
SUBSTITUTE SENATE BILL 5177

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Smith, Kohl, Long and Gaspard)

Read first time 02/02/95.

1 AN ACT Relating to restitution agreements between crime victims and
2 offenders; amending RCW 7.69.030, 9.92.060, 9.94A.030, 9.94A.110,
3 9.94A.127, 13.40.135, 13.40.150, 13.40.190, and 43.43.754; reenacting
4 and amending RCW 9.94A.120 and 13.40.020; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares that,
7 in appropriate circumstances, when mediation services are offered by
8 mediators trained in the special needs of crime victims and offenders,
9 meetings between victims and offenders that are facilitated by the
10 mediators can have a variety of beneficial results, including:

11 (a) Allowing a victim an opportunity to give the offender a summary
12 of the financial, emotional, and physical effects of the offense on the
13 victim and the victim's family;

14 (b) Increasing offenders' compliance with restitution orders;

15 (c) Increasing victims' sense of input over outcomes in the
16 criminal justice process and victims' overall satisfaction with the
17 criminal justice system; and

18 (d) Reducing reoffense rates by offenders.

19 (2) It is the intent of the legislature to:

1 (a) Encourage the establishment of victim-offender mediation
2 programs;

3 (b) Encourage the use of mediation programs, if appropriate, if
4 victims and offenders voluntarily agree; and

5 (c) Eliminate any possible ambiguity regarding the power of
6 sentencing courts to order offenders to comply with the terms of
7 restitution agreements with victims.

8 **Sec. 2.** RCW 7.69.030 and 1993 c 350 s 6 are each amended to read
9 as follows:

10 There shall be a reasonable effort made to ensure that victims,
11 survivors of victims, and witnesses of crimes have the following
12 rights:

13 (1) With respect to victims of violent or sex crimes, to receive,
14 at the time of reporting the crime to law enforcement officials, a
15 written statement of the rights of crime victims as provided in this
16 chapter. The written statement shall include the name, address, and
17 telephone number of a county or local crime victim/witness program, if
18 such a crime victim/witness program exists in the county;

19 (2) To be informed by local law enforcement agencies or the
20 prosecuting attorney of the final disposition of the case in which the
21 victim, survivor, or witness is involved;

22 (3) To be notified by the party who issued the subpoena that a
23 court proceeding to which they have been subpoenaed will not occur as
24 scheduled, in order to save the person an unnecessary trip to court;

25 (4) To receive protection from harm and threats of harm arising out
26 of cooperation with law enforcement and prosecution efforts, and to be
27 provided with information as to the level of protection available;

28 (5) To be informed of the procedure to be followed to apply for and
29 receive any witness fees to which they are entitled;

30 (6) To be provided, whenever practical, a secure waiting area
31 during court proceedings that does not require them to be in close
32 proximity to defendants and families or friends of defendants;

33 (7) To have any stolen or other personal property expeditiously
34 returned by law enforcement agencies or the superior court when no
35 longer needed as evidence. When feasible, all such property, except
36 weapons, currency, contraband, property subject to evidentiary
37 analysis, and property of which ownership is disputed, shall be
38 photographed and returned to the owner within ten days of being taken;

1 (8) To be provided with appropriate employer intercession services
2 to ensure that employers of victims, survivors of victims, and
3 witnesses of crime will cooperate with the criminal justice process in
4 order to minimize an employee's loss of pay and other benefits
5 resulting from court appearance;

6 (9) To access to immediate medical assistance and not to be
7 detained for an unreasonable length of time by a law enforcement agency
8 before having such assistance administered. However, an employee of
9 the law enforcement agency may, if necessary, accompany the person to
10 a medical facility to question the person about the criminal incident
11 if the questioning does not hinder the administration of medical
12 assistance;

13 (10) With respect to victims of violent and sex crimes, to have a
14 crime victim advocate from a crime victim/witness program present at
15 any prosecutorial or defense interviews with the victim. This
16 subsection applies if practical and if the presence of the crime victim
17 advocate does not cause any unnecessary delay in the investigation or
18 prosecution of the case. The role of the crime victim advocate is to
19 provide emotional support to the crime victim;

20 (11) With respect to victims and survivors of victims, to be
21 physically present in court during trial, or if subpoenaed to testify,
22 to be scheduled as early as practical in the proceedings in order to be
23 physically present during trial after testifying and not to be excluded
24 solely because they have testified;

25 (12) With respect to victims and survivors of victims, to be
26 informed by the prosecuting attorney of the date, time, and place of
27 the trial and of the sentencing hearing for felony convictions upon
28 request by a victim or survivor;

29 (13) To submit a victim impact statement or report to the court,
30 with the assistance of the prosecuting attorney if requested, and to
31 submit to the court any mediated agreement between a victim and the
32 offender as defined in RCW 9.94A.030 relating to restitution, which in
33 either case shall be included in all presentence reports and
34 permanently included in the files and records accompanying the offender
35 committed to the custody of a state agency or institution;

36 (14) With respect to victims and survivors of victims, to present
37 a statement personally or by representation, at the sentencing hearing
38 for felony convictions; and

1 (15) With respect to victims and survivors of victims, to entry of
2 an order of restitution by the court in all felony cases, even when the
3 offender is sentenced to confinement, unless extraordinary
4 circumstances exist which make restitution inappropriate in the court's
5 judgment.

6 **Sec. 3.** RCW 9.92.060 and 1987 c 202 s 142 are each amended to read
7 as follows:

8 Whenever any person shall be convicted of any crime except murder,
9 burglary in the first degree, arson in the first degree, robbery,
10 carnal knowledge of a female child under the age of ten years, or rape,
11 the court may in its discretion, at the time of imposing sentence upon
12 such person, direct that such sentence be stayed and suspended until
13 otherwise ordered by such court, and that the sentenced person be
14 placed under the charge of a parole or peace officer during the term of
15 such suspension, upon such terms as the court may determine: PROVIDED,
16 That as a condition to suspension of sentence, the court shall require
17 the payment of the penalty assessment required by RCW 7.68.035:
18 PROVIDED FURTHER, That as a condition to suspension of sentence, the
19 court may require the convicted person to make such monetary payments
20 and to perform such other acts, on such terms as the court deems
21 appropriate under the circumstances, as are necessary (1) to comply
22 with any order of the court for the payment of family support, (2) to
23 make restitution to any person or persons who may have suffered loss or
24 damage by reason of the commission of the crime in question or when the
25 offender pleads guilty to a lesser offense or fewer offenses and agrees
26 with the prosecutor's recommendation that the offender be required to
27 pay restitution to a victim of an offense or offenses which are not
28 prosecuted pursuant to a plea agreement, (3) to pay any fine imposed
29 and not suspended and the court or other costs incurred in the
30 prosecution of the case, including reimbursement of the state for costs
31 of extradition if return to this state by extradition was required, and
32 (4) to contribute to a county or interlocal drug fund. In ordering
33 restitution under subsection (2) of this section, the court shall
34 consider, and may require compliance with, any agreement between a
35 victim and the person convicted if the agreement was mediated and
36 facilitated by a victim-offender mediation program as defined in RCW
37 9.94A.030(27). In no case shall a sentence be suspended under the
38 provisions of this section unless the person is sentenced to

1 confinement in a penal institution be placed under the charge of a
2 parole officer, who is a duly appointed and acting officer of the
3 institution to which the person is sentenced: PROVIDED, That persons
4 convicted in district court may be placed under supervision of a
5 probation officer employed for that purpose. If restitution to the
6 victim has been ordered under subsection (2) of this section, the
7 officer supervising the probationer shall make a reasonable effort to
8 ascertain whether restitution has been made as ordered. If restitution
9 has not been made, the officer shall inform the prosecutor of that
10 violation of the terms of the suspended sentence not less than three
11 months prior to the termination of the suspended sentence.

12 **Sec. 4.** RCW 9.94A.030 and 1994 c 261 s 16 are each amended to read
13 as follows:

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

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

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

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

28 (4) "Community custody" means that portion of an inmate's sentence
29 of confinement in lieu of earned early release time served in the
30 community subject to controls placed on the inmate's movement and
31 activities by the department of corrections.

32 (5) "Community placement" means that period during which the
33 offender is subject to the conditions of community custody and/or
34 postrelease supervision, which begins either upon completion of the
35 term of confinement (postrelease supervision) or at such time as the
36 offender is transferred to community custody in lieu of earned early
37 release. Community placement may consist of entirely community
38 custody, entirely postrelease supervision, or a combination of the two.

1 (6) "Community service" means compulsory service, without
2 compensation, performed for the benefit of the community by the
3 offender.

4 (7) "Community supervision" means a period of time during which a
5 convicted offender is subject to crime-related prohibitions and other
6 sentence conditions imposed by a court pursuant to this chapter or RCW
7 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
8 may include crime-related prohibitions and other conditions imposed
9 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
10 for out-of-state supervision of parolees and probationers, RCW
11 9.95.270, community supervision is the functional equivalent of
12 probation and should be considered the same as probation by other
13 states.

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

16 (9) "Conviction" means an adjudication of guilt pursuant to Titles
17 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
18 acceptance of a plea of guilty.

19 (10) "Court-ordered legal financial obligation" means a sum of
20 money that is ordered by a superior court of the state of Washington
21 for legal financial obligations which may include restitution to the
22 victim, statutorily imposed crime victims' compensation fees as
23 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
24 drug funds, court-appointed attorneys' fees, and costs of defense,
25 fines, and any other financial obligation that is assessed to the
26 offender as a result of a felony conviction. Upon conviction for
27 vehicular assault while under the influence of intoxicating liquor or
28 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
29 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
30 legal financial obligations may also include payment to a public agency
31 of the expense of an emergency response to the incident resulting in
32 the conviction, subject to the provisions in RCW 38.52.430.

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

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

7 (b) "Criminal history" shall always include juvenile convictions
8 for sex offenses and shall also include a defendant's other prior
9 convictions in juvenile court if: (i) The conviction was for an
10 offense which is a felony or a serious traffic offense and is criminal
11 history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen
12 years of age or older at the time the offense was committed; and (iii)
13 with respect to prior juvenile class B and C felonies or serious
14 traffic offenses, the defendant was less than twenty-three years of age
15 at the time the offense for which he or she is being sentenced was
16 committed.

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

18 (14) "Determinate sentence" means a sentence that states with
19 exactitude the number of actual years, months, or days of total
20 confinement, of partial confinement, of community supervision, the
21 number of actual hours or days of community service work, or dollars or
22 terms of a legal financial obligation. The fact that an offender
23 through "earned early release" can reduce the actual period of
24 confinement shall not affect the classification of the sentence as a
25 determinate sentence.

26 (15) "Disposable earnings" means that part of the earnings of an
27 individual remaining after the deduction from those earnings of any
28 amount required by law to be withheld. For the purposes of this
29 definition, "earnings" means compensation paid or payable for personal
30 services, whether denominated as wages, salary, commission, bonuses, or
31 otherwise, and, notwithstanding any other provision of law making the
32 payments exempt from garnishment, attachment, or other process to
33 satisfy a court-ordered legal financial obligation, specifically
34 includes periodic payments pursuant to pension or retirement programs,
35 or insurance policies of any type, but does not include payments made
36 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
37 or Title 74 RCW.

38 (16) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 (17) "Escape" means:

11 (a) Escape in the first degree (RCW 9A.76.110), escape in the
12 second degree (RCW 9A.76.120), willful failure to return from furlough
13 (RCW 72.66.060), willful failure to return from work release (RCW
14 72.65.070), or willful failure to be available for supervision by the
15 department while in community custody (RCW 72.09.310); or

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

19 (18) "Felony traffic offense" means:

20 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
21 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
22 and-run injury-accident (RCW 46.52.020(4)); or

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

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

28 (20)(a) "First-time offender" means any person who is convicted of
29 a felony (i) not classified as a violent offense or a sex offense under
30 this chapter, or (ii) that is not the manufacture, delivery, or
31 possession with intent to manufacture or deliver a controlled substance
32 classified in schedule I or II that is a narcotic drug or the selling
33 for profit of any controlled substance or counterfeit substance
34 classified in schedule I, RCW 69.50.204, except leaves and flowering
35 tops of marihuana, and except as provided in (b) of this subsection,
36 who previously has never been convicted of a felony in this state,
37 federal court, or another state, and who has never participated in a
38 program of deferred prosecution for a felony offense.

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

4 (21) "Most serious offense" means any of the following felonies or
5 a felony attempt to commit any of the following felonies, as now
6 existing or hereafter amended:

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

25 (q) Vehicular assault;

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

30 (s) Any other class B felony offense with a finding of sexual
31 motivation, as "sexual motivation" is defined under this section;

32 (t) Any other felony with a deadly weapon verdict under RCW
33 9.94A.125;

34 (u) Any felony offense in effect at any time prior to December 2,
35 1993, that is comparable to a most serious offense under this
36 subsection, or any federal or out-of-state conviction for an offense
37 that under the laws of this state would be a felony classified as a
38 most serious offense under this subsection.

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

3 (23) "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 (24) "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 or
12 work crew has been ordered by the court, in an approved residence, for
13 a substantial portion of each day with the balance of the day spent in
14 the community. Partial confinement includes work release, home
15 detention, work crew, and a combination of work crew and home detention
16 as defined in this section.

17 (25) "Persistent offender" is an offender who:

18 (a) Has been convicted in this state of any felony considered a
19 most serious offense; and

20 (b) Has, before the commission of the offense under (a) of this
21 subsection, been convicted as an offender on at least two separate
22 occasions, whether in this state or elsewhere, of felonies that under
23 the laws of this state would be considered most serious offenses and
24 would be included in the offender score under RCW 9.94A.360; provided
25 that of the two or more previous convictions, at least one conviction
26 must have occurred before the commission of any of the other most
27 serious offenses for which the offender was previously convicted.

28 (26) "Postrelease supervision" is that portion of an offender's
29 community placement that is not community custody.

30 (27) "Victim-offender mediation program" means a dispute resolution
31 center operating under RCW 7.75.020 and offering mediation services to
32 crime victims and offenders for the purpose of reaching agreements
33 relating to restitution, where the program meets the following
34 conditions:

35 (a) Program mediators are specifically trained in facilitating
36 mediations between crime victims and offenders;

37 (b) The program has entered into an agreement with the county,
38 court, or prosecuting attorney. However, when a case is referred to
39 the program for mediation, mediation may not proceed unless the program

1 determines that the case appears to be appropriate for mediation. A
2 case is deemed to be inappropriate for mediation if any of the
3 following factors are found to exist by the court before referral or by
4 the program after referral: (i) The offender, a victim, and, in the
5 case of a victim under the age of eighteen, a parent or legal guardian
6 or that victim, are not each fully and voluntarily willing to
7 participate in mediation; (ii) there is an apparent risk of violence or
8 intimidation; (iii) there is no fully trained mediator available to
9 facilitate a mediation within a reasonable period of time; (iv) there
10 is no reasonably safe location available for the mediation; or (v) the
11 offender denies commission of all acts upon which the charge or charges
12 are based.

13 (28) "Mediated agreement between a victim and the offender" means
14 a voluntary agreement between a victim and the offender that is
15 mediated and facilitated by a victim-offender mediation program to
16 which the case is referred by the court, prosecuting attorney, or
17 community corrections officer after a conviction.

18 (29) "Restitution" means the requirement that the offender pay a
19 specific sum of money over a specific period of time to the court as
20 payment of damages or the requirement that the offender provide
21 compensation for victim losses under a mediated agreement between a
22 victim and the offender, which compensation is permitted to include
23 performance other than, or in addition to, payments of money. The sum
24 may include both public and private costs. The imposition of a
25 restitution order does not preclude civil redress.

26 ~~((28))~~ (30) "Serious traffic offense" means:

27 (a) Driving while under the influence of intoxicating liquor or any
28 drug (RCW 46.61.502), actual physical control while under the influence
29 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
30 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
31 or

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

35 ~~((29))~~ (31) "Serious violent offense" is a subcategory of violent
36 offense and means:

37 (a) Murder in the first degree, homicide by abuse, murder in the
38 second degree, assault in the first degree, kidnapping in the first
39 degree, or rape in the first degree, assault of a child in the first

1 degree, or an attempt, criminal solicitation, or criminal conspiracy to
2 commit one of these felonies; or

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

6 (~~(30)~~) (32) "Sentence range" means the sentencing court's
7 discretionary range in imposing a nonappealable sentence.

8 (~~(31)~~) (33) "Sex offense" means:

9 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
10 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
11 attempt, criminal solicitation, or criminal conspiracy to commit such
12 crimes;

13 (b) A felony with a finding of sexual motivation under RCW
14 9.94A.127; or

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

18 (~~(32)~~) (34) "Sexual motivation" means that one of the purposes
19 for which the defendant committed the crime was for the purpose of his
20 or her sexual gratification.

21 (~~(33)~~) (35) "Total confinement" means confinement inside the
22 physical boundaries of a facility or institution operated or utilized
23 under contract by the state or any other unit of government for twenty-
24 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

25 (~~(34)~~) (36) "Transition training" means written and verbal
26 instructions and assistance provided by the department to the offender
27 during the two weeks prior to the offender's successful completion of
28 the work ethic camp program. The transition training shall include
29 instructions in the offender's requirements and obligations during the
30 offender's period of community custody.

31 (~~(35)~~) (37) "Victim" means any person who has sustained
32 emotional, psychological, physical, or financial injury to person or
33 property as a direct result of the crime charged.

34 (~~(36)~~) (38) "Violent offense" means:

35 (a) Any of the following felonies, as now existing or hereafter
36 amended: Any felony defined under any law as a class A felony or an
37 attempt to commit a class A felony, criminal solicitation of or
38 criminal conspiracy to commit a class A felony, manslaughter in the
39 first degree, manslaughter in the second degree, indecent liberties if

1 committed by forcible compulsion, kidnapping in the second degree,
2 arson in the second degree, assault in the second degree, assault of a
3 child in the second degree, extortion in the first degree, robbery in
4 the second degree, vehicular assault, and vehicular homicide, when
5 proximately caused by the driving of any vehicle by any person while
6 under the influence of intoxicating liquor or any drug as defined by
7 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

14 (~~(37)~~) (39) "Work crew" means a program of partial confinement
15 consisting of civic improvement tasks for the benefit of the community
16 of not less than thirty-five hours per week that complies with RCW
17 9.94A.135. The civic improvement tasks shall have minimal negative
18 impact on existing private industries or the labor force in the county
19 where the service or labor is performed. The civic improvement tasks
20 shall not affect employment opportunities for people with developmental
21 disabilities contracted through sheltered workshops as defined in RCW
22 82.04.385. Only those offenders sentenced to a facility operated or
23 utilized under contract by a county or the state are eligible to
24 participate on a work crew. Offenders sentenced for a sex offense as
25 defined in subsection (~~(31)~~) (33) of this section are not eligible
26 for the work crew program.

27 (~~(38)~~) (40) "Work ethic camp" means an alternative incarceration
28 program designed to reduce recidivism and lower the cost of corrections
29 by requiring offenders to complete a comprehensive array of real-world
30 job and vocational experiences, character-building work ethics
31 training, life management skills development, substance abuse
32 rehabilitation, counseling, literacy training, and basic adult
33 education.

34 (~~(39)~~) (41) "Work release" means a program of partial confinement
35 available to offenders who are employed or engaged as a student in a
36 regular course of study at school. Participation in work release shall
37 be conditioned upon the offender attending work or school at regularly
38 defined hours and abiding by the rules of the work release facility.

1 (~~(40)~~) (42) "Home detention" means a program of partial
2 confinement available to offenders wherein the offender is confined in
3 a private residence subject to electronic surveillance. Home detention
4 may not be imposed for offenders convicted of a violent offense, any
5 sex offense, any drug offense, reckless burning in the first or second
6 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
7 degree as defined in RCW 9A.36.031, assault of a child in the third
8 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
9 harassment as defined in RCW 9A.46.020. Home detention may be imposed
10 for offenders convicted of possession of a controlled substance (RCW
11 69.50.401(d)) or forged prescription for a controlled substance (RCW
12 69.50.403) if the offender fulfills the participation conditions set
13 forth in this subsection and is monitored for drug use by treatment
14 alternatives to street crime (TASC) or a comparable court or agency-
15 referred program.

16 (a) Home detention may be imposed for offenders convicted of
17 burglary in the second degree as defined in RCW 9A.52.030 or
18 residential burglary conditioned upon the offender: (i) Successfully
19 completing twenty-one days in a work release program, (ii) having no
20 convictions for burglary in the second degree or residential burglary
21 during the preceding two years and not more than two prior convictions
22 for burglary or residential burglary, (iii) having no convictions for
23 a violent felony offense during the preceding two years and not more
24 than two prior convictions for a violent felony offense, (iv) having no
25 prior charges of escape, and (v) fulfilling the other conditions of the
26 home detention program.

27 (b) Participation in a home detention program shall be conditioned
28 upon: (i) The offender obtaining or maintaining current employment or
29 attending a regular course of school study at regularly defined hours,
30 or the offender performing parental duties to offspring or minors
31 normally in the custody of the offender, (ii) abiding by the rules of
32 the home detention program, and (iii) compliance with court-ordered
33 legal financial obligations. The home detention program may also be
34 made available to offenders whose charges and convictions do not
35 otherwise disqualify them if medical or health-related conditions,
36 concerns or treatment would be better addressed under the home
37 detention program, or where the health and welfare of the offender,
38 other inmates, or staff would be jeopardized by the offender's
39 incarceration. Participation in the home detention program for medical

1 or health-related reasons is conditioned on the offender abiding by the
2 rules of the home detention program and complying with court-ordered
3 restitution.

4 **Sec. 5.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read
5 as follows:

6 Before imposing a sentence upon a defendant, the court shall
7 conduct a sentencing hearing. The sentencing hearing shall be held
8 within forty court days following conviction. Upon the motion of
9 either party for good cause shown, or on its own motion, the court may
10 extend the time period for conducting the sentencing hearing. The
11 court shall order the department to complete a presentence report
12 before imposing a sentence upon a defendant who has been convicted of
13 a felony sexual offense. The department of corrections shall give
14 priority to presentence investigations for sexual offenders. The court
15 shall consider the presentence reports, if any, including any victim
16 impact statement, any mediated agreement between the victim and
17 offender relating to restitution, and criminal history, and allow
18 arguments from the prosecutor, the defense counsel, the offender, the
19 victim, the survivor of the victim, or a representative of the victim
20 or survivor, and an investigative law enforcement officer as to the
21 sentence to be imposed. If the court is satisfied by a preponderance
22 of the evidence that the defendant has a criminal history, the court
23 shall specify the convictions it has found to exist. All of this
24 information shall be part of the record. Copies of all presentence
25 reports presented to the sentencing court and all written findings of
26 facts and conclusions of law as to sentencing entered by the court
27 shall be sent to the department by the clerk of the court at the
28 conclusion of the sentencing and shall accompany the offender if the
29 offender is committed to the custody of the department. Court clerks
30 shall provide, without charge, certified copies of documents relating
31 to criminal convictions requested by prosecuting attorneys.

32 **Sec. 6.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.
33 593) and 1993 c 31 s 3 are each reenacted and amended to read as
34 follows:

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

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

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

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

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

37 (5) In sentencing a first-time offender the court may waive the
38 imposition of a sentence within the sentence range and impose a
39 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a
2 requirement that the offender refrain from committing new offenses.
3 The sentence may also include up to two years of community supervision,
4 which, in addition to crime-related prohibitions, may include
5 requirements that the offender perform any one or more of the
6 following:

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

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

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

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

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

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

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

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

35 The report of the examination shall include at a minimum the
36 following: The defendant's version of the facts and the official
37 version of the facts, the defendant's offense history, an assessment of
38 problems in addition to alleged deviant behaviors, the offender's

1 social and employment situation, and other evaluation measures used.
2 The report shall set forth the sources of the evaluator's information.

3 The examiner shall assess and report regarding the defendant's
4 amenability to treatment and relative risk to the community. A
5 proposed treatment plan shall be provided and shall include, at a
6 minimum:

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

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

10 (C) Monitoring plans, including any requirements regarding living
11 conditions, lifestyle requirements, and monitoring by family members
12 and others;

13 (D) Anticipated length of treatment; and

14 (E) Recommended crime-related prohibitions.

15 The court on its own motion may order, or on a motion by the state
16 shall order, a second examination regarding the offender's amenability
17 to treatment. The evaluator shall be selected by the party making the
18 motion. The defendant shall pay the cost of any second examination
19 ordered unless the court finds the defendant to be indigent in which
20 case the state shall pay the cost.

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

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

33 (B) The court shall order treatment for any period up to three
34 years in duration. The court in its discretion shall order outpatient
35 sex offender treatment or inpatient sex offender treatment, if
36 available. A community mental health center may not be used for such
37 treatment unless it has an appropriate program designed for sex
38 offender treatment. The offender shall not change sex offender
39 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
31 submit written reports to the court and parties regarding the
32 defendant's compliance with treatment and monitoring requirements, and
33 recommendations regarding termination from treatment, including
34 proposed community supervision conditions. Either party may request
35 and the court may order another evaluation regarding the advisability
36 of termination from treatment. The defendant shall pay the cost of any
37 additional evaluation ordered unless the court finds the defendant to
38 be indigent in which case the state shall pay the cost. At the
39 treatment termination hearing the court may: (A) Modify conditions of

1 community supervision, and either (B) terminate treatment, or (C)
2 extend treatment for up to the remaining period of community
3 supervision.

4 (v) The court may revoke the suspended sentence at any time during
5 the period of community supervision and order execution of the sentence
6 if: (A) The defendant violates the conditions of the suspended
7 sentence, or (B) the court finds that the defendant is failing to make
8 satisfactory progress in treatment. All confinement time served during
9 the period of community supervision shall be credited to the offender
10 if the suspended sentence is revoked.

11 (vi) Except as provided in (a)(vii) of this subsection, after July
12 1, 1991, examinations and treatment ordered pursuant to this subsection
13 shall only be conducted by sex offender treatment providers certified
14 by the department of health pursuant to chapter 18.155 RCW.

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

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
31 confinement of more than one year but less than six years, the
32 sentencing court may, on its own motion or on the motion of the
33 offender or the state, order the offender committed for up to thirty
34 days to the custody of the secretary of social and health services for
35 evaluation and report to the court on the offender's amenability to
36 treatment at these facilities. If the secretary of social and health
37 services cannot begin the evaluation within thirty days of the court's
38 order of commitment, the offender shall be transferred to the state for
39 confinement pending an opportunity to be evaluated at the appropriate

1 facility. The court shall review the reports and may order that the
2 term of confinement imposed be served in the sexual offender treatment
3 program at the location determined by the secretary of social and
4 health services or the secretary's designee, only if the report
5 indicates that the offender is amenable to the treatment program
6 provided at these facilities. The offender shall be transferred to the
7 state pending placement in the treatment program. Any offender who has
8 escaped from the treatment program shall be referred back to the
9 sentencing court.

10 If the offender does not comply with the conditions of the
11 treatment program, the secretary of social and health services may
12 refer the matter to the sentencing court. The sentencing court shall
13 commit the offender to the department of corrections to serve the
14 balance of the term of confinement.

15 If the offender successfully completes the treatment program before
16 the expiration of the term of confinement, the court may convert the
17 balance of confinement to community supervision and may place
18 conditions on the offender including crime-related prohibitions and
19 requirements that the offender perform any one or more of the
20 following:

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

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

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

34 (c) When an offender commits any felony sex offense on or after
35 July 1, 1987, and is sentenced to a term of confinement of more than
36 one year but less than six years, the sentencing court may, on its own
37 motion or on the motion of the offender or the state, request the
38 department of corrections to evaluate whether the offender is amenable

1 to treatment and the department may place the offender in a treatment
2 program within a correctional facility operated by the department.

3 Except for an offender who has been convicted of a violation of RCW
4 9A.44.040 or 9A.44.050, if the offender completes the treatment program
5 before the expiration of his or her term of confinement, the department
6 of corrections may request the court to convert the balance of
7 confinement to community supervision and to place conditions on the
8 offender including crime-related prohibitions and requirements that the
9 offender perform any one or more of the following:

- 10 (i) Devote time to a specific employment or occupation;
- 11 (ii) Remain within prescribed geographical boundaries and notify
12 the court or the community corrections officer prior to any change in
13 the offender's address or employment;
- 14 (iii) Report as directed to the court and a community corrections
15 officer;
- 16 (iv) Undergo available outpatient treatment.

17 If the offender violates any of the terms of his or her community
18 supervision, the court may order the offender to serve out the balance
19 of his or her community supervision term in confinement in the custody
20 of the department of corrections.

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

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

33 (8)(a) When a court sentences a person to a term of total
34 confinement to the custody of the department of corrections for an
35 offense categorized as a sex offense or a serious violent offense
36 committed after July 1, 1988, but before July 1, 1990, assault in the
37 second degree, assault of a child in the second degree, any crime
38 against a person where it is determined in accordance with RCW
39 9.94A.125 that the defendant or an accomplice was armed with a deadly

1 weapon at the time of commission, or any felony offense under chapter
2 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
3 in addition to the other terms of the sentence, sentence the offender
4 to a one-year term of community placement beginning either upon
5 completion of the term of confinement or at such time as the offender
6 is transferred to community custody in lieu of earned early release in
7 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
8 offender under this subsection to the statutory maximum period of
9 confinement then the community placement portion of the sentence shall
10 consist entirely of such community custody to which the offender may
11 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
12 period of community custody actually served shall be credited against
13 the community placement portion of the sentence.

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

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

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

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

1 (iv) An offender in community custody shall not unlawfully possess
2 controlled substances;

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

5 (vi) The residence location and living arrangements are subject to
6 the prior approval of the department of corrections during the period
7 of community placement.

8 (c) The court may also order any of the following special
9 conditions:

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

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

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

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

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

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

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

28 (10) If a sentence imposed includes payment of a legal financial
29 obligation, the sentence shall specify the total amount of the legal
30 financial obligation owed, and shall require the offender to pay a
31 specified monthly sum toward that legal financial obligation.
32 Restitution to victims shall be paid prior to any other payments of
33 monetary obligations. Any legal financial obligation that is imposed
34 by the court may be collected by the department, which shall deliver
35 the amount paid to the county clerk for credit. The offender's
36 compliance with payment of legal financial obligations shall be
37 supervised by the department. All monetary payments ordered shall be
38 paid no later than ten years after the last date of release from
39 confinement pursuant to a felony conviction or the date the sentence

1 was entered. Independent of the department, the party or entity to
2 whom the legal financial obligation is owed shall have the authority to
3 utilize any other remedies available to the party or entity to collect
4 the legal financial obligation. Nothing in this section makes the
5 department, the state, or any of its employees, agents, or other
6 persons acting on their behalf liable under any circumstances for the
7 payment of these legal financial obligations. If an order includes
8 restitution as one of the monetary assessments, the county clerk shall
9 make disbursements to victims named in the order.

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

14 (12) All offenders sentenced to terms involving community
15 supervision, community service, community placement, or legal financial
16 obligation shall be under the supervision of the secretary of the
17 department of corrections or such person as the secretary may designate
18 and shall follow explicitly the instructions of the secretary including
19 reporting as directed to a community corrections officer, remaining
20 within prescribed geographical boundaries, notifying the community
21 corrections officer of any change in the offender's address or
22 employment, and paying the supervision fee assessment. The department
23 may require offenders to pay for special services rendered on or after
24 July 25, 1993, including electronic monitoring, day reporting, and
25 telephone reporting, dependent upon the offender's ability to pay. The
26 department may pay for these services for offenders who are not able to
27 pay.

28 (13) All offenders sentenced to terms involving community
29 supervision, community service, or community placement under the
30 supervision of the department of corrections shall not own, use, or
31 possess firearms or ammunition. Offenders who own, use, or are found
32 to be in actual or constructive possession of firearms or ammunition
33 shall be subject to the appropriate violation process and sanctions.
34 "Constructive possession" as used in this subsection means the power
35 and intent to control the firearm or ammunition. "Firearm" as used in
36 this subsection means a weapon or device from which a projectile may be
37 fired by an explosive such as gunpowder.

38 (14) The sentencing court shall give the offender credit for all
39 confinement time served before the sentencing if that confinement was

1 solely in regard to the offense for which the offender is being
2 sentenced.

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

8 (16) The court shall order restitution whenever the offender is
9 convicted of a felony that results in injury to any person or damage to
10 or loss of property, whether the offender is sentenced to confinement
11 or placed under community supervision, unless extraordinary
12 circumstances exist that make restitution inappropriate in the court's
13 judgment. The court shall set forth the extraordinary circumstances in
14 the record if it does not order restitution. In ordering restitution,
15 the court shall consider any mediated agreement between a victim and
16 the offender relating to restitution.

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

24 (18) In any sentence of partial confinement, the court may require
25 the defendant to serve the partial confinement in work release, in a
26 program of home detention, on work crew, or in a combined program of
27 work crew and home detention.

28 (19) All court-ordered legal financial obligations collected by the
29 department and remitted to the county clerk shall be credited and paid
30 where restitution is ordered. Restitution shall be paid prior to any
31 other payments of monetary obligations.

32 **Sec. 7.** RCW 9.94A.127 and 1990 c 3 s 601 are each amended to read
33 as follows:

34 (1) The prosecuting attorney shall file a special allegation of
35 sexual motivation in every criminal case other than sex offenses as
36 defined in RCW 9.94A.030(~~((+29+))~~) (33) (a) or (c) when sufficient
37 admissible evidence exists, which, when considered with the most
38 plausible, reasonably foreseeable defense that could be raised under

1 the evidence, would justify a finding of sexual motivation by a
2 reasonable and objective fact-finder.

3 (2) In a criminal case wherein there has been a special allegation
4 the state shall prove beyond a reasonable doubt that the accused
5 committed the crime with a sexual motivation. The court shall make a
6 finding of fact of whether or not a sexual motivation was present at
7 the time of the commission of the crime, or if a jury trial is had, the
8 jury shall, if it finds the defendant guilty, also find a special
9 verdict as to whether or not the defendant committed the crime with a
10 sexual motivation. This finding shall not be applied to sex offenses
11 as defined in RCW 9.94A.030(~~(+29+)~~) (33) (a) or (c).

12 (3) The prosecuting attorney shall not withdraw the special
13 allegation of sexual motivation without approval of the court through
14 an order of dismissal of the special allegation. The court shall not
15 dismiss this special allegation unless it finds that such an order is
16 necessary to correct an error in the initial charging decision or
17 unless there are evidentiary problems which make proving the special
18 allegation doubtful.

19 **Sec. 8.** RCW 13.40.020 and 1994 sp.s. c 7 s 520, 1994 c 271 s 803,
20 and 1994 c 261 s 18 are each reenacted and amended to read as follows:

21 For the purposes of this chapter:

22 (1) "Serious offender" means a person fifteen years of age or older
23 who has committed an offense which if committed by an adult would be:

24 (a) A class A felony, or an attempt to commit a class A felony;

25 (b) Manslaughter in the first degree; or

26 (c) Assault in the second degree, extortion in the first degree,
27 child molestation in the second degree, kidnapping in the second
28 degree, robbery in the second degree, residential burglary, or burglary
29 in the second degree, where such offenses include the infliction of
30 bodily harm upon another or where during the commission of or immediate
31 withdrawal from such an offense the perpetrator is armed with a deadly
32 weapon;

33 (2) "Community service" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender as punishment for committing an offense. Community service
36 may be performed through public or private organizations or through
37 work crews;

1 (3) "Community supervision" means an order of disposition by the
2 court of an adjudicated youth not committed to the department or an
3 order granting a deferred adjudication pursuant to RCW 13.40.---
4 (section 545, chapter 7, Laws of 1994 1st sp. sess.). A community
5 supervision order for a single offense may be for a period of up to two
6 years for a sex offense as defined by RCW 9.94A.030 and up to one year
7 for other offenses. As a mandatory condition of any term of community
8 supervision, the court shall order the juvenile to refrain from
9 committing new offenses. As a mandatory condition of community
10 supervision, the court shall order the juvenile to comply with the
11 mandatory school attendance provisions of chapter 28A.225 RCW and to
12 inform the school of the existence of this requirement. Community
13 supervision is an individualized program comprised of one or more of
14 the following:

15 (a) Community-based sanctions;

16 (b) Community-based rehabilitation;

17 (c) Monitoring and reporting requirements;

18 (4) Community-based sanctions may include one or more of the
19 following:

20 (a) A fine, not to exceed one hundred dollars;

21 (b) Community service not to exceed one hundred fifty hours of
22 service;

23 (5) "Community-based rehabilitation" means one or more of the
24 following: Attendance of information classes; counseling, outpatient
25 substance abuse treatment programs, outpatient mental health programs,
26 anger management classes, education or outpatient treatment programs to
27 prevent animal cruelty, or other services; or attendance at school or
28 other educational programs appropriate for the juvenile as determined
29 by the school district. Placement in community-based rehabilitation
30 programs is subject to available funds;

31 (6) "Monitoring and reporting requirements" means one or more of
32 the following: Curfews; requirements to remain at home, school, work,
33 or court-ordered treatment programs during specified hours;
34 restrictions from leaving or entering specified geographical areas;
35 requirements to report to the probation officer as directed and to
36 remain under the probation officer's supervision; and other conditions
37 or limitations as the court may require which may not include
38 confinement;

1 (7) "Confinement" means physical custody by the department of
2 social and health services in a facility operated by or pursuant to a
3 contract with the state, or physical custody in a detention facility
4 operated by or pursuant to a contract with any county. The county may
5 operate or contract with vendors to operate county detention
6 facilities. The department may operate or contract to operate
7 detention facilities for juveniles committed to the department.
8 Pretrial confinement or confinement of less than thirty-one days
9 imposed as part of a disposition or modification order may be served
10 consecutively or intermittently, in the discretion of the court;

11 (8) "Court", when used without further qualification, means the
12 juvenile court judge(s) or commissioner(s);

13 (9) "Criminal history" includes all criminal complaints against the
14 respondent for which, prior to the commission of a current offense:

15 (a) The allegations were found correct by a court. If a respondent
16 is convicted of two or more charges arising out of the same course of
17 conduct, only the highest charge from among these shall count as an
18 offense for the purposes of this chapter; or

19 (b) The criminal complaint was diverted by a prosecutor pursuant to
20 the provisions of this chapter on agreement of the respondent and after
21 an advisement to the respondent that the criminal complaint would be
22 considered as part of the respondent's criminal history. A
23 successfully completed deferred adjudication shall not be considered
24 part of the respondent's criminal history;

25 (10) "Department" means the department of social and health
26 services;

27 (11) "Detention facility" means a county facility, paid for by the
28 county, for the physical confinement of a juvenile alleged to have
29 committed an offense or an adjudicated offender subject to a
30 disposition or modification order. "Detention facility" includes
31 county group homes, inpatient substance abuse programs, juvenile basic
32 training camps, and electronic monitoring;

33 (12) "Diversion unit" means any probation counselor who enters into
34 a diversion agreement with an alleged youthful offender, or any other
35 person, community accountability board, or other entity except a law
36 enforcement official or entity, with whom the juvenile court
37 administrator has contracted to arrange and supervise such agreements
38 pursuant to RCW 13.40.080, or any person, community accountability
39 board, or other entity specially funded by the legislature to arrange

1 and supervise diversion agreements in accordance with the requirements
2 of this chapter. For purposes of this subsection, "community
3 accountability board" means a board comprised of members of the local
4 community in which the juvenile offender resides. The superior court
5 shall appoint the members. The boards shall consist of at least three
6 and not more than seven members. If possible, the board should include
7 a variety of representatives from the community, such as a law
8 enforcement officer, teacher or school administrator, high school
9 student, parent, and business owner, and should represent the cultural
10 diversity of the local community;

11 (13) "Institution" means a juvenile facility established pursuant
12 to chapters 72.05 and 72.16 through 72.20 RCW;

13 (14) "Juvenile," "youth," and "child" mean any individual who is
14 under the chronological age of eighteen years and who has not been
15 previously transferred to adult court pursuant to RCW 13.40.110 or who
16 is otherwise under adult court jurisdiction;

17 (15) "Juvenile offender" means any juvenile who has been found by
18 the juvenile court to have committed an offense, including a person
19 eighteen years of age or older over whom jurisdiction has been extended
20 under RCW 13.40.300;

21 (16) "Manifest injustice" means a disposition that would either
22 impose an excessive penalty on the juvenile or would impose a serious,
23 and clear danger to society in light of the purposes of this chapter;

24 (17) "Mediated agreement between a victim and the respondent" means
25 a voluntary agreement between a victim and the respondent that is
26 mediated and facilitated by a victim-offender mediation program to
27 which the case is referred by the court, prosecuting attorney, or
28 probation counselor;

29 (18) "Middle offender" means a person who has committed an offense
30 and who is neither a minor or first offender nor a serious offender;

31 (~~(18)~~) (19) "Minor or first offender" means a person whose
32 current offense(s) and criminal history fall entirely within one of the
33 following categories:

- 34 (a) Four misdemeanors;
- 35 (b) Two misdemeanors and one gross misdemeanor;
- 36 (c) One misdemeanor and two gross misdemeanors; and
- 37 (d) Three gross misdemeanors.

38 For purposes of this definition, current violations shall be
39 counted as misdemeanors;

1 (~~(19)~~) (20) "Offense" means an act designated a violation or a
2 crime if committed by an adult under the law of this state, under any
3 ordinance of any city or county of this state, under any federal law,
4 or under the law of another state if the act occurred in that state;

5 (~~(20)~~) (21) "Respondent" means a juvenile who is alleged or
6 proven to have committed an offense;

7 (~~(21)~~) (22) "Restitution" means financial reimbursement by the
8 offender to the victim, and shall be limited to easily ascertainable
9 damages for injury to or loss of property, actual expenses incurred for
10 medical treatment for physical injury to persons, lost wages resulting
11 from physical injury, and costs of the victim's counseling reasonably
12 related to the offense if the offense is a sex offense. Restitution
13 also includes compensation for victim losses under a mediated agreement
14 between a victim and the respondent, which compensation is permitted to
15 include performance other than, or in addition to, payments of money.
16 Restitution shall not include reimbursement for damages for mental
17 anguish, pain and suffering, or other intangible losses. Nothing in
18 this chapter shall limit or replace civil remedies or defenses
19 available to the victim or offender;

20 (~~(22)~~) (23) "Secretary" means the secretary of the department of
21 social and health services. "Assistant secretary" means the assistant
22 secretary for juvenile rehabilitation for the department;

23 (~~(23)~~) (24) "Services" mean services which provide alternatives
24 to incarceration for those juveniles who have pleaded or been
25 adjudicated guilty of an offense or have signed a diversion agreement
26 pursuant to this chapter;

27 (~~(24)~~) (25) "Sex offense" means an offense defined as a sex
28 offense in RCW 9.94A.030;

29 (~~(25)~~) (26) "Sexual motivation" means that one of the purposes
30 for which the respondent committed the offense was for the purpose of
31 his or her sexual gratification;

32 (~~(26)~~) (27) "Foster care" means temporary physical care in a
33 foster family home or group care facility as defined in RCW 74.15.020
34 and licensed by the department, or other legally authorized care;

35 (~~(27)~~) (28) "Victim-offender mediation program" has the same
36 definition as in RCW 9.94A.030, except that, for purposes of this
37 chapter, references to "offenders" in that definition are deemed to
38 include a "respondent" as defined in this chapter;

1 (29) "Violation" means an act or omission, which if committed by an
2 adult, must be proven beyond a reasonable doubt, and is punishable by
3 sanctions which do not include incarceration;

4 (~~((28))~~) (30) "Violent offense" means a violent offense as defined
5 in RCW 9.94A.030.

6 **Sec. 9.** RCW 13.40.135 and 1990 c 3 s 604 are each amended to read
7 as follows:

8 (1) The prosecuting attorney shall file a special allegation of
9 sexual motivation in every juvenile offense other than sex offenses as
10 defined in RCW 9.94A.030(~~((29))~~) (33) (a) or (c) when sufficient
11 admissible evidence exists, which, when considered with the most
12 plausible, reasonably consistent defense that could be raised under the
13 evidence, would justify a finding of sexual motivation by a reasonable
14 and objective fact-finder.

15 (2) In a juvenile case wherein there has been a special allegation
16 the state shall prove beyond a reasonable doubt that the juvenile
17 committed the offense with a sexual motivation. The court shall make
18 a finding of fact of whether or not the sexual motivation was present
19 at the time of the commission of the offense. This finding shall not
20 be applied to sex offenses as defined in RCW 9.94A.030(~~((29))~~) (33) (a)
21 or (c).

22 (3) The prosecuting attorney shall not withdraw the special
23 allegation of "sexual motivation" without approval of the court through
24 an order of dismissal. The court shall not dismiss the special
25 allegation unless it finds that such an order is necessary to correct
26 an error in the initial charging decision or unless there are
27 evidentiary problems which make proving the special allegation
28 doubtful.

29 **Sec. 10.** RCW 13.40.150 and 1992 c 205 s 109 are each amended to
30 read as follows:

31 (1) In disposition hearings all relevant and material evidence,
32 including oral and written reports, may be received by the court and
33 may be relied upon to the extent of its probative value, even though
34 such evidence may not be admissible in a hearing on the information.
35 The youth or the youth's counsel and the prosecuting attorney shall be
36 afforded an opportunity to examine and controvert written reports so
37 received and to cross-examine individuals making reports when such

1 individuals are reasonably available, but sources of confidential
2 information need not be disclosed. The prosecutor and counsel for the
3 juvenile may submit recommendations for disposition.

4 (2) For purposes of disposition:

5 (a) Violations which are current offenses count as misdemeanors;

6 (b) Violations may not count as part of the offender's criminal
7 history;

8 (c) In no event may a disposition for a violation include
9 confinement.

10 (3) Before entering a dispositional order as to a respondent found
11 to have committed an offense, the court shall hold a disposition
12 hearing, at which the court shall:

13 (a) Consider the facts supporting the allegations of criminal
14 conduct by the respondent;

15 (b) Consider information and arguments offered by parties and their
16 counsel;

17 (c) Consider any predisposition reports;

18 (d) Consult with the respondent's parent, guardian, or custodian on
19 the appropriateness of dispositional options under consideration and
20 afford the respondent and the respondent's parent, guardian, or
21 custodian an opportunity to speak in the respondent's behalf;

22 (e) Allow the victim or a representative of the victim and an
23 investigative law enforcement officer to speak;

24 (f) Determine the amount of restitution owing to the victim, if
25 any, considering any mediated agreement between a victim and the
26 respondent relating to restitution;

27 (g) Determine whether the respondent is a serious offender, a
28 middle offender, or a minor or first offender;

29 (h) Consider whether or not any of the following mitigating factors
30 exist:

31 (i) The respondent's conduct neither caused nor threatened serious
32 bodily injury or the respondent did not contemplate that his or her
33 conduct would cause or threaten serious bodily injury;

34 (ii) The respondent acted under strong and immediate provocation;

35 (iii) The respondent was suffering from a mental or physical
36 condition that significantly reduced his or her culpability for the
37 offense though failing to establish a defense;

1 (iv) Prior to his or her detection, the respondent compensated or
2 made a good faith attempt to compensate the victim for the injury or
3 loss sustained; and

4 (v) There has been at least one year between the respondent's
5 current offense and any prior criminal offense;

6 (i) Consider whether or not any of the following aggravating
7 factors exist:

8 (i) In the commission of the offense, or in flight therefrom, the
9 respondent inflicted or attempted to inflict serious bodily injury to
10 another;

11 (ii) The offense was committed in an especially heinous, cruel, or
12 depraved manner;

13 (iii) The victim or victims were particularly vulnerable;

14 (iv) The respondent has a recent criminal history or has failed to
15 comply with conditions of a recent dispositional order or diversion
16 agreement;

17 (v) The current offense included a finding of sexual motivation
18 pursuant to RCW 9.94A.127;

19 (vi) The respondent was the leader of a criminal enterprise
20 involving several persons; and

21 (vii) There are other complaints which have resulted in diversion
22 or a finding or plea of guilty but which are not included as criminal
23 history.

24 (4) The following factors may not be considered in determining the
25 punishment to be imposed:

26 (a) The sex of the respondent;

27 (b) The race or color of the respondent or the respondent's family;

28 (c) The creed or religion of the respondent or the respondent's
29 family;

30 (d) The economic or social class of the respondent or the
31 respondent's family; and

32 (e) Factors indicating that the respondent may be or is a dependent
33 child within the meaning of this chapter.

34 (5) A court may not commit a juvenile to a state institution solely
35 because of the lack of facilities, including treatment facilities,
36 existing in the community.

37 **Sec. 11.** RCW 13.40.190 and 1994 sp.s. c 7 s 528 are each amended
38 to read as follows:

1 (1) In its dispositional order, the court shall require the
2 respondent to make restitution to any persons who have suffered loss or
3 damage as a result of the offense committed by the respondent. In
4 addition, restitution may be ordered for loss or damage if the offender
5 pleads guilty to a lesser offense or fewer offenses and agrees with the
6 prosecutor's recommendation that the offender be required to pay
7 restitution to a victim of an offense or offenses which, pursuant to a
8 plea agreement, are not prosecuted. The payment of restitution shall
9 be in addition to any punishment which is imposed pursuant to the other
10 provisions of this chapter. The court may determine the amount, terms,
11 and conditions of the restitution including a payment plan extending up
12 to ten years if the court determines that the respondent does not have
13 the means to make full restitution over a shorter period. Restitution
14 may include the costs of counseling reasonably related to the offense.
15 The court shall consider, and may include in its order, the terms of
16 any mediated agreement between a victim and the respondent relating to
17 restitution. If the respondent participated in the crime with another
18 person or other persons, all such participants shall be jointly and
19 severally responsible for the payment of restitution. For the purposes
20 of this section, the respondent shall remain under the court's
21 jurisdiction for a maximum term of ten years after the respondent's
22 eighteenth birthday. The court may not require the respondent to pay
23 full or partial restitution if the respondent reasonably satisfies the
24 court that he or she does not have the means to make full or partial
25 restitution and could not reasonably acquire the means to pay such
26 restitution over a ten-year period. In cases where an offender has
27 been committed to the department for a period of confinement exceeding
28 fifteen weeks, restitution may be waived.

29 (2) If an order includes restitution as one of the monetary
30 assessments, the county clerk shall make disbursements to victims named
31 in the order. The restitution to victims named in the order shall be
32 paid prior to any payment for other penalties or monetary assessments.

33 (3) A respondent under obligation to pay restitution may petition
34 the court for modification of the restitution order.

35 **Sec. 12.** RCW 43.43.754 and 1994 c 271 s 402 are each amended to
36 read as follows:

37 Every adult or juvenile individual convicted of a felony or
38 adjudicated guilty of an equivalent juvenile offense defined as a sex

1 offense under RCW 9.94A.030(~~(+31+)~~) (33)(a) or a violent offense as
2 defined in RCW 9.94A.030 shall have a blood sample drawn for purposes
3 of DNA identification analysis. For persons convicted of such offenses
4 or adjudicated guilty of an equivalent juvenile offense who are serving
5 a term of confinement in a county jail or detention facility, the
6 county shall be responsible for obtaining blood samples prior to
7 release from the county jail or detention facility. For persons
8 convicted of such offenses or adjudicated guilty of an equivalent
9 juvenile offense, who are serving a term of confinement in a department
10 of corrections facility or a division of juvenile rehabilitation
11 facility, the facility holding the person shall be responsible for
12 obtaining blood samples prior to release from such facility. Any blood
13 sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used
14 solely for the purpose of providing DNA or other blood grouping tests
15 for identification analysis and prosecution of a sex offense or a
16 violent offense.

17 This section applies to all adults who are convicted after July 1,
18 1990. This section applies to all juveniles who are adjudicated guilty
19 after July 1, 1994.

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