An offender may leave a correctional facility prior to  
29 completion of his sentence if the sentence has been reduced as provided  
30 in RCW 9.94A.160.

31 Notwithstanding any other provisions of this section, an offender  
32 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to  
33 a mandatory minimum sentence of total confinement shall not be released  
34 from total confinement before the completion of the listed mandatory  
35 minimum sentence for that felony crime of conviction unless allowed  
36 under RCW 9.94A.120(4).

37 **Sec. 3.** RCW 9.94A.400 and 1995 c 167 s 2 are each amended to read  
38 as follows:

1 (1)(a) Except as provided in (b) of this subsection, whenever a  
2 person is to be sentenced for two or more current offenses, the  
3 sentence range for each current offense shall be determined by using  
4 all other current and prior convictions as if they were prior  
5 convictions for the purpose of the offender score: PROVIDED, That if  
6 the court enters a finding that some or all of the current offenses  
7 encompass the same criminal conduct then those current offenses shall  
8 be counted as one crime. Sentences imposed under this subsection shall  
9 be served concurrently. Consecutive sentences may only be imposed  
10 under the exceptional sentence provisions of RCW 9.94A.120 and  
11 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same  
12 criminal conduct," as used in this subsection, means two or more crimes  
13 that require the same criminal intent, are committed at the same time  
14 and place, and involve the same victim. This definition (~~does not~~  
15 ~~apply~~) applies in cases involving vehicular assault or vehicular  
16 homicide even if the victims occupied the same vehicle. (~~However, the~~  
17 ~~sentencing judge may consider multiple victims in such instances as an~~  
18 ~~aggravating circumstance under RCW 9.94A.390.~~)

19 (b) Whenever a person is convicted of two or more serious violent  
20 offenses, as defined in RCW 9.94A.030, arising from separate and  
21 distinct criminal conduct, the sentence range for the offense with the  
22 highest seriousness level under RCW 9.94A.320 shall be determined using  
23 the offender's prior convictions and other current convictions that are  
24 not serious violent offenses in the offender score and the sentence  
25 range for other serious violent offenses shall be determined by using  
26 an offender score of zero. The sentence range for any offenses that  
27 are not serious violent offenses shall be determined according to (a)  
28 of this subsection. All sentences imposed under (b) of this subsection  
29 shall be served consecutively to each other and concurrently with  
30 sentences imposed under (a) of this subsection.

31 (2)(a) Except as provided in (b) of this subsection, whenever a  
32 person while under sentence of felony commits another felony and is  
33 sentenced to another term of confinement, the latter term shall not  
34 begin until expiration of all prior terms.

35 (b) Whenever a second or later felony conviction results in  
36 community supervision with conditions not currently in effect, under  
37 the prior sentence or sentences of community supervision the court may  
38 require that the conditions of community supervision contained in the  
39 second or later sentence begin during the immediate term of community

1 supervision and continue throughout the duration of the consecutive  
2 term of community supervision.

3 (3) Subject to subsections (1) and (2) of this section, whenever a  
4 person is sentenced for a felony that was committed while the person  
5 was not under sentence of a felony, the sentence shall run concurrently  
6 with any felony sentence which has been imposed by any court in this or  
7 another state or by a federal court subsequent to the commission of the  
8 crime being sentenced unless the court pronouncing the current sentence  
9 expressly orders that they be served consecutively.

10 (4) Whenever any person granted probation under RCW 9.95.210 or  
11 9.92.060, or both, has the probationary sentence revoked and a prison  
12 sentence imposed, that sentence shall run consecutively to any sentence  
13 imposed pursuant to this chapter, unless the court pronouncing the  
14 subsequent sentence expressly orders that they be served concurrently.

15 (5) However, in the case of consecutive sentences, all periods of  
16 total confinement shall be served before any partial confinement,  
17 community service, community supervision, or any other requirement or  
18 conditions of any of the sentences. Except for exceptional sentences  
19 as authorized under RCW 9.94A.120(2), if two or more sentences that run  
20 consecutively include periods of community supervision, the aggregate  
21 of the community supervision period shall not exceed twenty-four  
22 months.

23 **Sec. 4.** RCW 46.20.285 and 1990 c 250 s 43 are each amended to read  
24 as follows:

25 The department shall forthwith revoke the license of any driver for  
26 the period of one calendar year unless otherwise provided in this  
27 section, upon receiving a record of the driver's conviction of any of  
28 the following offenses, when the conviction has become final:

29 (1) For vehicular homicide the period of revocation shall be two  
30 years. The revocation period shall be tolled during any period of  
31 total confinement for the offense;

32 (2) Vehicular assault. The revocation period shall be tolled  
33 during any period of total confinement for the offense;

34 (3) Driving a motor vehicle while under the influence of  
35 intoxicating liquor or a narcotic drug, or under the influence of any  
36 other drug to a degree which renders the driver incapable of safely  
37 driving a motor vehicle, upon a showing by the department's records  
38 that the conviction is the second such conviction for the driver within



1 a period of five years. Upon a showing that the conviction is the  
2 third such conviction for the driver within a period of five years, the  
3 period of revocation shall be two years;

4 (4) Any felony in the commission of which a motor vehicle is used;

5 (5) Failure to stop and give information or render aid as required  
6 under the laws of this state in the event of a motor vehicle accident  
7 resulting in the death or personal injury of another or resulting in  
8 damage to a vehicle that is driven or attended by another;

9 (6) Perjury or the making of a false affidavit or statement under  
10 oath to the department under Title 46 RCW or under any other law  
11 relating to the ownership or operation of motor vehicles;

12 (7) Reckless driving upon a showing by the department's records  
13 that the conviction is the third such conviction for the driver within  
14 a period of two years.

15 NEW SECTION. **Sec. 5.** The department of licensing shall adopt  
16 procedures in cooperation with the office of the administrator for the  
17 courts and the department of corrections to implement section 4 of this  
18 act.

19 **Sec. 6.** RCW 46.61.520 and 1991 c 348 s 1 are each amended to read  
20 as follows:

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

25 (a) While under the influence of intoxicating liquor or any drug,  
26 as defined by RCW 46.61.502; or

27 (b) In a reckless manner; or

28 (c) With disregard for the safety of others.

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

31 **Sec. 7.** RCW 46.61.522 and 1983 c 164 s 2 are each amended to read  
32 as follows:

33 (1) A person is guilty of vehicular assault if he operates or  
34 drives any vehicle:

35 (a) In a reckless manner, and this conduct is the proximate cause  
36 of serious bodily injury to another; or

1 (b) While under the influence of intoxicating liquor or any drug,  
2 as defined by RCW 46.61.502, and this conduct is the proximate cause of  
3 serious bodily injury to another.

4 (2) "Serious bodily injury" means bodily injury which involves a  
5 substantial risk of death, serious permanent disfigurement, or  
6 protracted loss or impairment of the function of any part or organ of  
7 the body.

8 (3) Vehicular assault is a class ((C)) B felony punishable under  
9 chapter 9A.20 RCW.

10 NEW SECTION. **Sec. 8.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

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