
SUBSTITUTE HOUSE BILL 2490

State of Washington

52nd Legislature

1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Padden, Morris, D. Sommers, Hochstatter, Forner, Brough, Broback, Silver, Fuhrman, Horn, P. Johnson, Bowman, Wynne, Morton, Carlson, Chandler, Mitchell and Tate)

Read first time 02/07/92.

1 AN ACT Relating to escape from community placement or community
2 supervision; amending RCW 9.94A.320, 9.94A.360, 9.94A.440, and
3 72.09.310; reenacting and amending RCW 9.94A.030 and 9.94A.120; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and 1991
7 c 181 s 1 are each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Collect," or any derivative thereof, "collect and remit," or
11 "collect and deliver," when used with reference to the department of
12 corrections, means that the department is responsible for monitoring
13 and enforcing the offender's sentence with regard to the legal
14 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

4 (3) "Community corrections officer" means an employee of the
5 department who is responsible for carrying out specific duties in
6 supervision of sentenced offenders and monitoring of sentence
7 conditions.

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

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

19 (6) "Community service" means compulsory service, without
20 compensation, performed for the benefit of the community by the
21 offender.

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

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

3 (9) "Conviction" means an adjudication of guilt pursuant to Titles
4 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
5 acceptance of a plea of guilty.

6 (10) "Court-ordered legal financial obligation" means a sum of
7 money that is ordered by a superior court of the state of Washington
8 for legal financial obligations which may include restitution to the
9 victim, statutorily imposed crime victims' compensation fees as
10 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
11 drug funds, court-appointed attorneys' fees, and costs of defense,
12 fines, and any other financial obligation that is assessed to the
13 offender as a result of a felony conviction.

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

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

26 (b) "Criminal history" shall always include juvenile convictions
27 for sex offenses and shall also include a defendant's other prior
28 convictions in juvenile court if: (i) The conviction was for an
29 offense which is a felony or a serious traffic offense and is criminal
30 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was

1 fifteen years of age or older at the time the offense was committed;
2 and (iii) with respect to prior juvenile class B and C felonies or
3 serious traffic offenses, the defendant was less than twenty-three
4 years of age at the time the offense for which he or she is being
5 sentenced was committed.

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

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

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

27 (16) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession of
29 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
30 controlled substance (RCW 69.50.403);

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

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

7 (17) "Escape" means:

8 (a) Escape in the first degree (RCW 9A.76.110), escape in the
9 second degree (RCW 9A.76.120), willful failure to return from furlough
10 (RCW 72.66.060), willful failure to return from work release (RCW
11 72.65.070), or willful failure to ~~((comply with any limitations on the
12 inmate's movements))~~ be available for supervision by the department
13 while in community custody (RCW 72.09.310); or

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

17 (18) "Felony traffic offense" means:

18 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
19 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
20 and-run injury-accident (RCW 46.52.020(4)); or

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

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

26 (20)(a) "First-time offender" means any person who is convicted of
27 a felony (i) not classified as a violent offense or a sex offense under
28 this chapter, or (ii) that is not the manufacture, delivery, or
29 possession with intent to manufacture or deliver a controlled substance
30 classified in schedule I or II that is a narcotic drug or the selling

1 for profit [of] any controlled substance or counterfeit substance
2 classified in schedule I, RCW 69.50.204, except leaves and flowering
3 tops of marihuana, and except as provided in (b) of this subsection,
4 who previously has never been convicted of a felony in this state,
5 federal court, or another state, and who has never participated in a
6 program of deferred prosecution for a felony offense.

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

10 (21) "Nonviolent offense" means an offense which is not a violent
11 offense.

12 (22) "Offender" means a person who has committed a felony
13 established by state law and is eighteen years of age or older or is
14 less than eighteen years of age but whose case has been transferred by
15 the appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (23) "Partial confinement" means confinement for no more than one
19 year in a facility or institution operated or utilized under contract
20 by the state or any other unit of government, or, if home detention or
21 work crew has been ordered by the court, in an approved residence, for
22 a substantial portion of each day with the balance of the day spent in
23 the community. Partial confinement includes work release, home
24 detention, work crew, and a combination of work crew and home detention
25 as defined in this section.

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

28 (25) "Restitution" means the requirement that the offender pay a
29 specific sum of money over a specific period of time to the court as

1 payment of damages. The sum may include both public and private costs.
2 The imposition of a restitution order does not preclude civil redress.

3 (26) "Serious traffic offense" means:

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

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

12 (27) "Serious violent offense" is a subcategory of violent offense
13 and means:

14 (a) Murder in the first degree, homicide by abuse, murder in the
15 second degree, assault in the first degree, kidnapping in the first
16 degree, or rape in the first degree, or an attempt, criminal
17 solicitation, or criminal conspiracy to commit one of these felonies;
18 or

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

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

24 (29) "Sex offense" means:

25 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
26 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
27 attempt, criminal solicitation, or criminal conspiracy to commit such
28 crimes;

29 (b) A felony with a finding of sexual motivation under RCW
30 9.94A.127; or

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

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

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

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

14 (33) "Violent offense" means:

15 (a) Any of the following felonies, as now existing or hereafter
16 amended: Any felony defined under any law as a class A felony or an
17 attempt to commit a class A felony, criminal solicitation of or
18 criminal conspiracy to commit a class A felony, manslaughter in the
19 first degree, manslaughter in the second degree, indecent liberties if
20 committed by forcible compulsion, kidnapping in the second degree,
21 arson in the second degree, assault in the second degree, extortion in
22 the first degree, robbery in the second degree, vehicular assault, and
23 vehicular homicide, when proximately caused by the driving of any
24 vehicle by any person while under the influence of intoxicating liquor
25 or any drug as defined by RCW 46.61.502, or by the operation of any
26 vehicle in a reckless manner;

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

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

4 (34) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community of not less
6 than thirty-five hours per week that complies with RCW 9.94A.135. The
7 civic improvement tasks shall be performed on public property or on
8 private property owned or operated by nonprofit entities, except that,
9 for emergency purposes only, work crews may perform snow removal on any
10 private property. The civic improvement tasks shall have minimal
11 negative impact on existing private industries or the labor force in
12 the county where the service or labor is performed. The civic
13 improvement tasks shall not affect employment opportunities for people
14 with developmental disabilities contracted through sheltered workshops
15 as defined in RCW 82.04.385. Only those offenders sentenced to a
16 facility operated or utilized under contract by a county are eligible
17 to participate on a work crew. Offenders sentenced for a sex offense
18 as defined in subsection (29) of this section are not eligible for the
19 work crew program.

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

25 (36) "Home detention" means a program of partial confinement
26 available to offenders wherein the offender is confined in a private
27 residence subject to electronic surveillance. Home detention may not
28 be imposed for offenders convicted of a violent offense, any sex
29 offense, any drug offense, reckless burning in the first or second
30 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third

1 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
2 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
3 detention may be imposed for offenders convicted of possession of a
4 controlled substance (RCW 69.50.401(d)) or forged prescription for a
5 controlled substance (RCW 69.50.403) if the offender fulfills the
6 participation conditions set forth in this subsection and is monitored
7 for drug use by treatment alternatives to street crime (TASC) or a
8 comparable court or agency-referred program.

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

20 (b) Participation in a home detention program shall be conditioned
21 upon: (i) The offender obtaining or maintaining current employment or
22 attending a regular course of school study at regularly defined hours,
23 or the offender performing parental duties to offspring or minors
24 normally in the custody of the offender, (ii) abiding by the rules of
25 the home detention program, and (iii) compliance with court-ordered
26 legal financial obligations. The home detention program may also be
27 made available to offenders whose charges and convictions do not
28 otherwise disqualify them if medical or health-related conditions,
29 concerns or treatment would be better addressed under the home
30 detention program, or where the health and welfare of the offender,

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

6 **Sec. 2.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991
7 c 104 s 3 are each reenacted and amended to read as follows:

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

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

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

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

21 (4) An offender convicted of the crime of murder in the first
22 degree shall be sentenced to a term of total confinement not less than
23 twenty years. An offender convicted of the crime of assault in the
24 first degree where the offender used force or means likely to result in
25 death or intended to kill the victim shall be sentenced to a term of
26 total confinement not less than five years. An offender convicted of
27 the crime of rape in the first degree shall be sentenced to a term of
28 total confinement not less than five years, and shall not be eligible
29 for furlough, work release or other authorized leave of absence from

1 the correctional facility during such minimum five-year term except for
2 the purpose of commitment to an inpatient treatment facility. The
3 foregoing minimum terms of total confinement are mandatory and shall
4 not be varied or modified as provided in subsection (2) of this
5 section.

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

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

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

19 (c) Pursue a prescribed, secular course of study or vocational
20 training;

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

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

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

28 (6) If a sentence range has not been established for the
29 defendant's crime, the court shall impose a determinate sentence which
30 may include not more than one year of confinement, community service

1 work, a term of community supervision not to exceed one year, and/or
2 other legal financial obligations. The court may impose a sentence
3 which provides more than one year of confinement if the court finds,
4 considering the purpose of this chapter, that there are substantial and
5 compelling reasons justifying an exceptional sentence.

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

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

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

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

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

26 (C) Monitoring plans, including any requirements regarding living
27 conditions, lifestyle requirements, and monitoring by family members
28 and others;

29 (D) Anticipated length of treatment; and

30 (E) Recommended crime-related prohibitions.

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

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

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

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

1 not to exceed the sentence range of confinement for that offense,
2 crime-related prohibitions, and requirements that the offender perform
3 any one or more of the following:

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

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

8 (III) Report as directed to the court and a community corrections
9 officer;

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

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

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

22 (iv) At the time of sentencing, the court shall set a treatment
23 termination hearing for three months prior to the anticipated date for
24 completion of treatment. Prior to the treatment termination hearing,
25 the treatment professional and community corrections officer shall
26 submit written reports to the court and parties regarding the
27 defendant's compliance with treatment and monitoring requirements, and
28 recommendations regarding termination from treatment, including
29 proposed community supervision conditions. Either party may request
30 and the court may order another evaluation regarding the advisability

1 of termination from treatment. The defendant shall pay the cost of any
2 additional evaluation ordered unless the court finds the defendant to
3 be indigent in which case the state shall pay the cost. At the
4 treatment termination hearing the court may: (A) Modify conditions of
5 community supervision, and either (B) terminate treatment, or (C)
6 extend treatment for up to the remaining period of community
7 supervision.

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

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

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 is convicted of any felony sex offense
25 committed before July 1, 1987, and is sentenced to a term of
26 confinement of more than one year but less than six years, the
27 sentencing court may, on its own motion or on the motion of the
28 offender or the state, order the offender committed for up to thirty
29 days to the custody of the secretary of social and health services for
30 evaluation and report to the court on the offender's amenability to

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

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

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

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

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

29 (iii) Report as directed to the court and a community corrections
30 officer;

1 (iv) Undergo available outpatient treatment.

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

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

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

15 Except for an offender who has been convicted of a violation of RCW
16 9A.44.040 or 9A.44.050, if the offender completes the treatment program
17 before the expiration of his term of confinement, the department of
18 corrections may request the court to convert the balance of confinement
19 to community supervision and to place conditions on the offender
20 including crime-related prohibitions and requirements that the offender
21 perform any one or more of the following:

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

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

26 (iii) Report as directed to the court and a community corrections
27 officer;

28 (iv) Undergo available outpatient treatment.

29 If the offender violates any of the terms of his community
30 supervision, the court may order the offender to serve out the balance

1 of his community supervision term in confinement in the custody of the
2 department of corrections.

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

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

15 (8)(a) When a court sentences a person to a term of total
16 confinement to the custody of the department of corrections for an
17 offense categorized as a sex offense or a serious violent offense
18 committed after July 1, 1988, but before July 1, 1990, assault in the
19 second degree, any crime against a person where it is determined in
20 accordance with RCW 9.94A.125 that the defendant or an accomplice was
21 armed with a deadly weapon at the time of commission, or any felony
22 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
23 1988, the court shall in addition to the other terms of the sentence,
24 sentence the offender to a one-year term of community placement
25 beginning either upon completion of the term of confinement or at such
26 time as the offender is transferred to community custody in lieu of
27 earned early release in accordance with RCW 9.94A.150 (1) and (2).
28 When the court sentences an offender under this subsection to the
29 statutory maximum period of confinement then the community placement
30 portion of the sentence shall consist entirely of such community

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

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

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

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

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

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

5 (c) The court may also order any of the following special
6 conditions:

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

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

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

13 (iv) The offender shall not consume alcohol;

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

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

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

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

28 (10) If a sentence imposed includes payment of a legal financial
29 obligation, the sentence shall specify the total amount of the legal
30 financial obligation owed, and shall require the offender to pay a

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

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

23 (12) All offenders sentenced to terms involving community
24 supervision, community service, community placement, or legal financial
25 obligation shall be under the supervision of the secretary of the
26 department of corrections or such person as the secretary may designate
27 and shall follow explicitly the instructions of the secretary including
28 reporting as directed to a community corrections officer, remaining
29 within prescribed geographical boundaries, notifying the community

1 corrections officer of any change in the offender's address or
2 employment, and paying the supervision fee assessment.

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

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

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

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

29 (17) 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

1 the offender has been convicted, prohibiting the offender from having
2 any contact with other specified individuals or a specific class of
3 individuals for a period not to exceed the maximum allowable sentence
4 for the crime, regardless of the expiration of the offender's term of
5 community supervision or community placement.

6 (18) In any sentence of partial confinement, the court may require
7 the defendant to serve the partial confinement in work release, in a
8 program of home detention, on work crew, or in a combined program of
9 work crew and home detention.

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

14 **Sec. 3.** RCW 9.94A.320 and 1991 c 32 s 3 are each amended to read
15 as follows:

16 TABLE 2

17
18 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

19 XV Aggravated Murder 1 (RCW 10.95.020)

20 XIV Murder 1 (RCW 9A.32.030)

21 Homicide by abuse (RCW 9A.32.055)

22 XIII Murder 2 (RCW 9A.32.050)

23 XII Assault 1 (RCW 9A.36.011)

1 XI Rape 1 (RCW 9A.44.040)
2 Rape of a Child 1 (RCW 9A.44.073)

3 X Kidnapping 1 (RCW 9A.40.020)
4 Rape 2 (RCW 9A.44.050)
5 Rape of a Child 2 (RCW 9A.44.076)
6 Child Molestation 1 (RCW 9A.44.083)
7 Damaging building, etc., by explosion with threat to human
8 being (RCW 70.74.280(1))
9 Over 18 and deliver heroin or narcotic from Schedule I or
10 II to someone under 18 (RCW 69.50.406)
11 Leading Organized Crime (RCW 9A.82.060(1)(a))

12 IX Robbery 1 (RCW 9A.56.200)
13 Manslaughter 1 (RCW 9A.32.060)
14 Explosive devices prohibited (RCW 70.74.180)
15 Indecent Liberties (with forcible compulsion) (RCW
16 9A.44.100(1)(a))
17 Endangering life and property by explosives with threat
18 to human being (RCW 70.74.270)
19 Over 18 and deliver narcotic from Schedule III, IV, or V or
20 a nonnarcotic from Schedule I-V to someone under 18 and
21 3 years junior (RCW 69.50.406)
22 Controlled Substance Homicide (RCW 69.50.415)
23 Sexual Exploitation (RCW 9.68A.040)
24 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

25 VIII Arson 1 (RCW 9A.48.020)
26 Promoting Prostitution 1 (RCW 9A.88.070)
27 Selling for profit (controlled or counterfeit) any

1 controlled substance (RCW 69.50.410)
2 Manufacture, deliver, or possess with intent to deliver
3 heroin or cocaine (RCW 69.50.401(a)(1)(i))
4 Manufacture, deliver, or possess with intent to deliver
5 methamphetamine (RCW 69.50.401(a)(1)(ii))
6 Vehicular Homicide, by being under the influence of
7 intoxicating liquor or any drug or by the operation of
8 any vehicle in a reckless manner (RCW 46.61.520)

9 VII Burglary 1 (RCW 9A.52.020)
10 Vehicular Homicide, by disregard for the safety of others
11 (RCW 46.61.520)
12 Introducing Contraband 1 (RCW 9A.76.140)
13 Indecent Liberties (without forcible compulsion)
14 (RCW 9A.44.100(1) (b) and (c))
15 Child Molestation 2 (RCW 9A.44.086)
16 Dealing in depictions of minor engaged in sexually
17 explicit conduct (RCW 9.68A.050)
18 Sending, bringing into state depictions of minor
19 engaged in sexually explicit conduct (RCW 9.68A.060)
20 Involving a minor in drug dealing (RCW 69.50.401(f))

21 VI Bribery (RCW 9A.68.010)
22 Manslaughter 2 (RCW 9A.32.070)
23 Rape of a Child 3 (RCW 9A.44.079)
24 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
25 Damaging building, etc., by explosion with no threat to
26 human being (RCW 70.74.280(2))
27 Endangering life and property by explosives with no
28 threat to human being (RCW 70.74.270)

1 Incest 1 (RCW 9A.64.020(1))
2 Manufacture, deliver, or possess with intent to deliver
3 narcotics from Schedule I or II (except heroin or cocaine)
4 (RCW 69.50.401(a)(1)(i))
5 Intimidating a Judge (RCW 9A.72.160)
6 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))

7 V Criminal Mistreatment 1 (RCW 9A.42.020)
8 Rape 3 (RCW 9A.44.060)
9 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
10 Child Molestation 3 (RCW 9A.44.089)
11 Kidnapping 2 (RCW 9A.40.030)
12 Extortion 1 (RCW 9A.56.120)
13 Incest 2 (RCW 9A.64.020(2))
14 Perjury 1 (RCW 9A.72.020)
15 Extortionate Extension of Credit (RCW 9A.82.020)
16 Advancing money or property for extortionate extension of
17 credit (RCW 9A.82.030)
18 Extortionate Means to Collect Extensions of Credit (RCW
19 9A.82.040)
20 Rendering Criminal Assistance 1 (RCW 9A.76.070)
21 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
22 Delivery of imitation controlled substance by person
23 eighteen or over to person under eighteen (RCW
24 69.52.030(2))

25 IV Residential Burglary (RCW 9A.52.025)
26 Theft of Livestock 1 (RCW 9A.56.080)
27 Robbery 2 (RCW 9A.56.210)
28 Assault 2 (RCW 9A.36.021)

1 Escape 1 (RCW 9A.76.110)
2 Arson 2 (RCW 9A.48.030)
3 Bribing a Witness/Bribe Received by Witness
4 (RCW 9A.72.090, 9A.72.100)
5 Malicious Harassment (RCW 9A.36.080)
6 Threats to Bomb (RCW 9.61.160)
7 Willful Failure to Return from Furlough (RCW 72.66.060)
8 Hit and Run -- Injury Accident (RCW 46.52.020(4))
9 Vehicular Assault (RCW 46.61.522)
10 Manufacture, deliver, or possess with intent to deliver
11 narcotics from Schedule III, IV, or V or nonnarcotics
12 from Schedule I-V (except marijuana or methamphetamines)
13 (RCW 69.50.401(a)(1)(ii) through (iv))
14 Influencing Outcome of Sporting Event (RCW 9A.82.070)
15 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080
16 (1) and (2))
17 Knowingly Trafficking in Stolen Property (RCW
18 9A.82.050(2))

19 III Criminal mistreatment 2 (RCW 9A.42.030)
20 Extortion 2 (RCW 9A.56.130)
21 Unlawful Imprisonment (RCW 9A.40.040)
22 Assault 3 (RCW 9A.36.031)
23 Custodial Assault (RCW 9A.36.100)
24 Unlawful possession of firearm or pistol by felon (RCW
25 9.41.040)
26 Harassment (RCW 9A.46.020)
27 Promoting Prostitution 2 (RCW 9A.88.080)
28 Willful Failure to Return from Work Release (RCW
29 72.65.070)

1 Burglary 2 (RCW 9A.52.030)
2 Introducing Contraband 2 (RCW 9A.76.150)
3 Communication with a Minor for Immoral Purposes (RCW
4 9.68A.090)
5 Patronizing a Juvenile Prostitute (RCW 9.68A.100)
6 Escape 2 (RCW 9A.76.120)
7 Perjury 2 (RCW 9A.72.030)
8 Bail Jumping with class B or C Felony (RCW
9 9A.76.170(2)(c))
10 Intimidating a Public Servant (RCW 9A.76.180)
11 Tampering with a Witness (RCW 9A.72.120)
12 Manufacture, deliver, or possess with intent to deliver
13 marijuana (RCW 69.50.401(a)(1)(ii))
14 Delivery of a material in lieu of a controlled substance
15 (RCW 69.50.401(c))
16 Manufacture, distribute, or possess with intent to
17 distribute an imitation controlled substance (RCW
18 69.52.030(1))
19 Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
20 Theft of livestock 2 (RCW 9A.56.080)
21 Securities Act violation (RCW 21.20.400)

22 II Malicious Mischief 1 (RCW 9A.48.070)
23 Possession of Stolen Property 1 (RCW 9A.56.150)
24 Theft 1 (RCW 9A.56.030)
25 Possession of controlled substance that is either heroin
26 or narcotics from Schedule I or II (RCW 69.50.401(d))
27 Possession of phencyclidine (PCP) (RCW 69.50.401(d))
28 Create, deliver, or possess a counterfeit controlled
29 substance (RCW 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Reckless Endangerment 1 (RCW 9A.36.045)
3 Escape from Community Custody
4 (RCW 72.09.310)
5 I Theft 2 (RCW 9A.56.040)
6 Possession of Stolen Property 2 (RCW 9A.56.160)
7 Forgery (RCW 9A.60.020)
8 Taking Motor Vehicle Without Permission (RCW 9A.56.070)
9 Vehicle Prowl 1 (RCW 9A.52.095)
10 Attempting to Elude a Pursuing Police Vehicle (RCW
11 46.61.024)
12 Malicious Mischief 2 (RCW 9A.48.080)
13 Reckless Burning 1 (RCW 9A.48.040)
14 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
15 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
16 False Verification for Welfare (RCW 74.08.055)
17 Forged Prescription (RCW 69.41.020)
18 Forged Prescription for a Controlled Substance (RCW
19 69.50.403)
20 Possess Controlled Substance that is a Narcotic from
21 Schedule III, IV, or V or Non-narcotic from Schedule
22 I-V (except phencyclidine) (RCW 69.50.401(d))

23 **Sec. 4.** RCW 9.94A.360 and 1990 c 3 s 706 are each amended to read
24 as follows:

25 The offender score is measured on the horizontal axis of the
26 sentencing grid. The offender score rules are as follows:

27 The offender score is the sum of points accrued under this section
28 rounded down to the nearest whole number.

1 (1) A prior conviction is a conviction which exists before the date
2 of sentencing for the offense for which the offender score is being
3 computed. Convictions entered or sentenced on the same date as the
4 conviction for which the offender score is being computed shall be
5 deemed "other current offenses" within the meaning of RCW 9.94A.400.

6 (2) Except as provided in subsection (4) of this section, class A
7 and sex prior felony convictions shall always be included in the
8 offender score. Class B prior felony convictions other than sex
9 offenses shall not be included in the offender score, if since the last
10 date of release from confinement (including full-time residential
11 treatment) pursuant to a felony conviction, if any, or entry of
12 judgment and sentence, the offender had spent ten consecutive years in
13 the community without being convicted of any felonies. Class C prior
14 felony convictions other than sex offenses shall not be included in the
15 offender score if, since the last date of release from confinement
16 (including full-time residential treatment) pursuant to a felony
17 conviction, if any, or entry of judgment and sentence, the offender had
18 spent five consecutive years in the community without being convicted
19 of any felonies. Serious traffic convictions shall not be included in
20 the offender score if, since the last date of release from confinement
21 (including full-time residential treatment) pursuant to a felony
22 conviction, if any, or entry of judgment and sentence, the offender
23 spent five years in the community without being convicted of any
24 serious traffic or felony traffic offenses. This subsection applies to
25 both adult and juvenile prior convictions.

26 (3) Out-of-state convictions for offenses shall be classified
27 according to the comparable offense definitions and sentences provided
28 by Washington law.

29 (4) Always include juvenile convictions for sex offenses. Include
30 other class A juvenile felonies only if the offender was 15 or older at

1 the time the juvenile offense was committed. Include other class B and
2 C juvenile felony convictions only if the offender was 15 or older at
3 the time the juvenile offense was committed and the offender was less
4 than 23 at the time the offense for which he or she is being sentenced
5 was committed.

6 (5) Score prior convictions for felony anticipatory offenses
7 (attempts, criminal solicitations, and criminal conspiracies) the same
8 as if they were convictions for completed offenses.

9 (6) In the case of multiple prior convictions, for the purpose of
10 computing the offender score, count all convictions separately, except:

11 (a) Prior adult offenses which were found, under RCW
12 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
13 counted as one offense, the offense that yields the highest offender
14 score. The current sentencing court shall determine with respect to
15 other prior adult offenses for which sentences were served concurrently
16 whether those offenses shall be counted as one offense or as separate
17 offenses, and if the court finds that they shall be counted as one
18 offense, then the offense that yields the highest offender score shall
19 be used;

20 (b) Juvenile prior convictions entered or sentenced on the same
21 date shall count as one offense, the offense that yields the highest
22 offender score, except for juvenile prior convictions for violent
23 offenses with separate victims, which shall count as separate offenses;
24 and

25 (c) In the case of multiple prior convictions for offenses
26 committed before July 1, 1986, for the purpose of computing the
27 offender score, count all adult convictions served concurrently as one
28 offense, and count all juvenile convictions entered on the same date as
29 one offense. Use the conviction for the offense that yields the
30 highest offender score.

1 (7) If the present conviction is one of the anticipatory offenses
2 of criminal attempt, solicitation, or conspiracy, count each prior
3 conviction as if the present conviction were for a completed offense.

4 (8) If the present conviction is for a nonviolent offense and not
5 covered by subsection (12) or (13) of this section, count one point for
6 each adult prior felony conviction and one point for each juvenile
7 prior violent felony conviction and 1/2 point for each juvenile prior
8 nonviolent felony conviction.

9 (9) If the present conviction is for a violent offense and not
10 covered in subsection (10), (11), (12), or (13) of this section, count
11 two points for each prior adult and juvenile violent felony conviction,
12 one point for each prior adult nonviolent felony conviction, and 1/2
13 point for each prior juvenile nonviolent felony conviction.

14 (10) If the present conviction is for Murder 1 or 2, Assault 1,
15 Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior
16 adult and juvenile convictions for crimes in these categories, two
17 points for each prior adult and juvenile violent conviction (not
18 already counted), one point for each prior adult nonviolent felony
19 conviction, and 1/2 point for each prior juvenile nonviolent felony
20 conviction.

21 (11) If the present conviction is for Burglary 1, count prior
22 convictions as in subsection (9) of this section; however count two
23 points for each prior adult Burglary 2 or residential burglary
24 conviction, and one point for each prior juvenile Burglary 2 or
25 residential burglary conviction.

26 (12) If the present conviction is for a felony traffic offense
27 count two points for each adult or juvenile prior conviction for
28 Vehicular Homicide or Vehicular Assault; for each felony offense or
29 serious traffic offense, count one point for each adult and 1/2 point
30 for each juvenile prior conviction.

1 (13) If the present conviction is for a drug offense count three
2 points for each adult prior felony drug offense conviction and two
3 points for each juvenile drug offense. All other adult and juvenile
4 felonies are scored as in subsection (9) of this section if the current
5 drug offense is violent, or as in subsection (8) of this section if the
6 current drug offense is nonviolent.

7 (14) If the present conviction is for Willful Failure to Return
8 from Furlough, RCW 72.66.060, (~~(or)~~) Willful Failure to Return from
9 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
10 72.09.310, count only prior escape convictions in the offender score.
11 Count adult prior escape convictions as one point and juvenile prior
12 escape convictions as 1/2 point.

13 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
14 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
15 juvenile prior convictions as 1/2 point.

16 (16) If the present conviction is for Burglary 2 or residential
17 burglary, count priors as in subsection (8) of this section; however,
18 count two points for each adult and juvenile prior Burglary 1
19 conviction, two points for each adult prior Burglary 2 or residential
20 burglary conviction, and one point for each juvenile prior Burglary 2
21 or residential burglary conviction.

22 (17) If the present conviction is for a sex offense, count priors
23 as in subsections (8) through (16) of this section; however count three
24 points for each adult and juvenile prior sex offense conviction.

25 (18) If the present conviction is for an offense committed while
26 the offender was under community placement, add one point.

27 **Sec. 5.** RCW 9.94A.440 and 1989 c 332 s 2 are each amended to read
28 as follows:

29 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

10 (a) Contrary to Legislative Intent - It may be proper to decline to
11 charge where the application of criminal sanctions would be clearly
12 contrary to the intent of the legislature in enacting the particular
13 statute.

14 (b) Antiquated Statute - It may be proper to decline to charge
15 where the statute in question is antiquated in that:

16 (i) It has not been enforced for many years; and

17 (ii) Most members of society act as if it were no longer in
18 existence; and

19 (iii) It serves no deterrent or protective purpose in today's
20 society; and

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

26 (c) De Minimus Violation - It may be proper to decline to charge
27 where the violation of law is only technical or insubstantial and where
28 no public interest or deterrent purpose would be served by prosecution.

1 (d) Confinement on Other Charges - It may be proper to decline to
2 charge because the accused has been sentenced on another charge to a
3 lengthy period of confinement; and

4 (i) Conviction of the new offense would not merit any additional
5 direct or collateral punishment;

6 (ii) The new offense is either a misdemeanor or a felony which is
7 not particularly aggravated; and

8 (iii) Conviction of the new offense would not serve any significant
9 deterrent purpose.

10 (e) Pending Conviction on Another Charge - It may be proper to
11 decline to charge because the accused is facing a pending prosecution
12 in the same or another county; and

13 (i) Conviction of the new offense would not merit any additional
14 direct or collateral punishment;

15 (ii) Conviction in the pending prosecution is imminent;

16 (iii) The new offense is either a misdemeanor or a felony which is
17 not particularly aggravated; and

18 (iv) Conviction of the new offense would not serve any significant
19 deterrent purpose.

20 (f) High Disproportionate Cost of Prosecution - It may be proper to
21 decline to charge where the cost of locating or transporting, or the
22 burden on, prosecution witnesses is highly disproportionate to the
23 importance of prosecuting the offense in question. This reason should
24 be limited to minor cases and should not be relied upon in serious
25 cases.

26 (g) Improper Motives of Complainant - It may be proper to decline
27 charges because the motives of the complainant are improper and
28 prosecution would serve no public purpose, would defeat the underlying
29 purpose of the law in question or would result in decreased respect for
30 the law.

1 (h) Immunity - It may be proper to decline to charge where immunity
2 is to be given to an accused in order to prosecute another where the
3 accused's information or testimony will reasonably lead to the
4 conviction of others who are responsible for more serious criminal
5 conduct or who represent a greater danger to the public interest.

6 (i) Victim Request - It may be proper to decline to charge because
7 the victim requests that no criminal charges be filed and the case
8 involves the following crimes or situations:

9 (i) Assault cases where the victim has suffered little or no
10 injury;

11 (ii) Crimes against property, not involving violence, where no
12 major loss was suffered;

13 (iii) Where doing so would not jeopardize the safety of society.

14 Care should be taken to insure that the victim's request is freely
15 made and is not the product of threats or pressure by the accused.

16 The presence of these factors may also justify the decision to
17 dismiss a prosecution which has been commenced.

18 Notification

19 The prosecutor is encouraged to notify the victim, when practical,
20 and the law enforcement personnel, of the decision not to prosecute.

21 (2) Decision to prosecute.

22 STANDARD:

23 Crimes against persons will be filed if sufficient admissible
24 evidence exists, which, when considered with the most plausible,
25 reasonably foreseeable defense that could be raised under the evidence,
26 would justify conviction by a reasonable and objective fact-finder.
27 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
28 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
29 9A.64.020 the prosecutor should avoid prefiling agreements or
30 diversions intended to place the accused in a program of treatment or

1 counseling, so that treatment, if determined to be beneficial, can be
2 provided pursuant to RCW 9.94A.120(7).

3 Crimes against property/other crimes will be filed if the
4 admissible evidence is of such convincing force as to make it probable
5 that a reasonable and objective fact-finder would convict after hearing
6 all the admissible evidence and the most plausible defense that could
7 be raised.

8 See table below for the crimes within these categories.

9 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

10 CRIMES AGAINST PERSONS

- 11 Aggravated Murder
- 12 1st Degree Murder
- 13 2nd Degree Murder
- 14 1st Degree Kidnaping
- 15 1st Degree Assault
- 16 1st Degree Rape
- 17 1st Degree Robbery
- 18 1st Degree Rape of a Child
- 19 1st Degree Arson
- 20 2nd Degree Kidnaping
- 21 2nd Degree Assault
- 22 2nd Degree Rape
- 23 2nd Degree Robbery
- 24 1st Degree Burglary
- 25 1st Degree Manslaughter
- 26 2nd Degree Manslaughter
- 27 1st Degree Extortion

1 Indecent Liberties
2 Incest
3 2nd Degree Rape of a Child
4 Vehicular Homicide
5 Vehicular Assault
6 3rd Degree Rape
7 3rd Degree Rape of a Child
8 1st Degree Child Molestation
9 2nd Degree Child Molestation
10 3rd Degree Child Molestation
11 2nd Degree Extortion
12 1st Degree Promoting Prostitution
13 Intimidating a Juror
14 Communication with a Minor
15 Intimidating a Witness
16 Intimidating a Public Servant
17 Bomb Threat (if against person)
18 3rd Degree Assault
19 Unlawful Imprisonment
20 Promoting a Suicide Attempt
21 Riot (if against person)

22 CRIMES AGAINST PROPERTY/OTHER CRIMES

23 2nd Degree Arson
24 1st Degree Escape
25 2nd Degree Burglary
26 1st Degree Theft
27 1st Degree Perjury
28 1st Degree Introducing Contraband

1 1st Degree Possession of Stolen Property
2 Bribery
3 Bribing a Witness
4 Bribe received by a Witness
5 Bomb Threat (if against property)
6 1st Degree Malicious Mischief
7 2nd Degree Theft
8 2nd Degree Escape
9 2nd Degree Introducing Contraband
10 2nd Degree Possession of Stolen Property
11 2nd Degree Malicious Mischief
12 1st Degree Reckless Burning
13 Taking a Motor Vehicle without Authorization
14 Forgery
15 2nd Degree Perjury
16 2nd Degree Promoting Prostitution
17 Tampering with a Witness
18 Trading in Public Office
19 Trading in Special Influence
20 Receiving/Granting Unlawful Compensation
21 Bigamy
22 Eluding a Pursuing Police Vehicle
23 Willful Failure to Return from Furlough
24 Escape from Community Custody
25 Riot (if against property)
26 Thefts of Livestock

27 ALL OTHER UNCLASSIFIED FELONIES

28 Selection of Charges/Degree of Charge

1 (1) The prosecutor should file charges which adequately describe
2 the nature of defendant's conduct. Other offenses may be charged only
3 if they are necessary to ensure that the charges:

4 (a) Will significantly enhance the strength of the state's case at
5 trial; or

6 (b) Will result in restitution to all victims.

7 (2) The prosecutor should not overcharge to obtain a guilty plea.
8 Overcharging includes:

9 (a) Charging a higher degree;

10 (b) Charging additional counts.

11 This standard is intended to direct prosecutors to charge those
12 crimes which demonstrate the nature and seriousness of a defendant's
13 criminal conduct, but to decline to charge crimes which are not
14 necessary to such an indication. Crimes which do not merge as a matter
15 of law, but which arise from the same course of conduct, do not all
16 have to be charged.

17 GUIDELINES/COMMENTARY:

18 Police Investigation

19 A prosecuting attorney is dependent upon law enforcement agencies
20 to conduct the necessary factual investigation which must precede the
21 decision to prosecute. The prosecuting attorney shall ensure that a
22 thorough factual investigation has been conducted before a decision to
23 prosecute is made. In ordinary circumstances the investigation should
24 include the following:

25 (1) The interviewing of all material witnesses, together with the
26 obtaining of written statements whenever possible;

27 (2) The completion of necessary laboratory tests; and

28 (3) The obtaining, in accordance with constitutional requirements,
29 of the suspect's version of the events.

1 If the initial investigation is incomplete, a prosecuting attorney
2 should insist upon further investigation before a decision to prosecute
3 is made, and specify what the investigation needs to include.

4 Exceptions

5 In certain situations, a prosecuting attorney may authorize filing
6 of a criminal complaint before the investigation is complete if:

7 (1) Probable cause exists to believe the suspect is guilty; and

8 (2) The suspect presents a danger to the community or is likely to
9 flee if not apprehended; or

10 (3) The arrest of the suspect is necessary to complete the
11 investigation of the crime.

12 In the event that the exception to the standard is applied, the
13 prosecuting attorney shall obtain a commitment from the law enforcement
14 agency involved to complete the investigation in a timely manner. If
15 the subsequent investigation does not produce sufficient evidence to
16 meet the normal charging standard, the complaint should be dismissed.

17 Investigation Techniques

18 The prosecutor should be fully advised of the investigatory
19 techniques that were used in the case investigation including:

20 (1) Polygraph testing;

21 (2) Hypnosis;

22 (3) Electronic surveillance;

23 (4) Use of informants.

24 Pre-Filing Discussions with Defendant

25 Discussions with the defendant or his/her representative regarding
26 the selection or disposition of charges may occur prior to the filing
27 of charges, and potential agreements can be reached.

28 **Sec. 6.** RCW 72.09.310 and 1988 c 153 s 6 are each amended to read
29 as follows:

1 An inmate in community custody who willfully (~~((fails to comply with~~
2 ~~any one or more of the controls placed on the inmate's movements by the~~
3 ~~department of corrections))~~ discontinues making himself or herself
4 available to the department for supervision by making his or her
5 whereabouts unknown or by failing to maintain contact with the
6 department as directed by the community corrections officer shall be
7 deemed an escapee and fugitive from justice, and upon conviction shall
8 be guilty of a class C felony under chapter 9A.20 RCW.