
SENATE BILL 5204

State of Washington 55th Legislature 1997 Regular Session

By Senators Roach, Fairley, Johnson, Winsley, Kohl and Oke

Read first time 01/20/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to restitution agreements between crime victims and
2 offenders; amending RCW 7.69.030, 9.92.060, 9.94A.110, 9.94A.127,
3 9.94A.180, 13.40.135, 13.40.150, 13.40.190, and 43.43.754; reenacting
4 and amending RCW 9.94A.030, 9.94A.120, and 13.40.020; and creating a
5 new section.

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

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

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

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

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

19 (d) Reducing reoffense rates by offenders.

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) To have any stolen or other personal property expeditiously
35 returned by law enforcement agencies or the superior court when no
36 longer needed as evidence. When feasible, all such property, except
37 weapons, currency, contraband, property subject to evidentiary

1 analysis, and property of which ownership is disputed, shall be
2 photographed and returned to the owner within ten days of being taken;

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

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

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

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

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

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

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

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

9 **Sec. 3.** RCW 9.92.060 and 1996 c 298 s 5 are each amended to read
10 as follows:

11 (1) Whenever any person is convicted of any crime except murder,
12 burglary in the first degree, arson in the first degree, robbery, rape
13 of a child, or rape, the superior court may, in its discretion, at the
14 time of imposing sentence upon such person, direct that such sentence
15 be stayed and suspended until otherwise ordered by the superior court,
16 and that the sentenced person be placed under the charge of a community
17 corrections officer employed by the department of corrections, or if
18 the county elects to assume responsibility for the supervision of all
19 superior court misdemeanor probationers a probation officer employed
20 or contracted for by the county, upon such terms as the superior court
21 may determine.

22 (2) As a condition to suspension of sentence, the superior court
23 shall require the payment of the penalty assessment required by RCW
24 7.68.035. In addition, the superior court may require the convicted
25 person to make such monetary payments and to perform such other acts,
26 on such terms as the superior court deems appropriate under the
27 circumstances, as are necessary: (a) To comply with any order of the
28 court for the payment of family support; (b) to make restitution to any
29 person or persons who may have suffered loss or damage by reason of the
30 commission of the crime in question or when the offender pleads guilty
31 to a lesser offense or fewer offenses and agrees with the prosecutor's
32 recommendation that the offender be required to pay restitution to a
33 victim of an offense or offenses which are not prosecuted pursuant to
34 a plea agreement; (c) to pay any fine imposed and not suspended and the
35 court or other costs incurred in the prosecution of the case, including
36 reimbursement of the state for costs of extradition if return to this
37 state by extradition was required; and (d) to contribute to a county or
38 interlocal drug fund. In ordering restitution under (b) of this

1 subsection, the court shall consider, and may require compliance with,
2 any agreement between a victim and the person convicted if the
3 agreement was mediated and facilitated by a victim-offender mediation
4 program as defined in RCW 9.94A.030.

5 (3) As a condition of the suspended sentence, the superior court
6 may order the probationer to report to the secretary of corrections or
7 such officer as the secretary may designate and as a condition of the
8 probation to follow the instructions of the secretary. If the county
9 legislative authority has elected to assume responsibility for the
10 supervision of superior court misdemeanor probationers within its
11 jurisdiction, the superior court misdemeanor probationer shall report
12 to a probation officer employed or contracted for by the county. In
13 cases where a superior court misdemeanor probationer is sentenced in
14 one county, but resides within another county, there must be provisions
15 for the probationer to report to the agency having supervision
16 responsibility for the probationer's county of residence.

17 (4) If restitution to the victim has been ordered under subsection
18 (2)(b) of this section and the superior court has ordered supervision,
19 the officer supervising the probationer shall make a reasonable effort
20 to ascertain whether restitution has been made as ordered. If the
21 superior court has ordered supervision and restitution has not been
22 made, the officer shall inform the prosecutor of that violation of the
23 terms of the suspended sentence not less than three months prior to the
24 termination of the suspended sentence.

25 **Sec. 4.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are
26 each reenacted and amended to read as follows:

27 Unless the context clearly requires otherwise, the definitions in
28 this section apply throughout this chapter.

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

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

37 (3) "Community corrections officer" means an employee of the
38 department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

3 (4) "Community custody" means that portion of an inmate's sentence
4 of confinement in lieu of earned early release time or imposed pursuant
5 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
6 controls placed on the inmate's movement and activities by the
7 department of corrections.

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

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

18 (7) "Community supervision" means a period of time during which a
19 convicted offender is subject to crime-related prohibitions and other
20 sentence conditions imposed by a court pursuant to this chapter or RCW
21 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
22 may include crime-related prohibitions and other conditions imposed
23 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
24 for out-of-state supervision of parolees and probationers, RCW
25 9.95.270, community supervision is the functional equivalent of
26 probation and should be considered the same as probation by other
27 states.

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

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

33 (10) "Court-ordered legal financial obligation" means a sum of
34 money that is ordered by a superior court of the state of Washington
35 for legal financial obligations which may include restitution to the
36 victim, statutorily imposed crime victims' compensation fees as
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
38 drug funds, court-appointed attorneys' fees, and costs of defense,
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to the provisions in RCW 38.52.430.

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

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

20 (b) "Criminal history" shall always include juvenile convictions
21 for sex offenses and serious violent offenses and shall also include a
22 defendant's other prior convictions in juvenile court if: (i) The
23 conviction was for an offense which is a felony or a serious traffic
24 offense and is criminal history as defined in RCW 13.40.020(~~((+9))~~);
25 (ii) the defendant was fifteen years of age or older at the time the
26 offense was committed; and (iii) with respect to prior juvenile class
27 B and C felonies or serious traffic offenses, the defendant was less
28 than twenty-three years of age at the time the offense for which he or
29 she is being sentenced was committed.

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

34 (14) "Day reporting" means a program of enhanced supervision
35 designed to monitor the defendant's daily activities and compliance
36 with sentence conditions, and in which the defendant is required to
37 report daily to a specific location designated by the department or the
38 sentencing judge.

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

1 (16) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community service work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through "earned early release" can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

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

21 (18) "Drug offense" means:

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

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

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

31 (19) "Escape" means:

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

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

1 (20) "Felony traffic offense" means:

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

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

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

10 (22)(a) "First-time offender" means any person who is convicted of
11 a felony (i) not classified as a violent offense or a sex offense under
12 this chapter, or (ii) that is not 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, nor the
15 manufacture, delivery, or possession with intent to deliver
16 methamphetamine, its salts, isomers, and salts of its isomers as
17 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
18 controlled substance or counterfeit substance classified in schedule I,
19 RCW 69.50.204, except leaves and flowering tops of marijuana, and
20 except as provided in (b) of this subsection, who previously has never
21 been convicted of a felony in this state, federal court, or another
22 state, and who has never participated in a program of deferred
23 prosecution for a felony offense.

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

28 (23) "Mediated agreement between a victim and the offender" means
29 a voluntary agreement between a victim and the offender that is
30 mediated and facilitated by a victim-offender mediation program to
31 which the case is referred by the court, prosecuting attorney, or
32 community corrections officer after a conviction.

33 (24) "Most serious offense" means any of the following felonies or
34 a felony attempt to commit any of the following felonies, as now
35 existing or hereafter amended:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

39 (b) Assault in the second degree;

1 (c) Assault of a child in the second degree;
2 (d) Child molestation in the second degree;
3 (e) Controlled substance homicide;
4 (f) Extortion in the first degree;
5 (g) Incest when committed against a child under age fourteen;
6 (h) Indecent liberties;
7 (i) Kidnapping in the second degree;
8 (j) Leading organized crime;
9 (k) Manslaughter in the first degree;
10 (l) Manslaughter in the second degree;
11 (m) Promoting prostitution in the first degree;
12 (n) Rape in the third degree;
13 (o) Robbery in the second degree;
14 (p) Sexual exploitation;
15 (q) Vehicular assault;
16 (r) Vehicular homicide, when proximately caused by the driving of
17 any vehicle by any person while under the influence of intoxicating
18 liquor or any drug as defined by RCW 46.61.502, or by the operation of
19 any vehicle in a reckless manner;
20 (s) Any other class B felony offense with a finding of sexual
21 motivation, as "sexual motivation" is defined under this section;
22 (t) Any other felony with a deadly weapon verdict under RCW
23 9.94A.125;
24 (u) Any felony offense in effect at any time prior to December 2,
25 1993, that is comparable to a most serious offense under this
26 subsection, or any federal or out-of-state conviction for an offense
27 that under the laws of this state would be a felony classified as a
28 most serious offense under this subsection.
29 ((+24+)) (25) "Nonviolent offense" means an offense which is not a
30 violent offense.
31 ((+25+)) (26) "Offender" means a person who has committed a felony
32 established by state law and is eighteen years of age or older or is
33 less than eighteen years of age but whose case has been transferred by
34 the appropriate juvenile court to a criminal court pursuant to RCW
35 13.40.110. Throughout this chapter, the terms "offender" and
36 "defendant" are used interchangeably.
37 ((+26+)) (27) "Partial confinement" means confinement for no more
38 than one year in a facility or institution operated or utilized under
39 contract by the state or any other unit of government, or, if home

1 detention or work crew has been ordered by the court, in an approved
2 residence, for a substantial portion of each day with the balance of
3 the day spent in the community. Partial confinement includes work
4 release, home detention, work crew, and a combination of work crew and
5 home detention as defined in this section.

6 (~~(+27+)~~) (28) "Persistent offender" is an offender who:

7 (a)(i) Has been convicted in this state of any felony considered a
8 most serious offense; and

9 (ii) Has, before the commission of the offense under (a) of this
10 subsection, been convicted as an offender on at least two separate
11 occasions, whether in this state or elsewhere, of felonies that under
12 the laws of this state would be considered most serious offenses and
13 would be included in the offender score under RCW 9.94A.360; provided
14 that of the two or more previous convictions, at least one conviction
15 must have occurred before the commission of any of the other most
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of (A) rape in the first degree, rape in
18 the second degree, or indecent liberties by forcible compulsion; (B)
19 murder in the first degree, murder in the second degree, kidnapping in
20 the first degree, kidnapping in the second degree, assault in the first
21 degree, assault in the second degree, or burglary in the first degree,
22 with a finding of sexual motivation; or (C) an attempt to commit any
23 crime listed in this subsection (~~(+27+)~~) (28)(b)(i); and

24 (ii) Has, before the commission of the offense under (b)(i) of this
25 subsection, been convicted as an offender on at least one occasion,
26 whether in this state or elsewhere, of an offense listed in (b)(i) of
27 this subsection.

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

30 (~~(+29+)~~) (30) "Restitution" means the requirement that the offender
31 pay a specific sum of money over a specific period of time to the court
32 as payment of damages or the requirement that the offender provide
33 compensation for victim losses under a mediated agreement between a
34 victim and the offender, which compensation is permitted to include
35 performance other than, or in addition to, payments of money. The sum
36 may include both public and private costs. The imposition of a
37 restitution order does not preclude civil redress.

38 (~~(+30+)~~) (31) "Serious traffic offense" means:

1 (a) Driving while under the influence of intoxicating liquor or any
2 drug (RCW 46.61.502), actual physical control while under the influence
3 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
4 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
5 or

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

9 (~~(31)~~) (32) "Serious violent offense" is a subcategory of violent
10 offense and means:

11 (a) Murder in the first degree, homicide by abuse, murder in the
12 second degree, assault in the first degree, kidnapping in the first
13 degree, or rape in the first degree, assault of a child in the first
14 degree, or an attempt, criminal solicitation, or criminal conspiracy to
15 commit one of these felonies; 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 a serious
18 violent offense under (a) of this subsection.

19 (~~(32)~~) (33) "Sentence range" means the sentencing court's
20 discretionary range in imposing a nonappealable sentence.

21 (~~(33)~~) (34) "Sex offense" means:

22 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
23 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
24 criminal attempt, criminal solicitation, or criminal conspiracy to
25 commit such crimes;

26 (b) A felony with a finding of sexual motivation under RCW
27 9.94A.127 or 13.40.135; or

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

31 (~~(34)~~) (35) "Sexual motivation" means that one of the purposes
32 for which the defendant committed the crime was for the purpose of his
33 or her sexual gratification.

34 (~~(35)~~) (36) "Total confinement" means confinement inside the
35 physical boundaries of a facility or institution operated or utilized
36 under contract by the state or any other unit of government for twenty-
37 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

38 (~~(36)~~) (37) "Transition training" means written and verbal
39 instructions and assistance provided by the department to the offender

1 during the two weeks prior to the offender's successful completion of
2 the work ethic camp program. The transition training shall include
3 instructions in the offender's requirements and obligations during the
4 offender's period of community custody.

5 ~~((+37+))~~ (38) "Victim" means any person who has sustained
6 emotional, psychological, physical, or financial injury to person or
7 property as a direct result of the crime charged.

8 ~~((+38+))~~ (39) "Victim-offender mediation program" means a dispute
9 resolution center operating under RCW 7.75.020 and offering mediation
10 services to crime victims and offenders for the purpose of reaching
11 agreements relating to restitution, in which the program meets the
12 following conditions:

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

15 (b) The program has entered into an agreement with the county,
16 court, or prosecuting attorney. However, when a case is referred to
17 the program for mediation, mediation may not proceed unless the program
18 determines that the case appears to be appropriate for mediation. A
19 case is deemed to be inappropriate for mediation if any of the
20 following factors are found to exist by the court before referral or by
21 the program after referral: (i) The offender, a victim, and, in the
22 case of a victim under the age of eighteen, a parent or legal guardian
23 or that victim, are not each fully and voluntarily willing to
24 participate in mediation; (ii) there is an apparent risk of violence or
25 intimidation; (iii) a fully trained mediator is not available to
26 facilitate a mediation within a reasonable period of time; (iv) a
27 reasonably safe location is not available for the mediation; or (v) the
28 offender denies commission of all acts upon which the charge or charges
29 are based.

30 (40) "Violent offense" means:

31 (a) Any of the following felonies, as now existing or hereafter
32 amended: Any felony defined under any law as a class A felony or an
33 attempt to commit a class A felony, criminal solicitation of or
34 criminal conspiracy to commit a class A felony, manslaughter in the
35 first degree, manslaughter in the second degree, indecent liberties if
36 committed by forcible compulsion, kidnapping in the second degree,
37 arson in the second degree, assault in the second degree, assault of a
38 child in the second degree, extortion in the first degree, robbery in
39 the second degree, vehicular assault, and vehicular homicide, when

1 proximately caused by the driving of any vehicle by any person while
2 under the influence of intoxicating liquor or any drug as defined by
3 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

10 (~~(39)~~) (41) "Work crew" means a program of partial confinement
11 consisting of civic improvement tasks for the benefit of the community
12 of not less than thirty-five hours per week that complies with RCW
13 9.94A.135. The civic improvement tasks shall have minimal negative
14 impact on existing private industries or the labor force in the county
15 where the service or labor is performed. The civic improvement tasks
16 shall not affect employment opportunities for people with developmental
17 disabilities contracted through sheltered workshops as defined in RCW
18 82.04.385. Only those offenders sentenced to a facility operated or
19 utilized under contract by a county or the state are eligible to
20 participate on a work crew. Offenders sentenced for a sex offense as
21 defined in (~~subsection (33) of~~) this section are not eligible for the
22 work crew program.

23 (~~(40)~~) (42) "Work ethic camp" means an alternative incarceration
24 program designed to reduce recidivism and lower the cost of corrections
25 by requiring offenders to complete a comprehensive array of real-world
26 job and vocational experiences, character-building work ethics
27 training, life management skills development, substance abuse
28 rehabilitation, counseling, literacy training, and basic adult
29 education.

30 (~~(41)~~) (43) "Work release" means a program of partial confinement
31 available to offenders who are employed or engaged as a student in a
32 regular course of study at school. Participation in work release shall
33 be conditioned upon the offender attending work or school at regularly
34 defined hours and abiding by the rules of the work release facility.

35 (~~(42)~~) (44) "Home detention" means a program of partial
36 confinement available to offenders wherein the offender is confined in
37 a private residence subject to electronic surveillance.

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

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

29 **Sec. 6.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
30 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
31 follows:

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

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

37 (2) The court may impose a sentence outside the standard sentence
38 range for that offense if it finds, considering the purpose of this

1 chapter, that there are substantial and compelling reasons justifying
2 an exceptional sentence.

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

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

32 (5) In sentencing a first-time offender the court may waive the
33 imposition of a sentence within the sentence range and impose a
34 sentence which may include up to ninety days of confinement in a
35 facility operated or utilized under contract by the county and a
36 requirement that the offender refrain from committing new offenses.
37 The sentence may also include up to two years of community supervision,
38 which, in addition to crime-related prohibitions, may include

1 requirements that the offender perform any one or more of the
2 following:

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

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

7 (c) Pursue a prescribed, secular course of study or vocational
8 training;

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

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

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

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

18 (i) The offender is convicted of the manufacture, delivery, or
19 possession with intent to manufacture or deliver a controlled substance
20 classified in Schedule I or II that is a narcotic drug or a felony that
21 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
22 criminal solicitation, or criminal conspiracy to commit such crimes,
23 and the violation does not involve a sentence enhancement under RCW
24 9.94A.310 (3) or (4);

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

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

31 (b) If the midpoint of the standard range is greater than one year
32 and the sentencing judge determines that the offender is eligible for
33 this option and that the offender and the community will benefit from
34 the use of the special drug offender sentencing alternative, the judge
35 may waive imposition of a sentence within the standard range and impose
36 a sentence that must include a period of total confinement in a state
37 facility for one-half of the midpoint of the standard range. During
38 incarceration in the state facility, offenders sentenced under this
39 subsection shall undergo a comprehensive substance abuse assessment and

1 receive, within available resources, treatment services appropriate for
2 the offender. The treatment services shall be designed by the division
3 of alcohol and substance abuse of the department of social and health
4 services, in cooperation with the department of corrections. If the
5 midpoint of the standard range is twenty-four months or less, no more
6 than three months of the sentence may be served in a work release
7 status. The court shall also impose one year of concurrent community
8 custody and community supervision that must include appropriate
9 outpatient substance abuse treatment, crime-related prohibitions
10 including a condition not to use illegal controlled substances, and a
11 requirement to submit to urinalysis or other testing to monitor that
12 status. The court may require that the monitoring for controlled
13 substances be conducted by the department or by a treatment
14 alternatives to street crime program or a comparable court or agency-
15 referred program. The offender may be required to pay thirty dollars
16 per month while on community custody to offset the cost of monitoring.
17 In addition, the court shall impose three or more of the following
18 conditions:

- 19 (i) Devote time to a specific employment or training;
 - 20 (ii) Remain within prescribed geographical boundaries and notify
21 the court or the community corrections officer before any change in the
22 offender's address or employment;
 - 23 (iii) Report as directed to a community corrections officer;
 - 24 (iv) Pay all court-ordered legal financial obligations;
 - 25 (v) Perform community service work;
 - 26 (vi) Stay out of areas designated by the sentencing judge.
- 27 (c) If the offender violates any of the sentence conditions in (b)
28 of this subsection, the department shall impose sanctions
29 administratively, with notice to the prosecuting attorney and the
30 sentencing court. Upon motion of the court or the prosecuting
31 attorney, a violation hearing shall be held by the court. If the court
32 finds that conditions have been willfully violated, the court may
33 impose confinement consisting of up to the remaining one-half of the
34 midpoint of the standard range. All total confinement served during
35 the period of community custody shall be credited to the offender,
36 regardless of whether the total confinement is served as a result of
37 the original sentence, as a result of a sanction imposed by the
38 department, or as a result of a violation found by the court. The term

1 of community supervision shall be tolled by any period of time served
2 in total confinement as a result of a violation found by the court.

3 (d) The department shall determine the rules for calculating the
4 value of a day fine based on the offender's income and reasonable
5 obligations which the offender has for the support of the offender and
6 any dependents. These rules shall be developed in consultation with
7 the administrator for the courts, the office of financial management,
8 and the commission.

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

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

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

30 The examiner shall assess and report regarding the defendant's
31 amenability to treatment and relative risk to the community. A
32 proposed treatment plan shall be provided and shall include, at a
33 minimum:

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

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

37 (C) Monitoring plans, including any requirements regarding living
38 conditions, lifestyle requirements, and monitoring by family members
39 and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

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

18 (A) The court shall place the defendant on community custody for
19 the length of the suspended sentence or three years, whichever is
20 greater, and require the offender to comply with any conditions imposed
21 by the department of corrections under subsection (14) of this section;
22 and

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

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

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

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

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

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

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

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

33 (v) If a violation of conditions occurs during community custody,
34 the department shall either impose sanctions as provided for in RCW
35 9.94A.205(2)(a) or refer the violation to the court and recommend
36 revocation of the suspended sentence as provided for in (a)(vi) of this
37 subsection.

38 (vi) The court may revoke the suspended sentence at any time during
39 the period of community custody and order execution of the sentence if:

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

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

10 (viii) A sex offender therapist who examines or treats a sex
11 offender pursuant to this subsection (8) does not have to be certified
12 by the department of health pursuant to chapter 18.155 RCW if the court
13 finds that: (A) The offender has already moved to another state or
14 plans to move to another state for reasons other than circumventing the
15 certification requirements; (B) no certified providers are available
16 for treatment within a reasonable geographical distance of the
17 offender's home; and (C) the evaluation and treatment plan comply with
18 this subsection (8) and the rules adopted by the department of health.

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

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

31 Except for an offender who has been convicted of a violation of RCW
32 9A.44.040 or 9A.44.050, if the offender completes the treatment program
33 before the expiration of his or her term of confinement, the department
34 of corrections may request the court to convert the balance of
35 confinement to community supervision and to place conditions on the
36 offender including crime-related prohibitions and requirements that the
37 offender perform any one or more of the following:

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

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

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

6 (iv) Undergo available outpatient treatment.

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

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

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

23 (9)(a) When a court sentences a person to a term of total
24 confinement to the custody of the department of corrections for an
25 offense categorized as a sex offense or a serious violent offense
26 committed after July 1, 1988, but before July 1, 1990, assault in the
27 second degree, assault of a child in the second degree, any crime
28 against a person where it is determined in accordance with RCW
29 9.94A.125 that the defendant or an accomplice was armed with a deadly
30 weapon at the time of commission, or any felony offense under chapter
31 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
32 committed on or after July 1, 1988, the court shall in addition to the
33 other terms of the sentence, sentence the offender to a one-year term
34 of community placement beginning either upon completion of the term of
35 confinement or at such time as the offender is transferred to community
36 custody in lieu of earned early release in accordance with RCW
37 9.94A.150 (1) and (2). When the court sentences an offender under this
38 subsection to the statutory maximum period of confinement then the
39 community placement portion of the sentence shall consist entirely of

1 such community custody to which the offender may become eligible, in
2 accordance with RCW 9.94A.150 (1) and (2). Any period of community
3 custody actually served shall be credited against the community
4 placement portion of the sentence.

5 (b) When a court sentences a person to a term of total confinement
6 to the custody of the department of corrections for an offense
7 categorized as a sex offense committed on or after July 1, 1990, but
8 before June 6, 1996, a serious violent offense, vehicular homicide, or
9 vehicular assault, committed on or after July 1, 1990, the court shall
10 in addition to other terms of the sentence, sentence the offender to
11 community placement for two years or up to the period of earned early
12 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
13 longer. The community placement shall begin either upon completion of
14 the term of confinement or at such time as the offender is transferred
15 to community custody in lieu of earned early release in accordance with
16 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
17 this subsection to the statutory maximum period of confinement then the
18 community placement portion of the sentence shall consist entirely of
19 the community custody to which the offender may become eligible, in
20 accordance with RCW 9.94A.150 (1) and (2). Any period of community
21 custody actually served shall be credited against the community
22 placement portion of the sentence. Unless a condition is waived by the
23 court, the terms of community placement for offenders sentenced
24 pursuant to this section shall include the following conditions:

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

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

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

31 (iv) An offender in community custody shall not unlawfully possess
32 controlled substances;

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

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

1 (c) As a part of any sentence imposed under (a) or (b) of this
2 subsection, the court may also order any of the following special
3 conditions:

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

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

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

10 (iv) The offender shall not consume alcohol;

11 (v) The offender shall comply with any crime-related prohibitions;

12 or

13 (vi) For an offender convicted of a felony sex offense against a
14 minor victim after June 6, 1996, the offender shall comply with any
15 terms and conditions of community placement imposed by the department
16 of corrections relating to contact between the sex offender and a minor
17 victim or a child of similar age or circumstance as a previous victim.

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 (10)(a) When a court sentences a person to the custody of the
23 department of corrections for an offense categorized as a sex offense
24 committed on or after June 6, 1996, the court shall, in addition to
25 other terms of the sentence, sentence the offender to community custody
26 for three years or up to the period of earned early release awarded
27 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
28 community custody shall begin either upon completion of the term of
29 confinement or at such time as the offender is transferred to community
30 custody in lieu of earned early release in accordance with RCW
31 9.94A.150 (1) and (2).

32 (b) Unless a condition is waived by the court, the terms of
33 community custody shall be the same as those provided for in subsection
34 (9)(b) of this section and may include those provided for in subsection
35 (9)(c) of this section. As part of any sentence that includes a term
36 of community custody imposed under this subsection, the court shall
37 also require the offender to comply with any conditions imposed by the
38 department of corrections under subsection (14) of this section.

1 (c) At any time prior to the completion of a sex offender's term of
2 community custody, if the court finds that public safety would be
3 enhanced, the court may impose and enforce an order extending any or
4 all of the conditions imposed pursuant to this section for a period up
5 to the maximum allowable sentence for the crime as it is classified in
6 chapter 9A.20 RCW, regardless of the expiration of the offender's term
7 of community custody. If a violation of a condition extended under
8 this subsection occurs after the expiration of the offender's term of
9 community custody, it shall be deemed a violation of the sentence for
10 the purposes of RCW 9.94A.195 and may be punishable as contempt of
11 court as provided for in RCW 7.21.040.

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

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

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

5 (14) All offenders sentenced to terms involving community
6 supervision, community service, community placement, or legal financial
7 obligation shall be under the supervision of the department of
8 corrections and shall follow explicitly the instructions and conditions
9 of the department of corrections.

10 (a) The instructions shall include, at a minimum, reporting as
11 directed to a community corrections officer, remaining within
12 prescribed geographical boundaries, notifying the community corrections
13 officer of any change in the offender's address or employment, and
14 paying the supervision fee assessment.

15 (b) For sex offenders sentenced to terms involving community
16 custody for crimes committed on or after June 6, 1996, the department
17 may include, in addition to the instructions in (a) of this subsection,
18 any appropriate conditions of supervision, including but not limited
19 to, prohibiting the offender from having contact with any other
20 specified individuals or specific class of individuals. The conditions
21 authorized under this subsection (14)(b) may be imposed by the
22 department prior to or during a sex offender's community custody term.
23 If a violation of conditions imposed by the court or the department
24 pursuant to subsection (10) of this section occurs during community
25 custody, it shall be deemed a violation of community placement for the
26 purposes of RCW 9.94A.207 and shall authorize the department to
27 transfer an offender to a more restrictive confinement status as
28 provided in RCW 9.94A.205. At any time prior to the completion of a
29 sex offender's term of community custody, the department may recommend
30 to the court that any or all of the conditions imposed by the court or
31 the department pursuant to subsection (10) of this section be continued
32 beyond the expiration of the offender's term of community custody as
33 authorized in subsection (10)(c) of this section.

34 The department may require offenders to pay for special services
35 rendered on or after July 25, 1993, including electronic monitoring,
36 day reporting, and telephone reporting, dependent upon the offender's
37 ability to pay. The department may pay for these services for
38 offenders who are not able to pay.

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

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

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

20 (18) The court shall order restitution whenever the offender is
21 convicted of a felony that results in injury to any person or damage to
22 or loss of property, whether the offender is sentenced to confinement
23 or placed under community supervision, unless extraordinary
24 circumstances exist that make restitution inappropriate in the court's
25 judgment. The court shall set forth the extraordinary circumstances in
26 the record if it does not order restitution. In ordering restitution,
27 the court shall consider any mediated agreement between a victim and
28 the offender relating to restitution.

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

36 (20) In any sentence of partial confinement, the court may require
37 the defendant to serve the partial confinement in work release, in a
38 program of home detention, on work crew, or in a combined program of
39 work crew and home detention.

1 (21) All court-ordered legal financial obligations collected by the
2 department and remitted to the county clerk shall be credited and paid
3 where restitution is ordered. Restitution shall be paid prior to any
4 other payments of monetary obligations.

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

7 (1) The prosecuting attorney shall file a special allegation of
8 sexual motivation in every criminal case other than sex offenses as
9 defined in RCW 9.94A.030(~~((+29+))~~) (34) (a) or (c) when sufficient
10 admissible evidence exists, which, when considered with the most
11 plausible, reasonably foreseeable defense that could be raised under
12 the evidence, would justify a finding of sexual motivation by a
13 reasonable and objective fact-finder.

14 (2) In a criminal case wherein there has been a special allegation
15 the state shall prove beyond a reasonable doubt that the accused
16 committed the crime with a sexual motivation. The court shall make a
17 finding of fact of whether or not a sexual motivation was present at
18 the time of the commission of the crime, or if a jury trial is had, the
19 jury shall, if it finds the defendant guilty, also find a special
20 verdict as to whether or not the defendant committed the crime with a
21 sexual motivation. This finding shall not be applied to sex offenses
22 as defined in RCW 9.94A.030(~~((+29+))~~) (34) (a) or (c).

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

30 **Sec. 8.** RCW 9.94A.180 and 1991 c 181 s 4 are each amended to read
31 as follows:

32 (1) An offender sentenced to a term of partial confinement shall be
33 confined in the facility for at least eight hours per day or, if
34 serving a work crew sentence shall comply with the conditions of that
35 sentence as set forth in RCW 9.94A.030(~~((+23+))~~) (27) and 9.94A.135. The
36 offender shall be required as a condition of partial confinement to
37 report to the facility at designated times. An offender may be

1 required to comply with crime-related prohibitions during the period of
2 partial confinement.

3 (2) An offender in a county jail ordered to serve all or part of a
4 term of less than one year in work release, work crew, or a program of
5 home detention who violates the rules of the work release facility,
6 work crew, or program of home detention or fails to remain employed or
7 enrolled in school may be transferred to the appropriate county
8 detention facility without further court order but shall, upon request,
9 be notified of the right to request an administrative hearing on the
10 issue of whether or not the offender failed to comply with the order
11 and relevant conditions. Pending such hearing, or in the absence of a
12 request for the hearing, the offender shall serve the remainder of the
13 term of confinement as total confinement. This subsection shall not
14 affect transfer or placement of offenders committed to the state
15 department of corrections.

16 **Sec. 9.** RCW 13.40.020 and 1995 c 395 s 2 and 1995 c 134 s 1 are
17 each reenacted and amended to read as follows:

18 For the purposes of this chapter:

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

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

22 (b) Manslaughter in the first degree; or

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

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

35 (3) "Community supervision" means an order of disposition by the
36 court of an adjudicated youth not committed to the department or an
37 order granting a deferred adjudication pursuant to RCW 13.40.125. A
38 community supervision order for a single offense may be for a period of

1 up to two years for a sex offense as defined by RCW 9.94A.030 and up to
2 one year for other offenses. As a mandatory condition of any term of
3 community supervision, the court shall order the juvenile to refrain
4 from committing new offenses. As a mandatory condition of community
5 supervision, the court shall order the juvenile to comply with the
6 mandatory school attendance provisions of chapter 28A.225 RCW and to
7 inform the school of the existence of this requirement. Community
8 supervision is an individualized program comprised of one or more of
9 the following:

- 10 (a) Community-based sanctions;
- 11 (b) Community-based rehabilitation;
- 12 (c) Monitoring and reporting requirements;
- 13 (d) Posting of a probation bond imposed pursuant to RCW 13.40.0357;
- 14 (4) Community-based sanctions may include one or more of the
15 following:

- 16 (a) A fine, not to exceed one hundred dollars;
- 17 (b) Community service not to exceed one hundred fifty hours of
18 service;

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

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

35 (7) "Confinement" means physical custody by the department of
36 social and health services in a facility operated by or pursuant to a
37 contract with the state, or physical custody in a detention facility
38 operated by or pursuant to a contract with any county. The county may
39 operate or contract with vendors to operate county detention

1 facilities. The department may operate or contract to operate
2 detention facilities for juveniles committed to the department.
3 Pretrial confinement or confinement of less than thirty-one days
4 imposed as part of a disposition or modification order may be served
5 consecutively or intermittently, in the discretion of the court;

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

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

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

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

20 (10) "Department" means the department of social and health
21 services;

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

28 (12) "Diversion unit" means any probation counselor who enters into
29 a diversion agreement with an alleged youthful offender, or any other
30 person, community accountability board, or other entity except a law
31 enforcement official or entity, with whom the juvenile court
32 administrator has contracted to arrange and supervise such agreements
33 pursuant to RCW 13.40.080, or any person, community accountability
34 board, or other entity specially funded by the legislature to arrange
35 and supervise diversion agreements in accordance with the requirements
36 of this chapter. For purposes of this subsection, "community
37 accountability board" means a board comprised of members of the local
38 community in which the juvenile offender resides. The superior court
39 shall appoint the members. The boards shall consist of at least three

1 and not more than seven members. If possible, the board should include
2 a variety of representatives from the community, such as a law
3 enforcement officer, teacher or school administrator, high school
4 student, parent, and business owner, and should represent the cultural
5 diversity of the local community;

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

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

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

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

19 (17) "Mediated agreement between a victim and the respondent" means
20 a voluntary agreement between a victim and the respondent that is
21 mediated and facilitated by a victim-offender mediation program to
22 which the case is referred by the court, prosecuting attorney, or
23 probation counselor;

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

26 (~~(18)~~) (19) "Minor or first offender" means a person whose
27 current offense(s) and criminal history fall entirely within one of the
28 following categories:

- 29 (a) Four misdemeanors;
- 30 (b) Two misdemeanors and one gross misdemeanor;
- 31 (c) One misdemeanor and two gross misdemeanors; and
- 32 (d) Three gross misdemeanors.

33 For purposes of this definition, current violations shall be
34 counted as misdemeanors;

35 (~~(19)~~) (20) "Offense" means an act designated a violation or a
36 crime if committed by an adult under the law of this state, under any
37 ordinance of any city or county of this state, under any federal law,
38 or under the law of another state if the act occurred in that state;

1 ~~((20))~~ (21) "Respondent" means a juvenile who is alleged or
2 proven to have committed an offense;

3 ~~((21))~~ (22) "Restitution" means financial reimbursement by the
4 offender to the victim, and shall be limited to easily ascertainable
5 damages for injury to or loss of property, actual expenses incurred for
6 medical treatment for physical injury to persons, lost wages resulting
7 from physical injury, and costs of the victim's counseling reasonably
8 related to the offense if the offense is a sex offense. Restitution
9 also includes compensation for victim losses under a mediated agreement
10 between a victim and the respondent, which compensation is permitted to
11 include performance other than, or in addition to, payments of money.
12 Restitution shall not include reimbursement for damages for mental
13 anguish, pain and suffering, or other intangible losses. Nothing in
14 this chapter shall limit or replace civil remedies or defenses
15 available to the victim or offender;

16 ~~((22))~~ (23) "Secretary" means the secretary of the department of
17 social and health services. "Assistant secretary" means the assistant
18 secretary for juvenile rehabilitation for the department;

19 ~~((23))~~ (24) "Services" mean services which provide alternatives
20 to incarceration for those juveniles who have pleaded or been
21 adjudicated guilty of an offense or have signed a diversion agreement
22 pursuant to this chapter;

23 ~~((24))~~ (25) "Sex offense" means an offense defined as a sex
24 offense in RCW 9.94A.030;

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

28 ~~((26))~~ (27) "Foster care" means temporary physical care in a
29 foster family home or group care facility as defined in RCW 74.15.020
30 and licensed by the department, or other legally authorized care;

31 ~~((27))~~ (28) "Victim-offender mediation program" has the same
32 definition as in RCW 9.94A.030, except that, for purposes of this
33 chapter, references to "offenders" in that definition are deemed to
34 include a "respondent" as defined in this chapter;

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

38 ~~((28))~~ (30) "Violent offense" means a violent offense as defined
39 in RCW 9.94A.030;

1 (~~(+29+)~~) (31) "Probation bond" means a bond, posted with sufficient
2 security by a surety justified and approved by the court, to secure the
3 offender's appearance at required court proceedings and compliance with
4 court-ordered community supervision or conditions of release ordered
5 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
6 cash or posting of other collateral in lieu of a bond if approved by
7 the court;

8 (~~(+30+)~~) (32) "Surety" means an entity licensed under state
9 insurance laws or by the state department of licensing, to write
10 corporate, property, or probation bonds within the state, and justified
11 and approved by the superior court of the county having jurisdiction of
12 the case.

13 **Sec. 10.** RCW 13.40.135 and 1990 c 3 s 604 are each amended to read
14 as follows:

15 (1) The prosecuting attorney shall file a special allegation of
16 sexual motivation in every juvenile offense other than sex offenses as
17 defined in RCW 9.94A.030(~~(+29+)~~) (34) (a) or (c) when sufficient
18 admissible evidence exists, which, when considered with the most
19 plausible, reasonably consistent defense that could be raised under the
20 evidence, would justify a finding of sexual motivation by a reasonable
21 and objective fact-finder.

22 (2) In a juvenile case wherein there has been a special allegation
23 the state shall prove beyond a reasonable doubt that the juvenile
24 committed the offense with a sexual motivation. The court shall make
25 a finding of fact of whether or not the sexual motivation was present
26 at the time of the commission of the offense. This finding shall not
27 be applied to sex offenses as defined in RCW 9.94A.030(~~(+29+)~~) (34) (a)
28 or (c).

29 (3) The prosecuting attorney shall not withdraw the special
30 allegation of "sexual motivation" without approval of the court through
31 an order of dismissal. The court shall not dismiss the special
32 allegation unless it finds that such an order is necessary to correct
33 an error in the initial charging decision or unless there are
34 evidentiary problems which make proving the special allegation
35 doubtful.

36 **Sec. 11.** RCW 13.40.150 and 1995 c 268 s 5 are each amended to read
37 as follows:

1 (1) In disposition hearings all relevant and material evidence,
2 including oral and written reports, may be received by the court and
3 may be relied upon to the extent of its probative value, even though
4 such evidence may not be admissible in a hearing on the information.
5 The youth or the youth's counsel and the prosecuting attorney shall be
6 afforded an opportunity to examine and controvert written reports so
7 received and to cross-examine individuals making reports when such
8 individuals are reasonably available, but sources of confidential
9 information need not be disclosed. The prosecutor and counsel for the
10 juvenile may submit recommendations for disposition.

11 (2) For purposes of disposition:

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

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

15 (c) In no event may a disposition for a violation include
16 confinement.

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

20 (a) Consider the facts supporting the allegations of criminal
21 conduct by the respondent;

22 (b) Consider information and arguments offered by parties and their
23 counsel;

24 (c) Consider any predisposition reports;

25 (d) Consult with the respondent's parent, guardian, or custodian on
26 the appropriateness of dispositional options under consideration and
27 afford the respondent and the respondent's parent, guardian, or
28 custodian an opportunity to speak in the respondent's behalf;

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

31 (f) Determine the amount of restitution owing to the victim, if
32 any, considering any mediated agreement between a victim and the
33 respondent relating to restitution;

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

36 (h) Consider whether or not any of the following mitigating factors
37 exist:

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

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

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

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

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

13 (i) Consider whether or not any of the following aggravating
14 factors exist:

15 (i) In the commission of the offense, or in flight therefrom, the
16 respondent inflicted or attempted to inflict serious bodily injury to
17 another;

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

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

21 (iv) The respondent has a recent criminal history or has failed to
22 comply with conditions of a recent dispositional order or diversion
23 agreement;

24 (v) The current offense included a finding of sexual motivation
25 pursuant to RCW 13.40.135;

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

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

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

33 (a) The sex of the respondent;

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

35 (c) The creed or religion of the respondent or the respondent's
36 family;

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

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

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

6 **Sec. 12.** RCW 13.40.190 and 1996 c 124 s 2 are each amended to read
7 as follows:

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

34 (2) Regardless of the provisions of subsection (1) of this section,
35 the court shall order restitution in all cases where the victim is
36 entitled to benefits under the crime victims' compensation act, chapter
37 7.68 RCW. If the court does not order restitution and the victim of
38 the crime has been determined to be entitled to benefits under the

1 crime victims' compensation act, the department of labor and
2 industries, as administrator of the crime victims' compensation
3 program, may petition the court within one year of entry of the
4 disposition order for entry of a restitution order. Upon receipt of a
5 petition from the department of labor and industries, the court shall
6 hold a restitution hearing and shall enter a restitution order.

7 (3) If an order includes restitution as one of the monetary
8 assessments, the county clerk shall make disbursements to victims named
9 in the order. The restitution to victims named in the order shall be
10 paid prior to any payment for other penalties or monetary assessments.

11 (4) A respondent under obligation to pay restitution may petition
12 the court for modification of the restitution order.

13 **Sec. 13.** RCW 43.43.754 and 1994 c 271 s 402 are each amended to
14 read as follows:

15 Every adult or juvenile individual convicted of a felony or
16 adjudicated guilty of an equivalent juvenile offense defined as a sex
17 offense under RCW 9.94A.030(~~((+31+))~~) (34)(a) or a violent offense as
18 defined in RCW 9.94A.030 shall have a blood sample drawn for purposes
19 of DNA identification analysis. For persons convicted of such offenses
20 or adjudicated guilty of an equivalent juvenile offense who are serving
21 a term of confinement in a county jail or detention facility, the
22 county shall be responsible for obtaining blood samples prior to
23 release from the county jail or detention facility. For persons
24 convicted of such offenses or adjudicated guilty of an equivalent
25 juvenile offense, who are serving a term of confinement in a department
26 of corrections facility or a division of juvenile rehabilitation
27 facility, the facility holding the person shall be responsible for
28 obtaining blood samples prior to release from such facility. Any blood
29 sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used
30 solely for the purpose of providing DNA or other blood grouping tests
31 for identification analysis and prosecution of a sex offense or a
32 violent offense.

33 This section applies to all adults who are convicted after July 1,
34 1990. This section applies to all juveniles who are adjudicated guilty
35 after July 1, 1994.

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