
SENATE BILL 5267

State of Washington 53rd Legislature 1993 Regular Session

By Senators Niemi, A. Smith, Pelz and McAuliffe

Read first time 01/20/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to sentencing options for offenders convicted of
2 nonviolent crimes with a presumptive sentence less than twelve months;
3 reenacting and amending RCW 9.94A.030 and 9.94A.120; adding new
4 sections to chapter 9.94A RCW; adding a new section to chapter 2.56
5 RCW; creating a new section; repealing RCW 9.94A.380; prescribing
6 penalties; and providing an effective date.

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

8 NEW SECTION. **Sec. 1.** (1) It is the intent of the legislature that
9 the sentencing component of the criminal justice system meet the goals
10 identified in chapter 9.94A RCW. The legislature intends, by the
11 repeal of RCW 9.94A.380 and the enactment of this act, to clarify that
12 the judiciary shall consider all options available for sentencing
13 nonviolent offenders whose presumptive sentence is less than one year.

14 (2) It is the finding of the legislature that two goals of this
15 chapter stated in RCW 9.94A.010 are not yet met: (a) A limited group
16 of nonviolent offenders have not been offered full opportunities to
17 achieve self-improvement; and (b) the frugal use of state resources has
18 not been realized. The legislature finds that the sentencing of
19 offenders whose presumptive sentence is less than one year has not

1 consistently taken into account the ability of the judiciary to
2 exercise the discretion granted it by chapter 9.94A RCW. The
3 legislature also finds that chapter 9.94A RCW grants the judiciary the
4 authority to create a sentence for an offender whose presumptive
5 sentence is less than one year which is reflective of all purposes of
6 this act and the legislature intends such sentences to be utilized.
7 Such sentences are not exceptional sentences but reflect the full range
8 of options available under this chapter. It is the finding of the
9 legislature that sentencing options imposed pursuant to this act can be
10 utilized in a manner that is consistent with the purposes of this act
11 and can improve public safety, deter future criminal conduct, and
12 enhance the capacity of offenders to acquire appropriate social and
13 work skills.

14 **Sec. 2.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
15 each reenacted and amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in
17 this section apply throughout this chapter.

18 (1) "Approved adult education" means a formal program of adult
19 education that has state certification.

20 (2) "Approved vocational-technical training" means coursework
21 and/or on-the-job training in a vocational-technical training program
22 certified by the state.

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

30 ~~((+2))~~ (4) "Commission" means the sentencing guidelines
31 commission.

32 ~~((+3))~~ (5) "Community corrections officer" means an employee of
33 the department who is responsible for carrying out specific duties in
34 supervision of sentenced offenders and monitoring of sentence
35 conditions.

36 ~~((+4))~~ (6) "Community custody" means that portion of an inmate's
37 sentence of confinement in lieu of earned early release time served in

1 the community subject to controls placed on the inmate's movement and
2 activities by the department of corrections.

3 ~~((+5+))~~ (7) "Community placement" means that period during which
4 the offender is subject to the conditions of community custody and/or
5 postrelease supervision, which begins either upon completion of the
6 term of confinement (postrelease supervision) or at such time as the
7 offender is transferred to community custody in lieu of earned early
8 release. Community placement may consist of entirely community
9 custody, entirely postrelease supervision, or a combination of the two.

10 ~~((+6+))~~ (8) "Community rehabilitation center" means a nonsecure
11 residential facility for offenders. "Nonsecure" means that the
12 facility lacks physical restraints designed to prevent offenders from
13 departing without permission, such as bars on the windows.

14 (9) "Community service" means compulsory service, without compensa-
15 tion, performed for the benefit of the community by the offender.

16 ~~((+7+))~~ (10) "Community supervision" means a period of time during
17 which a convicted offender is subject to crime-related prohibitions and
18 other sentence conditions imposed by a court pursuant to this chapter
19 or RCW 46.61.524. For first-time offenders, the supervision may
20 include crime-related prohibitions and other conditions imposed
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
22 for out-of-state supervision of parolees and probationers, RCW
23 9.95.270, community supervision is the functional equivalent of
24 probation and should be considered the same as probation by other
25 states.

26 ~~((+8+))~~ (11) "Confinement" means total or partial confinement as
27 defined in this section.

28 ~~((+9+))~~ (12) "Conviction" means an adjudication of guilt pursuant
29 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
30 guilty, and acceptance of a plea of guilty.

31 ~~((+10+))~~ (13) "Court-ordered legal financial obligation" means a
32 sum of money that is ordered by a superior court of the state of
33 Washington for legal financial obligations which may include
34 restitution to the victim, statutorily imposed crime victims'
35 compensation fees as assessed pursuant to RCW 7.68.035, court costs,
36 county or interlocal drug funds, court-appointed attorneys' fees, and
37 costs of defense, fines, and any other financial obligation that is
38 assessed to the offender as a result of a felony conviction.

1 (~~(11)~~) (14) "Crime-related prohibition" means an order of a court
2 prohibiting conduct that directly relates to the circumstances of the
3 crime for which the offender has been convicted, and shall not be
4 construed to mean orders directing an offender affirmatively to
5 participate in rehabilitative programs or to otherwise perform
6 affirmative conduct.

7 (~~(12)~~) (15)(a) "Criminal history" means the list of a defendant's
8 prior convictions, whether in this state, in federal court, or
9 elsewhere. The history shall include, where known, for each conviction
10 (i) whether the defendant has been placed on probation and the length
11 and terms thereof; and (ii) whether the defendant has been incarcerated
12 and the length of incarceration.

13 (b) "Criminal history" shall always include juvenile convictions
14 for sex offenses and shall also include a defendant's other prior
15 convictions in juvenile court if: (i) The conviction was for an
16 offense which is a felony or a serious traffic offense and is criminal
17 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
18 fifteen years of age or older at the time the offense was committed;
19 and (iii) with respect to prior juvenile class B and C felonies or
20 serious traffic offenses, the defendant was less than twenty-three
21 years of age at the time the offense for which he or she is being
22 sentenced was committed.

23 (~~(13)~~) (16) "Day fine" means a fine imposed by the sentencing
24 judge that equals the difference between the offender's net daily
25 income and the reasonable obligations that the offender has for the
26 support of the offender and any dependents.

27 (17) "Day reporting" means a program of enhanced supervision
28 designed to monitor the defendant's daily activities and compliance
29 with sentence conditions, and in which the defendant is required to
30 report daily to a specific location designated by the department or the
31 sentencing judge.

32 (18) "Department" means the department of corrections.

33 (~~(14)~~) (19) "Determinate sentence" means a sentence that states
34 with exactitude the number of actual years, months, or days of total
35 confinement, of partial confinement, of community supervision, the
36 number of actual hours or days of community service work, or dollars or
37 terms of a legal financial obligation. The fact that an offender
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

3 ~~((15))~~ (20) "Disposable earnings" means that part of the earnings
4 of an individual remaining after the deduction from those earnings of
5 any amount required by law to be withheld. For the purposes of this
6 definition, "earnings" means compensation paid or payable for personal
7 services, whether denominated as wages, salary, commission, bonuses, or
8 otherwise, and, notwithstanding any other provision of law making the
9 payments exempt from garnishment, attachment, or other process to
10 satisfy a court-ordered legal financial obligation, specifically
11 includes periodic payments pursuant to pension or retirement programs,
12 or insurance policies of any type, but does not include payments made
13 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
14 or Title 74 RCW.

15 ~~((16))~~ (21) "Drug offense" means:

16 (a) Any felony violation of chapter 69.50 RCW except possession of
17 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
18 controlled substance (RCW 69.50.403);

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

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

25 ~~((17))~~ (22) "Drug or alcohol monitoring" means the obligation to
26 remain free of any nonprescribed controlled substance of any alcoholic
27 beverage and to submit to periodic testing to monitor that status.

28 (23) "Escape" means:

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

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

37 ~~((18))~~ (24) "Felony traffic offense" means:

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

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

7 (~~((19))~~) (25) "Fines" means the requirement that the offender pay
8 a specific sum of money over a specific period of time to the court.

9 (~~((20))~~) (26)(a) "First-time offender" means any person who is
10 convicted of a felony (i) not classified as a violent offense or a sex
11 offense under this chapter, or (ii) that is not the manufacture,
12 delivery, or possession with intent to manufacture or deliver a
13 controlled substance classified in schedule I or II that is a narcotic
14 drug or the selling for profit (~~{of}~~) of any controlled substance or
15 counterfeit substance classified in schedule I, RCW 69.50.204, except
16 leaves and flowering tops of marijuana, and except as provided in (b)
17 of this subsection, who previously has never been convicted of a felony
18 in this state, federal court, or another state, and who has never
19 participated in a program of deferred prosecution for a felony offense.

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

23 (~~((21))~~) (27) "Home detention" means a program of partial
24 confinement available to offenders wherein the offender is confined in
25 a private residence subject to electronic surveillance.

26 (28) "Inpatient treatment" means an alcohol or drug treatment
27 program certified by the state which requires the offender to be in
28 residence at the treatment facility.

29 (29) "Intensive supervision" means a supervision program
30 implemented by the department which involves closer monitoring of the
31 defendant's compliance with sentence conditions and more frequent
32 contacts with the community corrections officer than would occur under
33 standard community supervision.

34 (30) "Nonviolent offense" means an offense which is not a violent
35 offense.

36 (~~((22))~~) (31) "Offender" means a person who has committed a felony
37 established by state law and is eighteen years of age or older or is
38 less than eighteen years of age but whose case has been transferred by
39 the appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 ~~((23))~~ (32) "Outpatient treatment" means a treatment program
4 certified by the state or recommended by the department that does not
5 require that the offender be in residence at the treatment facility.

6 (33) "Partial confinement" means confinement for no more than one
7 year in a facility or institution operated or utilized under contract
8 by the state or any other unit of government, or, if home detention or
9 work crew has been ordered by the court, in an approved residence, for
10 a substantial portion of each day with the balance of the day spent in
11 the community. Partial confinement includes work release, home
12 detention, work crew, and a combination of work crew and home detention
13 as defined in this section.

14 ~~((24))~~ (34) "Postrelease supervision" is that portion of an
15 offender's community placement that is not community custody.

16 ~~((25))~~ (35) "Restitution" means the requirement that the offender
17 pay a specific sum of money over a specific period of time to the court
18 as payment of damages. The sum may include both public and private
19 costs. The imposition of a restitution order does not preclude civil
20 redress.

21 ~~((26))~~ (36) "Serious traffic offense" means:

22 (a) Driving while under the influence of intoxicating liquor or any
23 drug (RCW 46.61.502), actual physical control while under the influence
24 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
25 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
26 or

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

30 ~~((27))~~ (37) "Serious violent offense" is a subcategory of violent
31 offense and means:

32 (a) Murder in the first degree, homicide by abuse, murder in the
33 second degree, assault in the first degree, kidnapping in the first
34 degree, or rape in the first degree, assault of a child in the first
35 degree, or an attempt, criminal solicitation, or criminal conspiracy to
36 commit one of these felonies; or

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

1 (~~(28)~~) (38) "Sentence range" means the sentencing court's
2 discretionary range in imposing a nonappealable sentence.

3 (~~(29)~~) (39) "Sex offense" means:

4 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
5 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
6 attempt, criminal solicitation, or criminal conspiracy to commit such
7 crimes;

8 (b) A felony with a finding of sexual motivation under RCW
9 9.94A.127; or

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

13 (~~(30)~~) (40) "Sexual motivation" means that one of the purposes
14 for which the defendant committed the crime was for the purpose of his
15 or her sexual gratification.

16 (~~(31)~~) (41) "Total confinement" means confinement inside the
17 physical boundaries of a facility or institution operated or utilized
18 under contract by the state or any other unit of government for twenty-
19 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (~~(32)~~) (42) "Victim" means any person who has sustained
21 emotional, psychological, physical, or financial injury to person or
22 property as a direct result of the crime charged.

23 (~~(33)~~) (43) "Violent offense" means:

24 (a) Any of the following felonies, as now existing or hereafter
25 amended: Any felony defined under any law as a class A felony or an
26 attempt to commit a class A felony, criminal solicitation of or
27 criminal conspiracy to commit a class A felony, manslaughter in the
28 first degree, manslaughter in the second degree, indecent liberties if
29 committed by forcible compulsion, kidnapping in the second degree,
30 arson in the second degree, assault in the second degree, assault of a
31 child in the second degree, extortion in the first degree, robbery in
32 the second degree, vehicular assault, and vehicular homicide, when
33 proximately caused by the driving of any vehicle by any person while
34 under the influence of intoxicating liquor or any drug as defined by
35 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

36 (b) Any conviction for a felony offense in effect at any time prior
37 to July 1, 1976, that is comparable to a felony classified as a violent
38 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)~~) (44) "Work crew" means a program of partial confinement
5 consisting of civic improvement tasks for the benefit of the community
6 of not less than thirty-five hours per week that complies with RCW
7 9.94A.135. The civic improvement tasks shall be performed on public
8 property or on private property owned or operated by nonprofit
9 entities, except that, for emergency purposes only, work crews may
10 perform snow removal on any private property. The civic improvement
11 tasks shall have minimal negative impact on existing private industries
12 or the labor force in the county where the service or labor is
13 performed. The civic improvement tasks shall not affect employment
14 opportunities for people with developmental disabilities contracted
15 through sheltered workshops as defined in RCW 82.04.385. Only those
16 offenders sentenced to a facility operated or utilized under contract
17 by a county are eligible to participate on a work crew. Offenders
18 sentenced for a sex offense as defined in subsection (~~(29)~~) (39) of
19 this section are not eligible for the work crew program.

20 (~~(35)~~) (45) "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
31 degree as defined in RCW 9A.36.031, assault of a child in the third
32 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
33 harassment as defined in RCW 9A.46.020. Home detention may be imposed
34 for offenders convicted of possession of a controlled substance (RCW
35 69.50.401(d)) or forged prescription for a controlled substance (RCW
36 69.50.403) if the offender fulfills the participation conditions set
37 forth in this subsection and is monitored for drug use by treatment
38 alternatives to street crime (TASC) or a comparable court or agency-
39 referred program.

1 ~~(a) Home detention may be imposed for offenders convicted of~~
2 ~~burglary in the second degree as defined in RCW 9A.52.030 or~~
3 ~~residential burglary conditioned upon the offender: (i) Successfully~~
4 ~~completing twenty one days in a work release program, (ii) having no~~
5 ~~convictions for burglary in the second degree or residential burglary~~
6 ~~during the preceding two years and not more than two prior convictions~~
7 ~~for burglary or residential burglary, (iii) having no convictions for~~
8 ~~a violent felony offense during the preceding two years and not more~~
9 ~~than two prior convictions for a violent felony offense, (iv) having no~~
10 ~~prior charges of escape, and (v) fulfilling the other conditions of the~~
11 ~~home detention program.~~

12 ~~(b) Participation in a home detention program shall be conditioned~~
13 ~~upon: (i) The offender obtaining or maintaining current employment or~~
14 ~~attending a regular course of school study at regularly defined hours,~~
15 ~~or the offender performing parental duties to offspring or minors~~
16 ~~normally in the custody of the offender, (ii) abiding by the rules of~~
17 ~~the home detention program, and (iii) compliance with court ordered~~
18 ~~legal financial obligations. The home detention program may also be~~
19 ~~made available to offenders whose charges and convictions do not~~
20 ~~otherwise disqualify them if medical or health related conditions,~~
21 ~~concerns or treatment would be better addressed under the home~~
22 ~~detention program, or where the health and welfare of the offender,~~
23 ~~other inmates, or staff would be jeopardized by the offender's~~
24 ~~incarceration. Participation in the home detention program for medical~~
25 ~~or health related reasons is conditioned on the offender abiding by the~~
26 ~~rules of the home detention program and complying with court ordered~~
27 ~~restitution.))~~

28 NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW
29 to read as follows:

30 Home detention may not be imposed for offenders convicted of a
31 violent offense, any sex offense, any drug offense, reckless burning in
32 the first or second degree as defined in RCW 9A.48.040 or 9A.48.050,
33 assault in the third degree as defined in RCW 9A.36.031, assault of a
34 child in the third degree, unlawful imprisonment as defined in RCW
35 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention
36 may be imposed for offenders convicted of possession of a controlled
37 substance (RCW 69.50.401(d)) or forged prescription for a controlled
38 substance (RCW 69.50.403) if the offender fulfills the participation

1 conditions set forth in this subsection and is monitored for drug use
2 by treatment alternatives to street crime (TASC) or a comparable court
3 or agency-referred program.

4 (1) Home detention may be imposed for offenders convicted of
5 burglary in the second degree as defined in RCW 9A.52.030 or
6 residential burglary conditioned upon the offender: (a) Successfully
7 completing twenty-one days in a work release program, (b) having no
8 convictions for burglary in the second degree or residential burglary
9 during the preceding two years and not more than two prior convictions
10 for burglary or residential burglary, (c) having no convictions for a
11 violent felony offense during the preceding two years and not more than
12 two prior convictions for a violent felony offense, (d) having no prior
13 charges of escape, and (e) fulfilling the other conditions of the home
14 detention program.

15 (2) Participation in a home detention program shall be conditioned
16 upon: (a) The offender obtaining or maintaining current employment or
17 attending a regular course of school study at regularly defined hours,
18 or the offender performing parental duties to offspring or minors
19 normally in the custody of the offender, (b) abiding by the rules of
20 the home detention program, and (c) compliance with court-ordered legal
21 financial obligations. The home detention program may also be made
22 available to offenders whose charges and convictions do not otherwise
23 disqualify them if medical or health-related conditions, concerns or
24 treatment would be better addressed under the home detention program,
25 or where the health and welfare of the offender, other inmates, or
26 staff would be jeopardized by the offender's incarceration.
27 Participation in the home detention program for medical or health-
28 related reasons is conditioned on the offender abiding by the rules of
29 the home detention program and complying with court-ordered
30 restitution.

31 **Sec. 4.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992
32 c 45 s 5 are each reenacted and amended to read as follows:

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

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

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

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

9 (4) An offender convicted of the crime of murder in the first
10 degree shall be sentenced to a term of total confinement not less than
11 twenty years. An offender convicted of the crime of assault in the
12 first degree or assault of a child in the first degree where the
13 offender used force or means likely to result in death or intended to
14 kill the victim shall be sentenced to a term of total confinement not
15 less than five years. An offender convicted of the crime of rape in
16 the first degree shall be sentenced to a term of total confinement not
17 less than five years, and shall not be eligible for furlough, work
18 release or other authorized leave of absence from the correctional
19 facility during such minimum five-year term except for the purpose of
20 commitment to an inpatient treatment facility. The foregoing minimum
21 terms of total confinement are mandatory and shall not be varied or
22 modified as provided in subsection (2) of this section.

23 (5) In sentencing a first-time offender the court may waive the
24 imposition of a sentence within the sentence range and impose a
25 sentence which may include up to ninety days of confinement in a
26 facility operated or utilized under contract by the county (~~and a~~
27 ~~requirement that the offender refrain from committing new offenses~~).
28 The sentence shall be imposed in accordance with the provisions of
29 subsection (6) of this section. The sentence may also include up to
30 ~~((two))~~ one year~~((s))~~ of community supervision, which, in addition to
31 crime-related prohibitions, may include ~~((requirements))~~ conditions
32 that the offender ~~((perform any one or more of the following))~~:

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

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

37 ~~(c) Pursue a prescribed, secular course of study or vocational~~
38 ~~training;~~

39 ~~(d))~~ Refrain from committing new offenses;

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

4 ~~((e))~~ (d) Report as directed to the court and a community
5 corrections officer; or

6 ~~((f))~~ (e) Pay all court-ordered legal financial obligations as
7 provided in RCW ~~((9.94A.030 and/or perform community service work))~~
8 9.94A.145.

9 (6)(a) When sentencing an offender who is not a violent offender or
10 a sex offender and whose presumptive sentence is less than twelve
11 months, the court shall first determine if it is appropriate that such
12 sentence be served primarily or exclusively under one or more of the
13 sentencing options set forth in (c) of this subsection. If the court
14 determines that a period of total confinement is appropriate in order
15 to adequately punish the offender and to serve the best interest of
16 society, the court shall order total confinement for the minimum time
17 necessary to carry out the goals of this chapter.

18 (b) To impose a sentence consisting of sentencing options, the
19 court shall determine the standard range for the offender and then
20 convert that amount of total confinement as is necessary into the
21 sentencing options the court finds appropriate for the offender.
22 Sentencing options that are imposed under this section may be used in
23 any combination and may also be combined with total confinement.
24 Conversions of total confinement to sentencing options shall be clearly
25 indicated on the judgment and sentence.

26 (c) Sentencing options available to a court include:

27 (i) Approved adult education;

28 (ii) Approved vocational-technical training;

29 (iii) Community rehabilitation center;

30 (iv) Community service;

31 (v) Day fines;

32 (vi) Day reporting;

33 (vii) Drug or alcohol monitoring;

34 (viii) Home detention;

35 (ix) Inpatient treatment;

36 (x) Intensive supervision;

37 (xi) Outpatient treatment;

38 (xii) Partial confinement;

39 (xiii) Work crews;

1 (xiv) Work release; and
2 (xv) Any other nonincarcerative option that is consistent with the
3 purposes of this chapter.

4 (d) An offender may also be placed on a term of community
5 supervision not to exceed one year. At any time after the successful
6 completion of sentencing options and other conditions imposed, the
7 offender or the department may petition the court to terminate
8 community supervision.

9 (7) If a sentence range has not been established for the
10 defendant's crime, the court shall impose a determinate sentence which
11 may include not more than one year of confinement, (~~community service~~
12 work~~7~~), a term of community supervision not to exceed one year, and/or
13 (~~other~~) legal financial obligations. The court shall consider
14 conversion of any total confinement to sentencing options in accordance
15 with subsection (6) of this section. At any time after the successful
16 completion of sentencing options and other conditions imposed, the
17 offender or the department may petition the court to terminate
18 community supervision. The court may impose a sentence which provides
19 more than one year of confinement if the court finds, considering the
20 purpose of this chapter, that there are substantial and compelling
21 reasons justifying an exceptional sentence.

22 (~~(7)~~) (8)(a)(i) When an offender is convicted of a sex offense
23 other than a violation of RCW 9A.44.050 or a sex offense that is also
24 a serious violent offense and has no prior convictions for a sex
25 offense or any other felony sex offenses in this or any other state,
26 the sentencing court, on its own motion or the motion of the state or
27 the defendant, may order an examination to determine whether the
28 defendant is amenable to treatment.

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

35 The examiner shall assess and report regarding the defendant's
36 amenability to treatment and relative risk to the community. A
37 proposed treatment plan shall be provided and shall include, at a
38 minimum:

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

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

3 (C) Monitoring plans, including any requirements regarding living
4 conditions, lifestyle requirements, and monitoring by family members
5 and others;

6 (D) Anticipated length of treatment; and

7 (E) Recommended crime-related prohibitions.

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

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

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

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

1 crime-related prohibitions, and requirements that the offender perform
2 any one or more of the following:

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

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

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

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

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

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

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

37 (v) The court may revoke the suspended sentence at any time during
38 the period of community supervision and order execution of the sentence
39 if: (A) The defendant violates the conditions of the suspended

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

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

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

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

24 (b) When an offender 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
31 treatment at these facilities. If the secretary of social and health
32 services cannot begin the evaluation within thirty days of the court's
33 order of commitment, the offender shall be transferred to the state for
34 confinement pending an opportunity to be evaluated at the appropriate
35 facility. The court shall review the reports and may order that the
36 term of confinement imposed be served in the sexual offender treatment
37 program at the location determined by the secretary of social and
38 health services or the secretary's designee, only if the report
39 indicates that the offender is amenable to the treatment program

1 provided at these facilities. The offender shall be transferred to the
2 state pending placement in the treatment program. Any offender who has
3 escaped from the treatment program shall be referred back to the
4 sentencing court.

5 If the offender does not comply with the conditions of the
6 treatment program, the secretary of social and health services may
7 refer the matter to the sentencing court. The sentencing court shall
8 commit the offender to the department of corrections to serve the
9 balance of the term of confinement.

10 If the offender successfully completes the treatment program before
11 the expiration of the term of confinement, the court may convert the
12 balance of confinement to community supervision and may place
13 conditions on the offender including crime-related prohibitions and
14 requirements that the offender perform any one or more of the
15 following:

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

23 If the offender violates any of the terms of community supervision,
24 the court may order the offender to serve out the balance of the
25 community supervision term in confinement in the custody of the
26 department of corrections.

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

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

36 Except for an offender who has been convicted of a violation of RCW
37 9A.44.040 or 9A.44.050, if the offender completes the treatment program
38 before the expiration of his or her term of confinement, the department
39 of corrections may request the court to convert the balance of

1 confinement to community supervision and to place conditions on the
2 offender including crime-related prohibitions and requirements that the
3 offender perform 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) Undergo available outpatient treatment.

11 If the offender violates any of the terms of his or her community
12 supervision, the court may order the offender to serve out the balance
13 of his or her community supervision term in confinement in the custody
14 of the department of corrections.

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

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

27 ~~((+8+))~~ (9)(a) When a court sentences a person to a term of total
28 confinement to the custody of the department of corrections for an
29 offense categorized as a sex offense or a serious violent offense
30 committed after July 1, 1988, but before July 1, 1990, assault in the
31 second degree, assault of a child in the second degree, any crime
32 against a person where it is determined in accordance with RCW
33 9.94A.125 that the defendant or an accomplice was armed with a deadly
34 weapon at the time of commission, or any felony offense under chapter
35 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
36 in addition to the other terms of the sentence, sentence the offender
37 to a one-year term of community placement beginning either upon
38 completion of the term of confinement or at such time as the offender
39 is transferred to community custody in lieu of earned early release in

1 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
2 offender under this subsection to the statutory maximum period of
3 confinement then the community placement portion of the sentence shall
4 consist entirely of such community custody to which the offender may
5 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
6 period of community custody actually served shall be credited against
7 the community placement portion of the sentence.

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

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

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

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

33 (iv) An offender in community custody shall not unlawfully possess
34 controlled substances;

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

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

1 (c) The court may also order any of the following special
2 conditions:

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

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

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

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

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

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 (~~(9)~~) (10) If the court imposes a sentence requiring confinement
16 of thirty days or less, the court may, in its discretion, specify that
17 the sentence be served on consecutive or intermittent days. A sentence
18 requiring more than thirty days of confinement shall be served on
19 consecutive days. Local jail administrators may schedule court-ordered
20 intermittent sentences as space permits.

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

1 restitution as one of the monetary assessments, the county clerk shall
2 make disbursements to victims named in the order.

3 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
4 9.94A.142(1), a court may not impose a sentence providing for a term of
5 confinement or community supervision or community placement which
6 exceeds the statutory maximum for the crime as provided in chapter
7 9A.20 RCW.

8 ~~((12))~~ (13) All offenders sentenced to terms involving community
9 supervision, community service, community placement, or legal financial
10 obligation shall be under the supervision of the secretary of the
11 department of corrections or such person as the secretary may designate
12 and shall follow explicitly the instructions of the secretary including
13 reporting as directed to a community corrections officer, remaining
14 within prescribed geographical boundaries, notifying the community
15 corrections officer of any change in the offender's address or
16 employment, and paying the supervision fee assessment.

17 ~~((13))~~ (14) All offenders sentenced to terms involving community
18 supervision, community service, or community placement under the
19 supervision of the department of corrections shall not own, use, or
20 possess firearms or ammunition. Offenders who own, use, or are found
21 to be in actual or constructive possession of firearms or ammunition
22 shall be subject to the appropriate violation process and sanctions.
23 "Constructive possession" as used in this subsection means the power
24 and intent to control the firearm or ammunition. "Firearm" as used in
25 this subsection means a weapon or device from which a projectile may be
26 fired by an explosive such as gunpowder.

27 ~~((14))~~ (15) The sentencing court shall give the offender credit
28 for all confinement time served before the sentencing if that
29 confinement was solely in regard to the offense for which the offender
30 is being sentenced.

31 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)
32 and (2) governing whether sentences are to be served consecutively or
33 concurrently is an exceptional sentence subject to the limitations in
34 subsections (2) and (3) of this section, and may be appealed by the
35 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

36 ~~((16))~~ (17) The court shall order restitution whenever the
37 offender is convicted of a felony that results in injury to any person
38 or damage to or loss of property, whether the offender is sentenced to
39 confinement or placed under community supervision, unless extraordinary

1 circumstances exist that make restitution inappropriate in the court's
2 judgment. The court shall set forth the extraordinary circumstances in
3 the record if it does not order restitution.

4 ~~((17))~~ (18) As a part of any sentence, the court may impose and
5 enforce an order that relates directly to the circumstances of the
6 crime for which the offender has been convicted, prohibiting the
7 offender from having any contact with other specified individuals or a
8 specific class of individuals for a period not to exceed the maximum
9 allowable sentence for the crime, regardless of the expiration of the
10 offender's term of community supervision or community placement.

11 ~~((18))~~ (19) In any sentence of partial confinement, the court may
12 require the defendant to serve the partial confinement in work release,
13 in a program of home detention, on work crew, or in a combined program
14 of work crew and home detention.

15 ~~((19))~~ (20) All court-ordered legal financial obligations
16 collected by the department and remitted to the county clerk shall be
17 credited and paid where restitution is ordered. Restitution shall be
18 paid prior to any other payments of monetary obligations.

19 NEW SECTION. Sec. 5. A new section is added to chapter 9.94A RCW
20 to read as follows:

21 The administrator for the courts and the commission shall develop
22 a chart for courts to use in determining the amount of incarceration
23 equivalent represented by each of the options set forth in RCW
24 9.94A.120(6). The chart shall be advisory and not mandatory. The
25 chart shall be completed not later than September 30, 1993.
26 Notwithstanding the effective date of this act, the administrator and
27 commission shall begin work immediately to develop the chart.

28 NEW SECTION. Sec. 6. A new section is added to chapter 2.56 RCW
29 to read as follows:

30 The administrator for the courts shall provide as part of its
31 education and training programs for judges a curriculum that emphasizes
32 the availability, effectiveness, and role nonincarcerative sentencing
33 options have in a sound correctional policy for the state. The
34 curriculum shall include information from other states on the advances
35 and innovations other courts have determined to be effective as
36 punishment, as well as encouraging rehabilitation and discouraging
37 repeat criminal offenses. The curriculum shall include awareness

1 training on implementing alternative sentencing to promote impartiality
2 and equity and avoid racial, ethnic, or sexual discrimination.

3 NEW SECTION. **Sec. 7.** RCW 9.94A.380 and 1988 c 157 s 4, 1988 c 155
4 s 3, 1984 c 209 s 21, & 1983 c 115 s 9 are each repealed.

5 NEW SECTION. **Sec. 8.** (1) This act shall take effect January 1,
6 1994.

7 (2) This act shall apply only to crimes committed on or after
8 January 1, 1994.

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