
SUBSTITUTE SENATE BILL 5352

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Benton and Hargrove)

Read first time 02/20/97.

1 AN ACT Relating to sexual battery; reenacting and amending RCW
2 9.94A.120 and 9.94A.320; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (C) Monitoring plans, including any requirements regarding living
32 conditions, lifestyle requirements, and monitoring by family members
33 and others;

34 (D) Anticipated length of treatment; and

35 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

36 (III) Report as directed to the court and a community corrections
37 officer;

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

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

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

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

28 (v) If a violation of conditions occurs during community custody,
29 the department shall either impose sanctions as provided for in RCW
30 9.94A.205(2)(a) or refer the violation to the court and recommend
31 revocation of the suspended sentence as provided for in (a)(vi) of this
32 subsection.

33 (vi) The court may revoke the suspended sentence at any time during
34 the period of community custody and order execution of the sentence if:
35 (A) The defendant violates the conditions of the suspended sentence, or
36 (B) the court finds that the defendant is failing to make satisfactory
37 progress in treatment. All confinement time served during the period
38 of community custody shall be credited to the offender if the suspended
39 sentence is revoked.

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

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

14 For purposes of this subsection, "victim" means any person who has
15 sustained emotional, psychological, physical, or financial injury to
16 person or property as a result of the crime charged. "Victim" also
17 means a parent or guardian of a victim who is a minor child unless the
18 parent or guardian is the perpetrator of the offense.

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

26 Except for an offender who has been convicted of a violation of RCW
27 9A.44.040 or 9A.44.050, if the offender completes the treatment program
28 before the expiration of his or her term of confinement, the department
29 of corrections may request the court to convert the balance of
30 confinement to community supervision and to place conditions on the
31 offender including crime-related prohibitions and requirements that the
32 offender perform any one or more of the following:

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

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

37 (iii) Report as directed to the court and a community corrections
38 officer;

39 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his or her community
2 supervision, the court may order the offender to serve out the balance
3 of his or her community supervision term in confinement in the custody
4 of the department of corrections.

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

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

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

38 (b) When a court sentences a person to a term of total confinement
39 to the custody of the department of corrections for an offense

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

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

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

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

25 (iv) An offender in community custody shall not unlawfully possess
26 controlled substances;

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

29 (vi) The residence location and living arrangements are subject to
30 the prior approval of the department of corrections during the period
31 of community placement.

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

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

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

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

3 (iv) The offender shall not consume alcohol;

4 (v) The offender shall comply with any crime-related prohibitions;
5 or

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

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

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

25 (b) Unless a condition is waived by the court, the terms of
26 community custody shall be the same as those provided for in subsection
27 (9)(b) of this section and may include those provided for in subsection
28 (9)(c) of this section. As part of any sentence that includes a term
29 of community custody imposed under this subsection, the court shall
30 also require the offender to comply with any conditions imposed by the
31 department of corrections under subsection (14) of this section.

32 (c) At any time prior to the completion of a sex offender's term of
33 community custody, if the court finds that public safety would be
34 enhanced, the court may impose and enforce an order extending any or
35 all of the conditions imposed pursuant to this section for a period up
36 to the maximum allowable sentence for the crime as it is classified in
37 chapter 9A.20 RCW, regardless of the expiration of the offender's term
38 of community custody. If a violation of a condition extended under
39 this subsection occurs after the expiration of the offender's term of

1 community custody, it shall be deemed a violation of the sentence for
2 the purposes of RCW 9.94A.195 and may be punishable as contempt of
3 court as provided for in RCW 7.21.040.

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

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

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

35 (14) All offenders sentenced to terms involving community
36 supervision, community service, community placement, or legal financial
37 obligation shall be under the supervision of the department of
38 corrections and shall follow explicitly the instructions and conditions
39 of the department of corrections.

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

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

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

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

1 (16) The sentencing court shall give the offender credit for all
2 confinement time served before the sentencing if that confinement was
3 solely in regard to the offense for which the offender is being
4 sentenced.

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

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

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

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

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

32 (22)(a) If the offense is not one for which the conviction results
33 in the offender's being a persistent offender, the court shall, at the
34 time of sentencing, impose as a condition of release such treatment,
35 including the use of medroxyprogesterone acetate together with any
36 other mental health or chemical dependency treatment, as the court
37 finds appropriate to reduce the likelihood of the offender's commission
38 of a subsequent sex offense upon release, for any of the following
39 offenses:

1 (i) Rape in the first degree;
2 (ii) Rape in the second degree;
3 (iii) Rape of a child in the first degree; and
4 (iv) Child molestation in the first degree, if it is the person's
5 second conviction for child molestation in the first degree.

6 (b)(i) At least thirty days before the department sets a release
7 date for an offender who has had a treatment regimen imposed as a
8 condition of release under (a) of this subsection, the offender must be
9 brought back before the court for a hearing, including an examination
10 by medical experts, for the purpose of determining whether to impose
11 the regimen. At the hearing, the offender has the right to all due
12 process rights including counsel, cross-examination, testimony,
13 experts, and the provision of counsel if the offender is indigent, but
14 not the presence of a jury.

15 (ii) At the hearing under (b)(i) of this subsection, the court
16 shall determine, by a preponderance of the evidence, whether a proposed
17 treatment regimen, including treatment with medroxyprogesterone
18 acetate, makes it likely that the regimen will reduce the chance that
19 the offender will commit a sex offense upon release. In making its
20 determination, the court shall consider:

21 (A) Whether the offender has a mental abnormality as defined in RCW
22 71.09.020;

23 (B) Whether the offender is likely to engage in predatory acts, as
24 defined in RCW 71.09.020, if the regimen is not required; and

25 (C) Whether the regimen is likely to decrease the offender's
26 likelihood to engage in predatory acts, as defined in RCW 71.09.020.

27 (c) If the court decides that the offender and the treatment
28 regimen meet the criteria in (b) of this subsection, the court shall
29 impose the requirement of the treatment regimen as a condition of
30 release and the treatment must begin before the release of the
31 offender. The court may set the treatment regimen period for as long
32 as the court finds it necessary. If the court decides that the
33 criteria are not met, then the court shall suspend the imposition of
34 the treatment regimen, but may reimpose it if, following a hearing, the
35 court finds the offender meets the criteria in (b)(ii) of this
36 subsection. The offender, to the extent private resources are
37 available, shall bear the cost of the treatment regimen.

1 (d) Imposition and successful use of the treatment regimen shall in
2 no way otherwise reduce the time in confinement an offender would
3 otherwise serve.

4 (e) The court may require the offender to return at any time in
5 order for the court to monitor the progress and effect of the treatment
6 regimen.

7 (f) An offender may appeal any determination made under this
8 subsection, but a determination under this subsection is of record and
9 the offender shall continue any treatment regimen imposed under this
10 subsection pending a decision on the appeal.

11 (g) An offender may at any time seek early termination of a
12 treatment regimen imposed under this subsection, but an early
13 termination may not be granted unless, by clear and convincing
14 evidence, the offender proves that the offender no longer has a mental
15 abnormality, as defined in RCW 71.09.020, and that a continued
16 treatment regimen is not necessary to prevent the offender's commission
17 of a predatory act, as defined in RCW 71.09.020.

18 (h) The offender may at any time agree to surgical alternatives to
19 medroxyprogesterone acetate treatment if the offender voluntarily,
20 knowingly, and intelligently petitions the court in writing.

21 (i) An offender who unlawfully stops treatment imposed under this
22 subsection is guilty of a class B felony.

23 **Sec. 2.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996
24 c 36 s 2 are each reenacted and amended to read as follows:

25 TABLE 2

26 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

27	XV	Aggravated Murder 1 (RCW 10.95.020)
28	XIV	Murder 1 (RCW 9A.32.030)
29		Homicide by abuse (RCW 9A.32.055)
30	XIII	Murder 2 (RCW 9A.32.050)
31	XII	Assault 1 (RCW 9A.36.011)
32		Assault of a Child 1 (RCW 9A.36.120)
33	XI	Rape 1 (RCW 9A.44.040)
34		Rape of a Child 1 (RCW 9A.44.073)

1 X Kidnapping 1 (RCW 9A.40.020)
2 Rape 2 (RCW 9A.44.050)
3 Rape of a Child 2 (RCW 9A.44.076)
4 Child Molestation 1 (RCW 9A.44.083)
5 Damaging building, etc., by explosion with
6 threat to human being (RCW
7 70.74.280(1))
8 Over 18 and deliver heroin or narcotic from
9 Schedule I or II to someone under 18
10 (RCW 69.50.406)
11 Leading Organized Crime (RCW
12 9A.82.060(1)(a))
13 IX Assault of a Child 2 (RCW 9A.36.130)
14 Robbery 1 (RCW 9A.56.200)
15 Manslaughter 1 (RCW 9A.32.060)
16 Explosive devices prohibited (RCW
17 70.74.180)
18 Indecent Liberties (with forcible
19 compulsion) (RCW 9A.44.100(1)(a))
20 Endangering life and property by explosives
21 with threat to human being (RCW
22 70.74.270)
23 Over 18 and deliver narcotic from Schedule
24 III, IV, or V or a nonnarcotic from
25 Schedule I-V to someone under 18 and 3
26 years junior (RCW 69.50.406)
27 Controlled Substance Homicide (RCW
28 69.50.415)
29 Sexual Exploitation (RCW 9.68A.040)
30 Inciting Criminal Profiteering (RCW
31 9A.82.060(1)(b))
32 Vehicular Homicide, by being under the
33 influence of intoxicating liquor or
34 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)
2 Promoting Prostitution 1 (RCW 9A.88.070)
3 Selling for profit (controlled or
4 counterfeit) any controlled substance
5 (RCW 69.50.410)
6 Manufacture, deliver, or possess with
7 intent to deliver heroin or cocaine
8 (RCW 69.50.401(a)(1)(i))
9 Manufacture, deliver, or possess with
10 intent to deliver methamphetamine (RCW
11 69.50.401(a)(1)(ii))
12 Possession of ephedrine or pseudoephedrine
13 with intent to manufacture
14 methamphetamine (RCW 69.50.440)
15 Vehicular Homicide, by the operation of any
16 vehicle in a reckless manner (RCW
17 46.61.520)

18 VII Burglary 1 (RCW 9A.52.020)
19 Vehicular Homicide, by disregard for the
20 safety of others (RCW 46.61.520)
21 Introducing Contraband 1 (RCW 9A.76.140)
22 Indecent Liberties (without forcible
23 compulsion) (RCW 9A.44.100(1) (b) and
24 (c))
25 Child Molestation 2 (RCW 9A.44.086)
26 Dealing in depictions of minor engaged in
27 sexually explicit conduct (RCW
28 9.68A.050)
29 Sending, bringing into state depictions of
30 minor engaged in sexually explicit
31 conduct (RCW 9.68A.060)
32 Involving a minor in drug dealing (RCW
33 69.50.401(f))
34 Reckless Endangerment 1 (RCW 9A.36.045)
35 Unlawful Possession of a Firearm in the
36 first degree (RCW 9.41.040(1)(a))

1 VI Bribery (RCW 9A.68.010)
2 Manslaughter 2 (RCW 9A.32.070)
3 Rape of a Child 3 (RCW 9A.44.079)
4 Intimidating a Juror/Witness (RCW
5 9A.72.110, 9A.72.130)
6 Damaging building, etc., by explosion with
7 no threat to human being (RCW
8 70.74.280(2))
9 Endangering life and property by explosives
10 with no threat to human being (RCW
11 70.74.270)
12 Incest 1 (RCW 9A.64.020(1))
13 Manufacture, deliver, or possess with
14 intent to deliver narcotics from
15 Schedule I or II (except heroin or
16 cocaine) (RCW 69.50.401(a)(1)(i))
17 Intimidating a Judge (RCW 9A.72.160)
18 Bail Jumping with Murder 1 (RCW
19 9A.76.170(2)(a))
20 Theft of a Firearm (RCW 9A.56.300)

21 V Persistent prison misbehavior (RCW
22 9.94.070)
23 Criminal Mistreatment 1 (RCW 9A.42.020)
24 Abandonment of dependent person 1 (RCW
25 9A.42.060)
26 Rape 3 (RCW 9A.44.060)
27 Sexual Misconduct with a Minor 1 (RCW
28 9A.44.093)
29 Child Molestation 3 (RCW 9A.44.089)
30 Kidnapping 2 (RCW 9A.40.030)
31 Extortion 1 (RCW 9A.56.120)
32 Incest 2 (RCW 9A.64.020(2))
33 Perjury 1 (RCW 9A.72.020)
34 Extortionate Extension of Credit (RCW
35 9A.82.020)
36 Advancing money or property for
37 extortionate extension of credit (RCW
38 9A.82.030)

1 Extortionate Means to Collect Extensions of
2 Credit (RCW 9A.82.040)
3 Rendering Criminal Assistance 1 (RCW
4 9A.76.070)
5 Bail Jumping with class A Felony (RCW
6 9A.76.170(2)(b))
7 Sexually Violating Human Remains (RCW
8 9A.44.105)
9 Delivery of imitation controlled substance
10 by person eighteen or over to person
11 under eighteen (RCW 69.52.030(2))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)
14 Unlawful termination of sex offender
15 reoffense reduction treatment (RCW
16 9.94A.120(22))

17 IV Residential Burglary (RCW 9A.52.025)
18 Theft of Livestock 1 (RCW 9A.56.080)
19 Robbery 2 (RCW 9A.56.210)
20 Assault 2 (RCW 9A.36.021)
21 Escape 1 (RCW 9A.76.110)
22 Arson 2 (RCW 9A.48.030)
23 Commercial Bribery (RCW 9A.68.060)
24 Bribing a Witness/Bribe Received by Witness
25 (RCW 9A.72.090, 9A.72.100)
26 Malicious Harassment (RCW 9A.36.080)
27 Threats to Bomb (RCW 9.61.160)
28 Willful Failure to Return from Furlough
29 (RCW 72.66.060)
30 Hit and Run -- Injury Accident (RCW
31 46.52.020(4))
32 Hit and Run with Vessel -- Injury Accident
33 (RCW 88.12.155(3))
34 Vehicular Assault (RCW 46.61.522)

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule III, IV, or V or nonnarcotics
4 from Schedule I-V (except marijuana or
5 methamphetamines) (RCW 69.50.401(a)(1)
6 (iii) through (v))
7 Influencing Outcome of Sporting Event (RCW
8 9A.82.070)
9 Use of Proceeds of Criminal Profiteering
10 (RCW 9A.82.080 (1) and (2))
11 Knowingly Trafficking in Stolen Property
12 (RCW 9A.82.050(2))
13 III Criminal Mistreatment 2 (RCW 9A.42.030)
14 Abandonment of dependent person 2 (RCW
15 9A.42.070)
16 Extortion 2 (RCW 9A.56.130)
17 Unlawful Imprisonment (RCW 9A.40.040)
18 Assault 3 (RCW 9A.36.031)
19 Assault of a Child 3 (RCW 9A.36.140)
20 Custodial Assault (RCW 9A.36.100)
21 Unlawful possession of firearm in the
22 second degree (RCW 9.41.040(1)(b))
23 Harassment (RCW 9A.46.020)
24 Promoting Prostitution 2 (RCW 9A.88.080)
25 Willful Failure to Return from Work Release
26 (RCW 72.65.070)
27 Burglary 2 (RCW 9A.52.030)
28 Introducing Contraband 2 (RCW 9A.76.150)
29 Communication with a Minor for Immoral
30 Purposes (RCW 9.68A.090)
31 Patronizing a Juvenile Prostitute (RCW
32 9.68A.100)
33 Escape 2 (RCW 9A.76.120)
34 Perjury 2 (RCW 9A.72.030)
35 Bail Jumping with class B or C Felony (RCW
36 9A.76.170(2)(c))
37 Intimidating a Public Servant (RCW
38 9A.76.180)
39 Tampering with a Witness (RCW 9A.72.120)

1 Manufacture, deliver, or possess with
2 intent to deliver marijuana (RCW
3 69.50.401(a)(1)(iii))
4 Delivery of a material in lieu of a
5 controlled substance (RCW
6 69.50.401(c))
7 Manufacture, distribute, or possess with
8 intent to distribute an imitation
9 controlled substance (RCW
10 69.52.030(1))
11 Recklessly Trafficking in Stolen Property
12 (RCW 9A.82.050(1))
13 Theft of livestock 2 (RCW 9A.56.080)
14 Securities Act violation (RCW 21.20.400)

15 II Unlawful Practice of Law (RCW 2.48.180)
16 Malicious Mischief 1 (RCW 9A.48.070)
17 Possession of Stolen Property 1 (RCW
18 9A.56.150)
19 Theft 1 (RCW 9A.56.030)
20 Trafficking in Insurance Claims (RCW
21 48.30A.015)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Health Care False Claims (RCW 48.80.030)
25 Possession of controlled substance that is
26 either heroin or narcotics from
27 Schedule I or II (RCW 69.50.401(d))
28 Possession of phencyclidine (PCP) (RCW
29 69.50.401(d))
30 Create, deliver, or possess a counterfeit
31 controlled substance (RCW
32 69.50.401(b))
33 Computer Trespass 1 (RCW 9A.52.110)
34 Escape from Community Custody (RCW
35 72.09.310)

36 I Theft 2 (RCW 9A.56.040)
37 Possession of Stolen Property 2 (RCW
38 9A.56.160)

1 Forgery (RCW 9A.60.020)
2 Taking Motor Vehicle Without Permission
3 (RCW 9A.56.070)
4 Vehicle Prowl 1 (RCW 9A.52.095)
5 Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 Malicious Mischief 2 (RCW 9A.48.080)
8 Reckless Burning 1 (RCW 9A.48.040)
9 Unlawful Issuance of Checks or Drafts (RCW
10 9A.56.060)
11 Unlawful Use of Food Stamps (RCW 9.91.140
12 (2) and (3))
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forged Prescription (RCW 69.41.020)
16 Forged Prescription for a Controlled
17 Substance (RCW 69.50.403)
18 Possess Controlled Substance that is a
19 Narcotic from Schedule III, IV, or V
20 or Non-narcotic from Schedule I-V
21 (except phencyclidine) (RCW
22 69.50.401(d))

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