
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5451

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senator Hargrove)

Read first time 04/05/93.

1 AN ACT Relating to persons convicted of felonies; amending RCW
2 9.94A.390, 9.95.0011, 9.95.210, 9.96.050, 9A.20.021, 43.19.534,
3 72.09.070, 72.09.080, 72.09.110, and 72.60.160; reenacting and amending
4 RCW 9.94A.030, 9.94A.120, and 9.94A.440; adding new a section to
5 chapter 72.09 RCW; creating new sections; repealing RCW 72.09.102 and
6 72.60.190; and prescribing penalties.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that crowded prisons
9 are clearly one of the most pressing problems facing the criminal
10 justice system today. Even the most conservative estimates indicate
11 that despite our aggressive prison construction plan we will not be
12 able to build enough prison beds to keep pace with expected growth in
13 the prison population over the next ten years. The huge increase in
14 our prison population is not only the result of more individuals
15 committing serious crimes but also because most offenders released from
16 prison will return again. Our corrections system has become a high-
17 cost institution that perpetually recycles inmates without deterring
18 crime. As a result of these conditions, serious concerns have been
19 raised about our current corrections philosophy. Attention must be

1 directed towards implementing a long-range corrections strategy that
2 focuses on inmate responsibility through work training, the development
3 of mature and marketable job skills, and requiring inmates to pay for
4 the cost of their incarceration.

5 The combined cost of housing, maintaining, and supervising inmates
6 in our state corrections facilities is increasing beyond our capability
7 to pay. The legislature recognizes that the responsibility for
8 criminal activity must fall squarely on the criminal. Society should
9 not have to pay the price for crimes twice, once for the criminal act
10 and then again by feeding, clothing, and housing the offender. The
11 corrections system must be the first place where criminal offenders are
12 given the opportunity to be responsible for paying for their criminal
13 activity, not just through the loss of their freedom, but also by
14 working while in prison and contributing an appropriate portion of
15 their wages to the cost of their incarceration. Allowing offenders to
16 become responsible through working in meaningful jobs for real wages
17 can be a beneficial opportunity for corrections. Everyone profits from
18 a successful corrections industry program -- the prison system,
19 taxpayers, the community, families, and the inmate. Most important, an
20 inmate who is drug-free and has mature job skills is significantly more
21 likely not to return to prison.

22 It is the purpose and intent of this act to outline a comprehensive
23 strategy for reducing upwardly spiraling prison costs through an inmate
24 work responsibility program, preserving scarce prison cell space for
25 our most dangerous offenders, and providing judges with alternatives to
26 incarceration, including drug rehabilitation, that must be used without
27 jeopardizing public safety.

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

30 Unless the context clearly requires otherwise, the definitions in
31 this section apply throughout this chapter.

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

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

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

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

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

17 (6) "Community service" means compulsory service, without compensa-
18 tion, performed for the benefit of the community by the offender.

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

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

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

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

1 fines, and any other financial obligation that is assessed to the
2 offender as a result of a felony conviction.

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

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

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

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

29 (14) "Day reporting" means reporting at least once per day to a
30 specific location designated by the department or the sentencing judge
31 together with the requirement that the offender's location throughout
32 each day be reported to the department.

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

34 (~~(14)~~) (16) "Determinate sentence" means a sentence that states
35 with exactitude the number of actual years, months, or days of total
36 confinement, of partial confinement, of community supervision, the
37 number of actual hours or days of community service work, or dollars or
38 terms of a legal financial obligation. The fact that an offender
39 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))~~ (17) "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))~~ (18) "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))~~ (19) "Escape" means:

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

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

34 ~~((18))~~ (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); or

1 (b) 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 felony
3 traffic offense under (a) of this subsection.

4 (~~((19))~~) (21) "Fines" means the requirement that the offender pay
5 a specific sum of money over a specific period of time to the court.

6 (~~((20))~~) (22)(a) "First-time offender" means any person who is
7 convicted of a felony (i) not classified as a violent offense or a sex
8 offense under this chapter, or (ii) that is not the manufacture,
9 delivery, or possession with intent to manufacture or deliver a
10 controlled substance classified in schedule I or II that is a narcotic
11 drug or the selling for profit (~~{of}~~) of any controlled substance or
12 counterfeit substance classified in schedule I, RCW 69.50.204, except
13 leaves and flowering tops of marihuana, and except as provided in (b)
14 of this subsection, who previously has never been convicted of a felony
15 in this state, federal court, or another state, and who has never
16 participated in a program of deferred prosecution for a felony offense.

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

20 (~~((21))~~) (23) "Home detention" means a program of partial
21 confinement available to offenders in which the offender is confined in
22 a private residence subject to electronic surveillance. Home detention
23 may not be imposed for offenders convicted of a violent offense, a sex
24 offense, a drug offense, reckless burning in the first or second degree
25 as defined in RCW 9A.48.040 or 9A.48.050, assault in the third degree
26 as defined in RCW 9A.36.031, assault of a child in the third degree,
27 unlawful imprisonment as defined in RCW 9A.40.040, or harassment as
28 defined in RCW 9A.46.020. Home detention may be imposed for offenders
29 convicted of possession of a controlled substance (RCW 69.50.401(d)) or
30 forged prescription for a controlled substance (RCW 69.50.403) if the
31 offender fulfills the participation conditions set forth in this
32 subsection and is monitored for drug use by treatment alternatives to
33 street crime (TASC) or a comparable court or agency-referred program.

34 (a) Home detention may be imposed for offenders convicted of
35 burglary in the second degree as defined in RCW 9A.52.030 or
36 residential burglary conditioned upon the offender: (i) Successfully
37 completing twenty-one days in a work release program, (ii) having no
38 convictions for burglary in the second degree or residential burglary
39 during the preceding two years and not more than two prior convictions

1 for burglary or residential burglary, (iii) having no convictions for
2 a violent felony offense during the preceding two years and not more
3 than two prior convictions for a violent felony offense, (iv) having no
4 prior charges of escape, and (v) fulfilling the other conditions of the
5 home detention program.

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

22 (24) "Inpatient treatment" means participation in a treatment
23 program certified by the state that requires the offender to be in
24 residence at the facility.

25 (25) "Nonviolent offense" means an offense which is not a violent
26 offense.

27 ~~((+22+))~~ (26) "Offender" means a person who has committed a felony
28 established by state law and is eighteen years of age or older or is
29 less than eighteen years of age but whose case has been transferred by
30 the appropriate juvenile court to a criminal court pursuant to RCW
31 13.40.110. Throughout this chapter, the terms "offender" and
32 "defendant" are used interchangeably.

33 ~~((+23+))~~ (27) "Outpatient treatment" means participation in a
34 treatment program certified by the state or recommended by the
35 department that does not require the offender to be present for more
36 than twelve hours per day.

37 (28) "Partial confinement" means confinement for no more than one
38 year in a facility or institution operated or utilized under contract
39 by the state or any other unit of government, or, if home detention or

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

6 ~~((+24+))~~ (29) "Postrelease supervision" is that portion of an
7 offender's community placement that is not community custody.

8 ~~((+25+))~~ (30) "Restitution" means the requirement that the offender
9 pay a specific sum of money over a specific period of time to the court
10 as payment of damages. The sum may include both public and private
11 costs. The imposition of a restitution order does not preclude civil
12 redress.

13 ~~((+26+))~~ (31) "Serious traffic offense" means:

14 (a) Driving while under the influence of intoxicating liquor or any
15 drug (RCW 46.61.502), actual physical control while under the influence
16 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
17 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
18 or

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

22 ~~((+27+))~~ (32) "Serious violent offense" is a subcategory of violent
23 offense and means:

24 (a) Murder in the first degree, homicide by abuse, murder in the
25 second degree, assault in the first degree, kidnapping in the first
26 degree, or rape in the first degree, assault of a child in the first
27 degree, or an attempt, criminal solicitation, or criminal conspiracy to
28 commit one of these felonies; or

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

32 ~~((+28+))~~ (33) "Sentence range" means the sentencing court's
33 discretionary range in imposing a nonappealable sentence.

34 ~~((+29+))~~ (34) "Sex offense" means:

35 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
36 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
37 attempt, criminal solicitation, or criminal conspiracy to commit such
38 crimes;

1 (b) A felony with a finding of sexual motivation under RCW
2 9.94A.127; or

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

6 (~~(30)~~) (35) "Sexual motivation" means that one of the purposes
7 for which the defendant committed the crime was for the purpose of his
8 or her sexual gratification.

9 (~~(31)~~) (36) "Total confinement" means confinement inside the
10 physical boundaries of a facility or institution operated or utilized
11 under contract by the state or any other unit of government for twenty-
12 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

13 (~~(32)~~) (37) "Victim" means any person who has sustained
14 emotional, psychological, physical, or financial injury to person or
15 property as a direct result of the crime charged.

16 (~~(33)~~) (38) "Violent offense" means:

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

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

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

35 (~~(34)~~) (39) "Work crew" means a program of partial confinement
36 consisting of civic improvement tasks for the benefit of the community
37 of not less than thirty-five hours per week that complies with RCW
38 9.94A.135. The civic improvement tasks shall be performed on public
39 property or on private property owned or operated by nonprofit

1 entities, except that, for emergency purposes only, work crews may
2 perform snow removal on any private property. The civic improvement
3 tasks shall have minimal negative impact on existing private industries
4 or the labor force in the county where the service or labor is
5 performed. The civic improvement tasks shall not affect employment
6 opportunities for people with developmental disabilities contracted
7 through sheltered workshops as defined in RCW 82.04.385. Only those
8 offenders sentenced to a facility operated or utilized under contract
9 by a county are eligible to participate on a work crew. Offenders
10 sentenced for a sex offense as defined in subsection ~~((29))~~ (34) of
11 this section are not eligible for the work crew program.

12 ~~((35))~~ (40) "Work release" means a program of partial confinement
13 available to offenders who are employed or engaged as a student in a
14 regular course of study at school. Participation in work release shall
15 be conditioned upon the offender attending work or school at regularly
16 defined hours and abiding by the rules of the work release facility.

17 ~~((36))~~ "Home detention" means a program of partial confinement
18 available to offenders wherein the offender is confined in a private
19 residence subject to electronic surveillance. Home detention may not
20 be imposed for offenders convicted of a violent offense, any sex
21 offense, any drug offense, reckless burning in the first or second
22 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
23 degree as defined in RCW 9A.36.031, assault of a child in the third
24 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
25 harassment as defined in RCW 9A.46.020. Home detention may be imposed
26 for offenders convicted of possession of a controlled substance (RCW
27 69.50.401(d)) or forged prescription for a controlled substance (RCW
28 69.50.403) if the offender fulfills the participation conditions set
29 forth in this subsection and is monitored for drug use by treatment
30 alternatives to street crime (TASC) or a comparable court or agency-
31 referred program.

32 (a) Home detention may be imposed for offenders convicted of
33 burglary in the second degree as defined in RCW 9A.52.030 or
34 residential burglary conditioned upon the offender: (i) Successfully
35 completing twenty one days in a work release program, (ii) having no
36 convictions for burglary in the second degree or residential burglary
37 during the preceding two years and not more than two prior convictions
38 for burglary or residential burglary, (iii) having no convictions for
39 a violent felony offense during the preceding two years and not more

1 than two prior convictions for a violent felony offense, (iv) having no
2 prior charges of escape, and (v) fulfilling the other conditions of the
3 home detention program.

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

20 **Sec. 3.** RCW 9.94A.120 and 1992 c 145 s 7 and 1992 c 75 s 2 are
21 each reenacted and amended to read as follows:

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

24 (1) Except as authorized in subsections (2), (4), (5), ~~((and))~~ (7),
25 (8), and (21) of this section, the court shall impose a sentence within
26 the sentence range for the offense.

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

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

35 (4)(a) An offender convicted of the crime of murder in the first
36 degree shall be sentenced to a term of total confinement not less than
37 twenty years.

1 **(b)** An offender convicted of the crime of assault in the first
2 degree or assault of a child in the first degree where the offender
3 used force or means likely to result in death or intended to kill the
4 victim shall be sentenced to a term of total confinement not less than
5 five years.

6 **(c)** An offender convicted of the crime of rape in the first degree
7 shall be sentenced to a term of total confinement not less than five
8 years, and shall not be eligible for furlough, work release or other
9 authorized leave of absence from the correctional facility during such
10 minimum five-year term except for the purpose of commitment to an
11 inpatient treatment facility.

12 **(d)** An offender shall be sentenced to a minimum term of confinement
13 of not less than fifteen years if the offender (i) while committed to
14 a state correctional facility for murder in the first or second degree,
15 homicide by abuse, assault in the first or second degree, rape in the
16 first or second degree, kidnapping in the first degree, robbery in the
17 first degree, arson in the first degree, or burglary in the first
18 degree; (ii) commits the crime of murder in the second degree, assault
19 in the first or second degree, rape in the first or second degree,
20 arson in the first or second degree, or robbery in the first or second
21 degree. The sentence shall be served consecutive to any term of
22 confinement remaining on the offense or offenses for which the offender
23 was committed to the state institution as provided in RCW 9.94A.400 (2)
24 and (5). An offender who commits murder in the first degree while
25 committed to a state institution for the conviction of one of the
26 offenses listed in (d)(ii) of this subsection shall serve his or her
27 sentence consecutive to any term of confinement remaining on the
28 offense or offenses for which the offender was committed to the state
29 institution. RCW 9A.20.021(1)(b), which provides that the statutory
30 maximum for class B felonies is ten years, does not apply to the crimes
31 identified in (d)(ii) of this subsection when committed in a state
32 correctional facility by an offender who is committed to the state
33 institution for a crime listed in (d)(i) of this subsection. In these
34 circumstances, the statutory maximum is a term of life imprisonment.

35 The foregoing minimum terms of total confinement, specified in (a),
36 (b), (c), and (d) of this subsection, are mandatory and shall not be
37 varied or modified as provided in subsection (2) of this section.

38 (5) In sentencing a first-time offender the court may waive the
39 imposition of a sentence within the sentence range and impose a

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

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

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

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

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

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

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

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

29 (7)(a) An offender is eligible for the special drug offender
30 sentencing alternative if:

31 (i) The offender is convicted of the manufacture, delivery, or
32 possession with intent to manufacture or deliver a controlled substance
33 classified in schedule I or II that is a narcotic drug and the
34 violation does not involve a sentence enhancement under RCW
35 9.94A.310(3);

36 (ii) The offender has no prior or other current convictions for a
37 felony in this state, another state, or the United States;

38 (iii) The offender has not previously been sentenced under this
39 special drug offender sentencing alternative;

1 (iv) The offense involved only a small quantity of the particular
2 controlled substance, as determined by the sentencing judge upon
3 consideration of such factors as the weight, purity, packaging, sale
4 price, and street value of the controlled substance.

5 (b) If the sentencing judge determines that the offender is
6 eligible for this option and that the offender and the community will
7 benefit from the use of the special drug offender sentencing
8 alternative, the judge may waive imposition of a sentence within the
9 standard range and impose a sentence that must include a period of
10 total confinement in a state facility for one-half of the midpoint of
11 the standard range. No more than three months of the sentence may be
12 served in a work release status. The court shall also impose one year
13 of community custody that must include crime-related prohibitions, a
14 condition to not use illegal controlled substances, and to submit to
15 urinalysis or other testing to monitor that status. In addition, the
16 court may impose any of the following conditions:

17 (i) Devote time to a specific employment or training;

18 (ii) Participate in outpatient substance abuse treatment;

19 (iii) Remain within prescribed geographical boundaries and notify
20 the court or the community corrections officer before any change in the
21 offender's address or employment;

22 (iv) Report as directed to a community corrections officer;

23 (v) Pay all court-ordered legal financial obligations;

24 (vi) Perform community service work;

25 (vii) Pay a day fine;

26 (viii) Stay out of areas designated by the sentencing judge;

27 (ix) Undergo day reporting.

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

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

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

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

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

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

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

26 The court on its own motion may order, or on a motion by the state
27 shall order, a second examination regarding the offender's amenability
28 to treatment. The evaluator shall be selected by the party making the
29 motion. The defendant shall pay the cost of any second examination
30 ordered unless the court finds the defendant to be indigent in which
31 case the state shall pay the cost.

32 (ii) After receipt of the reports, the court shall consider whether
33 the offender and the community will benefit from use of this special
34 sexual offender sentencing alternative and consider the victim's
35 opinion whether the offender should receive a treatment disposition
36 under this subsection. If the court determines that this special sex
37 offender sentencing alternative is appropriate, the court shall then
38 impose a sentence within the sentence range. If this sentence is less

1 than eight years of confinement, the court may suspend the execution of
2 the sentence and impose the following conditions of suspension:

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

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

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

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

25 (III) Report as directed to the court and a community corrections
26 officer;

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

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

32 (iii) The sex offender therapist shall submit quarterly reports on
33 the defendant's progress in treatment to the court and the parties.
34 The report shall reference the treatment plan and include at a minimum
35 the following: Dates of attendance, defendant's compliance with
36 requirements, treatment activities, the defendant's relative progress
37 in treatment, and any other material as specified by the court at
38 sentencing.

1 (iv) At the time of sentencing, the court shall set a treatment
2 termination hearing for three months prior to the anticipated date for
3 completion of treatment. Prior to the treatment termination hearing,
4 the treatment professional and community corrections officer shall
5 submit written reports to the court and parties regarding the
6 defendant's compliance with treatment and monitoring requirements, and
7 recommendations regarding termination from treatment, including
8 proposed community supervision conditions. Either party may request
9 and the court may order another evaluation regarding the advisability
10 of termination from treatment. The defendant shall pay the cost of any
11 additional evaluation ordered unless the court finds the defendant to
12 be indigent in which case the state shall pay the cost. At the
13 treatment termination hearing the court may: (A) Modify conditions of
14 community supervision, and either (B) terminate treatment, or (C)
15 extend treatment for up to the remaining period of community
16 supervision.

17 (v) The court may revoke the suspended sentence at any time during
18 the period of community supervision and order execution of the sentence
19 if: (A) The defendant violates the conditions of the suspended
20 sentence, or (B) the court finds that the defendant is failing to make
21 satisfactory progress in treatment. All confinement time served during
22 the period of community supervision shall be credited to the offender
23 if the suspended sentence is revoked.

24 (vi) Except as provided in (a)(vii) of this subsection, after July
25 1, 1991, examinations and treatment ordered pursuant to this subsection
26 shall only be conducted by sex offender treatment providers certified
27 by the department of health pursuant to chapter 18.155 RCW.

28 (vii) A sex offender therapist who examines or treats a sex
29 offender pursuant to this subsection (~~((7))~~) (8) does not have to be
30 certified by the department of health pursuant to chapter 18.155 RCW if
31 the court finds that: (A) The offender has already moved to another
32 state or plans to move to another state for reasons other than
33 circumventing the certification requirements; (B) no certified
34 providers are available for treatment within a reasonable geographical
35 distance of the offender's home; and (C) the evaluation and treatment
36 plan comply with this subsection (~~((7))~~) (8) and the rules adopted by
37 the department of health.

38 For purposes of this subsection, "victim" means any person who has
39 sustained emotional, psychological, physical, or financial injury to

1 person or property as a result of the crime charged. "Victim" also
2 means a parent or guardian of a victim who is a minor child unless the
3 parent or guardian is the perpetrator of the offense.

4 (b) When an offender is convicted of any felony sex offense
5 committed before July 1, 1987, and is sentenced to a term of
6 confinement of more than one year but less than six years, the
7 sentencing court may, on its own motion or on the motion of the
8 offender or the state, order the offender committed for up to thirty
9 days to the custody of the secretary of social and health services for
10 evaluation and report to the court on the offender's amenability to
11 treatment at these facilities. If the secretary of social and health
12 services cannot begin the evaluation within thirty days of the court's
13 order of commitment, the offender shall be transferred to the state for
14 confinement pending an opportunity to be evaluated at the appropriate
15 facility. The court shall review the reports and may order that the
16 term of confinement imposed be served in the sexual offender treatment
17 program at the location determined by the secretary of social and
18 health services or the secretary's designee, only if the report
19 indicates that the offender is amenable to the treatment program
20 provided at these facilities. The offender shall be transferred to the
21 state pending placement in the treatment program. Any offender who has
22 escaped from the treatment program shall be referred back to the
23 sentencing court.

24 If the offender does not comply with the conditions of the
25 treatment program, the secretary of social and health services may
26 refer the matter to the sentencing court. The sentencing court shall
27 commit the offender to the department of corrections to serve the
28 balance of the term of confinement.

29 If the offender successfully completes the treatment program before
30 the expiration of the term of confinement, the court may convert the
31 balance of confinement to community supervision and may place
32 conditions on the offender including crime-related prohibitions and
33 requirements that the offender perform any one or more of the
34 following:

- 35 (i) Devote time to a specific employment or occupation;
- 36 (ii) Remain within prescribed geographical boundaries and notify
37 the court or the community corrections officer prior to any change in
38 the offender's address or employment;

1 (iii) Report as directed to the court and a community corrections
2 officer;

3 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

30 (iv) Undergo available outpatient treatment.

31 If the offender violates any of the terms of his or her community
32 supervision, the court may order the offender to serve out the balance
33 of his community supervision term in confinement in the custody of the
34 department of corrections.

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

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

9 ~~((+8))~~ (9)(a) When a court sentences a person to a term of total
10 confinement to the custody of the department of corrections for an
11 offense categorized as a sex offense or a serious violent offense
12 committed after July 1, 1988, but before July 1, 1990, assault in the
13 second degree, assault of a child in the second degree, any crime
14 against a person where it is determined in accordance with RCW
15 9.94A.125 that the defendant or an accomplice was armed with a deadly
16 weapon at the time of commission, or any felony offense under chapter
17 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
18 in addition to the other terms of the sentence, sentence the offender
19 to a one-year term of community placement beginning either upon
20 completion of the term of confinement or at such time as the offender
21 is transferred to community custody in lieu of earned early release in
22 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
23 offender under this subsection to the statutory maximum period of
24 confinement then the community placement portion of the sentence shall
25 consist entirely of such community custody to which the offender may
26 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
27 period of community custody actually served shall be credited against
28 the community placement portion of the sentence.

29 (b) When a court sentences a person to a term of total confinement
30 to the custody of the department of corrections for an offense
31 categorized as a sex offense or serious violent offense committed on or
32 after July 1, 1990, the court shall in addition to other terms of the
33 sentence, sentence the offender to community placement for two years or
34 up to the period of earned early release awarded pursuant to RCW
35 9.94A.150 (1) and (2), whichever is longer. The community placement
36 shall begin either upon completion of the term of confinement or at
37 such time as the offender is transferred to community custody in lieu
38 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
39 When the court sentences an offender under this subsection to the

1 statutory maximum period of confinement then the community placement
2 portion of the sentence shall consist entirely of the community custody
3 to which the offender may become eligible, in accordance with RCW
4 9.94A.150 (1) and (2). Any period of community custody actually served
5 shall be credited against the community placement portion of the
6 sentence. Unless a condition is waived by the court, the terms of
7 community placement for offenders sentenced pursuant to this section
8 shall include the following conditions:

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

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

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

15 (iv) An offender in community custody shall not unlawfully possess
16 controlled substances;

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

19 (vi) The residence location and living arrangements are subject to
20 the prior approval of the department of corrections during the period
21 of community placement.

22 (c) The court may also order any of the following special
23 conditions:

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

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

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

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

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

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

36 ((+9)) (10) If the court imposes a sentence requiring confinement
37 of thirty days or less, the court may, in its discretion, specify that
38 the sentence be served on consecutive or intermittent days. A sentence
39 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered
2 intermittent sentences as space permits.

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

24 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
25 9.94A.142(1), a court may not impose a sentence providing for a term of
26 confinement or community supervision or community placement which
27 exceeds the statutory maximum for the crime as provided in chapter
28 9A.20 RCW.

29 ~~((12))~~ (13) All offenders sentenced to terms involving community
30 supervision, community service, community placement, or legal financial
31 obligation shall be under the supervision of the secretary of the
32 department of corrections or such person as the secretary may designate
33 and shall follow explicitly the instructions of the secretary including
34 reporting as directed to a community corrections officer, remaining
35 within prescribed geographical boundaries, notifying the community
36 corrections officer of any change in the offender's address or
37 employment, and paying the supervision fee assessment.

38 ~~((13))~~ (14) All offenders sentenced to terms involving community
39 supervision, community service, or community placement under the

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

9 ~~((14))~~ (15) The sentencing court shall give the offender credit
10 for all confinement time served before the sentencing if that
11 confinement was solely in regard to the offense for which the offender
12 is being sentenced.

13 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)
14 and (2) governing whether sentences are to be served consecutively or
15 concurrently is an exceptional sentence subject to the limitations in
16 subsections (2) and (3) of this section, and may be appealed by the
17 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

18 ~~((16))~~ (17) The court shall order restitution whenever the
19 offender is convicted of a felony that results in injury to any person
20 or damage to or loss of property, whether the offender is sentenced to
21 confinement or placed under community supervision, unless extraordinary
22 circumstances exist that make restitution inappropriate in the court's
23 judgment. The court shall set forth the extraordinary circumstances in
24 the record if it does not order restitution.

25 ~~((17))~~ (18) As a part of any sentence, the court may impose and
26 enforce an order that relates directly to the circumstances of the
27 crime for which the offender has been convicted, prohibiting the
28 offender from having any contact with other specified individuals or a
29 specific class of individuals for a period not to exceed the maximum
30 allowable sentence for the crime, regardless of the expiration of the
31 offender's term of community supervision or community placement.

32 ~~((18))~~ (19) In any sentence of partial confinement, the court may
33 require the defendant to serve the partial confinement in work release,
34 in a program of home detention, on work crew, or in a combined program
35 of work crew and home detention.

36 ~~((19))~~ (20) All court-ordered legal financial obligations
37 collected by the department and remitted to the county clerk shall be
38 credited and paid where restitution is ordered. Restitution shall be
39 paid prior to any other payments of monetary obligations.

1 (21) An offender shall be sentenced to a minimum term of
2 confinement of not less than fifteen years or a determinate term within
3 the standard range, whichever is greater, if the offender (a) while
4 committed to a state correctional facility for murder in the first or
5 second degree, homicide by abuse, assault in the first or second
6 degree, rape in the first or second degree, kidnapping in the first
7 degree, robbery in the first degree, arson in the first degree, or
8 burglary in the first degree; (b) commits the crime of murder in the
9 second degree, assault in the first or second degree, rape in the first
10 or second degree, arson in the first or second degree, or robbery in
11 the first or second degree. The court may impose an exceptional
12 sentence above the mandatory minimum term or the standard range for the
13 offense based on the existence of aggravating factors as provided in
14 RCW 9.94A.390, but may not impose an exceptional sentence below the
15 mandatory minimum or standard range. The term imposed shall be served
16 consecutive to any term of confinement remaining on the offense or
17 offenses for which the offender was committed to the state institution
18 as provided in RCW 9.94A.400 (2) and (5). An offender who commits
19 murder in the first degree while committed to a state institution for
20 the conviction of one of the offenses listed in (b) of this subsection
21 shall serve his or her sentence consecutive to any term of confinement
22 remaining on the offense or offenses for which the offender was
23 committed to the state institution. RCW 9A.20.021(1)(b), which
24 provides that the statutory maximum for class B felonies is ten years,
25 does not apply to the crimes identified in (b) of this subsection when
26 committed in a state correctional facility by an offender who is
27 committed to the state institution for a crime listed in (a) of this
28 subsection. In these circumstances, the statutory maximum is a term of
29 life imprisonment.

30 **Sec. 4.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
31 as follows:

32 If the sentencing court finds that an exceptional sentence outside
33 the standard range should be imposed in accordance with RCW
34 9.94A.120(2), the sentence is subject to review only as provided for in
35 RCW 9.94A.210(4).

36 The following are illustrative factors which the court may consider
37 in the exercise of its discretion to impose an exceptional sentence.

1 The following are illustrative only and are not intended to be
2 exclusive reasons for exceptional sentences.

3 (1) Mitigating Circumstances

4 (a) To a significant degree, the victim was an initiator, willing
5 participant, aggressor, or provoker of the incident.

6 (b) Before detection, the defendant compensated, or made a good
7 faith effort to compensate, the victim of the criminal conduct for any
8 damage or injury sustained.

9 (c) The defendant committed the crime under duress, coercion,
10 threat, or compulsion insufficient to constitute a complete defense but
11 which significantly affected his or her conduct.

12 (d) The defendant, with no apparent predisposition to do so, was
13 induced by others to participate in the crime.

14 (e) The defendant's capacity to appreciate the wrongfulness of his
15 or her conduct or to conform his or her conduct to the requirements of
16 the law, was significantly impaired (voluntary use of drugs or alcohol
17 is excluded).

18 (f) The offense was principally accomplished by another person and
19 the defendant manifested extreme caution or sincere concern for the
20 safety or well-being of the victim.

21 (g) The operation of the multiple offense policy of RCW 9.94A.400
22 results in a presumptive sentence that is clearly excessive in light of
23 the purpose of this chapter, as expressed in RCW 9.94A.010.

24 (h) The defendant or the defendant's children suffered a continuing
25 pattern of physical or sexual abuse by the victim of the offense and
26 the offense is a response to that abuse.

27 (2) Aggravating Circumstances

28 (a) The defendant's conduct during the commission of the current
29 offense manifested deliberate cruelty to the victim.

30 (b) The defendant knew or should have known that the victim of the
31 current offense was particularly vulnerable or incapable of resistance
32 due to extreme youth, advanced age, disability, or ill health.

33 (c) The current offense was a major economic offense or series of
34 offenses, so identified by a consideration of any of the following
35 factors:

36 (i) The current offense involved multiple victims or multiple
37 incidents per victim;

38 (ii) The current offense involved attempted or actual monetary loss
39 substantially greater than typical for the offense;

1 (iii) The current offense involved a high degree of sophistication
2 or planning or occurred over a lengthy period of time;

3 (iv) The defendant used his or her position of trust, confidence,
4 or fiduciary responsibility to facilitate the commission of the current
5 offense.

6 (d) The current offense was a major violation of the Uniform
7 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
8 trafficking in controlled substances, which was more onerous than the
9 typical offense of its statutory definition: The presence of ANY of
10 the following may identify a current offense as a major VUCSA:

11 (i) The current offense involved at least three separate
12 transactions in which controlled substances were sold, transferred, or
13 possessed with intent to do so; or

14 (ii) The current offense involved an attempted or actual sale or
15 transfer of controlled substances in quantities substantially larger
16 than for personal use; or

17 (iii) The current offense involved the manufacture of controlled
18 substances for use by other parties; or

19 (iv) The circumstances of the current offense reveal the offender
20 to have occupied a high position in the drug distribution hierarchy; or

21 (v) The current offense involved a high degree of sophistication or
22 planning or occurred over a lengthy period of time or involved a broad
23 geographic area of disbursement; or

24 (vi) The offender used his or her position or status to facilitate
25 the commission of the current offense, including positions of trust,
26 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
27 other medical professional)(~~(; or)~~).

28 (e) The defendant is being sentenced for an offense involving the
29 use or threatened use of physical violence and poses a future danger of
30 violent behavior that will not be sufficiently mitigated by a period of
31 incarceration within the standard range. This finding may be made upon
32 conviction of any violent offense and must be supported by:

33 (i) A history of similar misconduct. This history may be
34 established by prior criminal convictions or other competent evidence;
35 and

36 (ii) A finding that the defendant is not amenable to treatment.
37 The following are among the factors the court may consider in making
38 such a finding:

1 (A) The opinion of a mental health professional that the defendant
2 would likely not be amenable to treatment;

3 (B) The defendant has been refused treatment at all available
4 facilities;

5 (C) The defendant refuses to cooperate with necessary evaluations
6 to determine the usefulness of treatment; or

7 (D) The current offense was committed less than six months after
8 the defendant was released from incarceration for a similar offense.

9 (f) The current offense included a finding of sexual motivation
10 pursuant to RCW 9.94A.127((+)).

11 ~~((+))~~ (g) The offense was part of an ongoing pattern of sexual
12 abuse of the same victim under the age of eighteen years manifested by
13 multiple incidents over a prolonged period of time((+or)).

14 ~~((+))~~ (h) The operation of the multiple offense policy of RCW
15 9.94A.400 results in a presumptive sentence that is clearly too lenient
16 in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

17 **Sec. 5.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
18 each reenacted and amended to read as follows:

19 (1) Decision not to prosecute.

20 STANDARD: A prosecuting attorney may decline to prosecute, even
21 though technically sufficient evidence to prosecute exists, in
22 situations where prosecution would serve no public purpose, would
23 defeat the underlying purpose of the law in question or would result in
24 decreased respect for the law.

25 GUIDELINE/COMMENTARY:

26 Examples

27 The following are examples of reasons not to prosecute which could
28 satisfy the standard.

29 (a) Contrary to Legislative Intent - It may be proper to decline to
30 charge where the application of criminal sanctions would be clearly
31 contrary to the intent of the legislature in enacting the particular
32 statute.

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

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

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

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

3 (iv) The statute has not been recently reconsidered by the
4 legislature.

5 This reason is not to be construed as the basis for declining cases
6 because the law in question is unpopular or because it is difficult to
7 enforce.

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

11 (d) Confinement on Other Charges - Except for crimes committed by
12 prisoners in state correctional facilities as provided in RCW
13 9.94A.120(21), it may be proper to decline to charge because the
14 accused has been sentenced on another charge to a lengthy period of
15 confinement; and

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

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

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

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

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

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

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

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

32 (f) High Disproportionate Cost of Prosecution - It may be proper to
33 decline to charge where the cost of locating or transporting, or the
34 burden on, prosecution witnesses is highly disproportionate to the
35 importance of prosecuting the offense in question. This reason should
36 be limited to minor cases and should not be relied upon in serious
37 cases.

38 (g) Improper Motives of Complainant - It may be proper to decline
39 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying
2 purpose of the law in question or would result in decreased respect for
3 the law.

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

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

12 (i) Assault cases where the victim has suffered little or no
13 injury;

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

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

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

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

21 Notification

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

24 (2) Decision to prosecute.

25 STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the evidence,
29 would justify conviction by a reasonable and objective fact-finder.
30 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
31 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
32 9A.64.020 the prosecutor should avoid prefiling agreements or
33 diversions intended to place the accused in a program of treatment or
34 counseling, so that treatment, if determined to be beneficial, can be
35 provided pursuant to RCW 9.94A.120(~~(7)~~)(8).

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it probable
38 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

6 Aggravated Murder
7 1st Degree Murder
8 2nd Degree Murder
9 1st Degree Kidnaping
10 1st Degree Assault
11 1st Degree Assault of a Child
12 1st Degree Rape
13 1st Degree Robbery
14 1st Degree Rape of a Child
15 1st Degree Arson
16 2nd Degree Kidnaping
17 2nd Degree Assault
18 2nd Degree Assault of a Child
19 2nd Degree Rape
20 2nd Degree Robbery
21 1st Degree Burglary
22 1st Degree Manslaughter
23 2nd Degree Manslaughter
24 1st Degree Extortion
25 Indecent Liberties
26 Incest
27 2nd Degree Rape of a Child
28 Vehicular Homicide
29 Vehicular Assault
30 3rd Degree Rape
31 3rd Degree Rape of a Child
32 1st Degree Child Molestation
33 2nd Degree Child Molestation
34 3rd Degree Child Molestation
35 2nd Degree Extortion
36 1st Degree Promoting Prostitution
37 Intimidating a Juror
38 Communication with a Minor

1 Intimidating a Witness
2 Intimidating a Public Servant
3 Bomb Threat (if against person)
4 3rd Degree Assault
5 3rd Degree Assault of a Child
6 Unlawful Imprisonment
7 Promoting a Suicide Attempt
8 Riot (if against person)

9 CRIMES AGAINST PROPERTY/OTHER CRIMES

10 2nd Degree Arson
11 1st Degree Escape
12 2nd Degree Burglary
13 1st Degree Theft
14 1st Degree Perjury
15 1st Degree Introducing Contraband
16 1st Degree Possession of Stolen Property
17 Bribery
18 Bribing a Witness
19 Bribe received by a Witness
20 Bomb Threat (if against property)
21 1st Degree Malicious Mischief
22 2nd Degree Theft
23 2nd Degree Escape
24 2nd Degree Introducing Contraband
25 2nd Degree Possession of Stolen Property
26 2nd Degree Malicious Mischief
27 1st Degree Reckless Burning
28 Taking a Motor Vehicle without Authorization
29 Forgery
30 2nd Degree Perjury
31 2nd Degree Promoting Prostitution
32 Tampering with a Witness
33 Trading in Public Office
34 Trading in Special Influence
35 Receiving/Granting Unlawful Compensation
36 Bigamy
37 Eluding a Pursuing Police Vehicle

1 Willful Failure to Return from Furlough
2 Escape from Community Custody
3 Riot (if against property)
4 Thefts of Livestock

5 ALL OTHER UNCLASSIFIED FELONIES

6 Selection of Charges/Degree of Charge

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

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

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

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

15 (a) Charging a higher degree;

16 (b) Charging additional counts.

17 This standard is intended to direct prosecutors to charge those
18 crimes which demonstrate the nature and seriousness of a defendant's
19 criminal conduct, but to decline to charge crimes which are not
20 necessary to such an indication. Crimes which do not merge as a matter
21 of law, but which arise from the same course of conduct, do not all
22 have to be charged.

23 GUIDELINES/COMMENTARY:

24 Police Investigation

25 A prosecuting attorney is dependent upon law enforcement agencies
26 to conduct the necessary factual investigation which must precede the
27 decision to prosecute. The prosecuting attorney shall ensure that a
28 thorough factual investigation has been conducted before a decision to
29 prosecute is made. In ordinary circumstances the investigation should
30 include the following:

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

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

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

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

1 Exceptions

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

- 4 (1) Probable cause exists to believe the suspect is guilty; and
5 (2) The suspect presents a danger to the community or is likely to
6 flee if not apprehended; or
7 (3) The arrest of the suspect is necessary to complete the
8 investigation of the crime.

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

14 Investigation Techniques

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

- 17 (1) Polygraph testing;
18 (2) Hypnosis;
19 (3) Electronic surveillance;
20 (4) Use of informants.

21 Pre-Filing Discussions with Defendant

22 Discussions with the defendant or ((his/her)) a representative
23 regarding the selection or disposition of charges may occur prior to
24 the filing of charges, and potential agreements can be reached.

25 **Sec. 6.** RCW 9.95.0011 and 1989 c 259 s 4 are each amended to read
26 as follows:

27 (1) The indeterminate ((sentencing)) sentence review board shall
28 cease to exist on June 30, 1998. Prior to June 30, 1998, the board
29 shall review each inmate convicted of crimes committed before July 1,
30 1984, and prepare a report. This report shall include a recommendation
31 regarding the offender's suitability for parole, appropriate parole
32 conditions, and, for those persons committed under a mandatory life
33 sentence, duration of confinement.

34 (2) ~~((The governor, through the office of financial management,~~
35 ~~shall recommend to the legislature alternatives for carrying out the~~
36 ~~duties of)) To facilitate termination of the board on June 30, 1998,~~
37 the board shall prepare a detailed plan and recommendations for the
38 transfer of jurisdiction over inmates and parolees remaining subject to

1 the indeterminate sentencing system. The plan shall consider ex post
2 facto issues and public safety concerns. In developing
3 recommendations, the (~~office of financial management~~) board shall
4 consult with the (~~indeterminate sentence review board~~) office of
5 financial management, the attorney general, the Washington association
6 of prosecuting attorneys, the Washington defender association, the
7 department of corrections, and the administrator for the courts.
8 Recommendations shall include an indication of to whom jurisdiction
9 over the inmates and parolees should be transferred, a detailed fiscal
10 analysis, and if necessary, recommended formulas and procedures for the
11 reimbursement of costs to local governments (~~if necessary~~). The plan
12 and recommendations shall be presented to the (~~1997~~) legislature no
13 later than December 1, 1995.

14 **Sec. 7.** RCW 9.95.210 and 1992 c 86 s 1 are each amended to read as
15 follows:

16 In granting probation, the court may suspend the imposition or the
17 execution of the sentence and may direct that the suspension may
18 continue upon such conditions and for such time as it shall designate,
19 not exceeding the maximum term of sentence or two years, whichever is
20 longer.

21 In the order granting probation and as a condition thereof, the
22 court may in its discretion imprison the defendant in the county jail
23 for a period not exceeding one year and may fine the defendant any sum
24 not exceeding the statutory limit for the offense committed, and court
25 costs. As a condition of probation, the court shall require the
26 payment of the penalty assessment required by RCW 7.68.035. The court
27 may also require the defendant to make such monetary payments, on such
28 terms as it deems appropriate under the circumstances, as are necessary
29 (1) to comply with any order of the court for the payment of family
30 support, (2) to make restitution to any person or persons who may have
31 suffered loss or damage by reason of the commission of the crime in
32 question or when the offender pleads guilty to a lesser offense or
33 fewer offenses and agrees with the prosecutor's recommendation that the
34 offender be required to pay restitution to a victim of an offense or
35 offenses which are not prosecuted pursuant to a plea agreement, (3) to
36 pay such fine as may be imposed and court costs, including
37 reimbursement of the state for costs of extradition if return to this
38 state by extradition was required, (4) following consideration of the

1 financial condition of the person subject to possible electronic
2 monitoring, to pay for the costs of electronic monitoring if that
3 monitoring was required by the court as a condition of release from
4 custody or as a condition of probation, and (5) to contribute to a
5 county or interlocal drug fund, and may require bonds for the faithful
6 observance of any and all conditions imposed in the probation. In the
7 case of felony offense, the court shall order the probationer to report
8 to the secretary of corrections or such officer as the secretary may
9 designate and as a condition of the probation to follow implicitly the
10 instructions of the secretary. Misdemeanants shall be assigned to the
11 county for probation. If the probationer has been ordered to make
12 restitution, the officer supervising the probationer shall make a
13 reasonable effort to ascertain whether restitution has been made. If
14 restitution has not been made as ordered, the officer shall inform the
15 prosecutor of that violation of the terms of probation not less than
16 three months prior to the termination of the probation period. The
17 secretary of corrections will promulgate rules and regulations for the
18 conduct of the person during the term of probation. For defendants
19 found guilty in district court, like functions as the secretary
20 performs in regard to probation may be performed by probation officers
21 employed for that purpose by the county legislative authority of the
22 county wherein the court is located.

23 **Sec. 8.** RCW 9.96.050 and 1980 c 75 s 1 are each amended to read as
24 follows:

25 When a prisoner on parole has performed the obligations of his or
26 her release for such time as shall satisfy the indeterminate sentence
27 review board ((of prison terms and paroles)) that his or her final
28 release is not incompatible with the best interests of society and the
29 welfare of the paroled individual, the board may make a final order of
30 discharge and issue a certificate of discharge to the prisoner. The
31 board retains the jurisdiction to issue a certificate of discharge
32 after the expiration of the prisoner's or parolee's maximum statutory
33 sentence(~~(: PROVIDED, That no such order of discharge shall be made in~~
34 ~~any case within a period of less than one year from the date on which~~
35 ~~the board has conditionally discharged the parolee from active~~
36 ~~supervision by a probation and parole officer, except where the~~
37 ~~parolee's maximum statutory sentence expires earlier)). If not granted
38 earlier, the board shall make a final order of discharge three years~~

1 from the date of parole unless the parolee is on suspended or revoked
2 status at the expiration of the three years. Such discharge,
3 regardless of when issued, shall have the effect of restoring all civil
4 rights lost by operation of law upon conviction, and the certification
5 of discharge shall so state. This restoration of civil rights does not
6 restore the right to receive, possess, own, or transport firearms.

7 The discharge provided for in this section shall be considered as
8 a part of the sentence of the convicted person and shall not in any
9 manner be construed as affecting the powers of the governor to pardon
10 any such person.

11 **Sec. 9.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read
12 as follows:

13 (1) Felony. No person convicted of a classified felony shall be
14 punished by confinement or fine exceeding the following:

15 (a) For a class A felony, by confinement in a state correctional
16 institution for a term of life imprisonment, or by a fine in an amount
17 fixed by the court of fifty thousand dollars, or by both such
18 confinement and fine;

19 (b) Except as provided in RCW 9.94A.120(4)(d) and (21) for a class
20 B felony, by confinement in a state correctional institution for a term
21 of ten years, or by a fine in an amount fixed by the court of twenty
22 thousand dollars, or by both such confinement and fine;

23 (c) For a class C felony, by confinement in a state correctional
24 institution for five years, or by a fine in an amount fixed by the
25 court of ten thousand dollars, or by both such confinement and fine.

26 (2) Gross Misdemeanor. Every person convicted of a gross
27 misdemeanor defined in Title 9A RCW shall be punished by imprisonment
28 in the county jail for a maximum term fixed by the court of not more
29 than one year, or by a fine in an amount fixed by the court of not more
30 than five thousand dollars, or by both such imprisonment and fine.

31 (3) Misdemeanor. Every person convicted of a misdemeanor defined
32 in Title 9A RCW shall be punished by imprisonment in the county jail
33 for a maximum term fixed by the court of not more than ninety days, or
34 by a fine in an amount fixed by the court of not more than one thousand
35 dollars, or by both such imprisonment and fine.

36 (4) This section applies to only those crimes committed on or after
37 July 1, 1984.

1 **Sec. 10.** RCW 43.19.534 and 1986 c 94 s 2 are each amended to read
2 as follows:

3 State agencies, the legislature, and departments shall purchase for
4 their use all (~~(articles or products)~~) goods and services required by
5 the legislature, agencies, or departments (~~(which)~~) that are produced
6 or provided in whole or in part from class II inmate work programs
7 operated by the department of corrections through state contract.
8 These (~~(articles and products)~~) goods and services shall not be
9 purchased from any other source unless, upon application by the
10 department or agency: (1) The department of general administration
11 finds that the articles or products do not meet the reasonable
12 requirements of the agency or department, (2) are not of equal or
13 better quality, or (3) the price of the product or service is higher
14 than that produced by the private sector. However, the criteria
15 contained in (1), (2), and (3) of this section for purchasing goods and
16 services from sources other than correctional industries do not apply
17 to goods and services produced by correctional industries that
18 primarily replace goods manufactured or services obtained from outside
19 the state. The department of corrections and department of general
20 administration shall adopt administrative rules that implement this
21 section.

22 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.09 RCW
23 to read as follows:

24 (1) The secretary shall increase inmate participation in class I
25 and class II correctional industries work programs incrementally until
26 a combined total of fifteen percent of all eligible physically and
27 mentally able inmates are employed in class I and class II programs by
28 December 30, 1998, and thirty percent by December 30, 2001. "Eligible
29 physically and mentally able inmates" includes all inmates in
30 department facilities except inmates determined to be incapable of
31 working in correctional industries work programs due to one of the
32 following reasons only:

33 (a) The inmate has a chronic mental deficiency or is mentally
34 retarded and participation in work programs is impossible;

35 (b) The inmate has a physical disability or illness making
36 participation in work programs impossible;

37 (c) The inmate is housed in an intensive management unit.

1 (2) The department shall deduct at least fifty percent from the
2 gross wages of each inmate working in correctional industries. This
3 amount shall be first used to pay any court-ordered legal financial
4 obligations the defendant is required to pay. Upon full payment of
5 legal financial obligations, the deduction shall be deposited into a
6 department personal inmate savings account until the account reaches at
7 least two hundred fifty dollars. Thereafter, all inmates working in
8 class I, class II, class III, and class IV correctional industries
9 programs shall pay fifty percent of their gross wages earned, up to six
10 dollars per hour, toward the cost of incarceration so long as the
11 inmate has retained at least two hundred fifty dollars in a department
12 personal inmate savings account.

13 (3) The department shall explore other methods of recovering a
14 portion of the cost of the inmate's incarceration and for encouraging
15 participation in work programs, including development of incentive
16 programs that offer inmates benefits and amenities paid for only from
17 wages earned while working in a correctional industries work program.

18 (4) The department shall develop the necessary administrative
19 structure to recover inmates' wages and keep records of the amount
20 inmates pay for the costs of incarceration and amenities. All funds
21 gained from this section shall be deposited in a dedicated fund with
22 the department and shall be used only for the purpose of enhancing and
23 maintaining the correctional industries program until December 31,
24 2000, and thereafter all funds shall be deposited in the general fund.

25 (5) The expansion of inmate employment in class I and class II
26 correctional industries shall be limited to the expanded use of
27 existing correctional industry facilities and any new facilities funded
28 in the 1993-95 budget, and any expansions funded from the recovery of
29 inmate wages described in subsection (4) of this section. The
30 department shall maximize the use of existing facilities to the fullest
31 possible extent, including the addition of second and third shifts of
32 workers where possible.

33 **Sec. 12.** RCW 72.09.070 and 1989 c 185 s 4 are each amended to read
34 as follows:

35 (1) There is created a correctional industries board of directors
36 which shall have the composition provided in RCW 72.09.080.

37 (2) Consistent with general department of corrections policies and
38 procedures pertaining to the general administration of correctional

1 facilities, the board shall establish and implement policy for
2 correctional industries programs designed to:

3 (a) Offer inmates meaningful employment, work experience, and
4 training in vocations (~~((which may provide))~~) that are specifically
5 designed to reduce recidivism and thereby enhance public safety by
6 providing opportunities for legitimate means of livelihood upon their
7 release from custody;

8 (b) Provide industries which will reduce the tax burden of
9 corrections and save taxpayers money through production of goods and
10 services for sale and use;

11 (c) Operate correctional work programs in an effective and
12 efficient manner which are as similar as possible to those provided by
13 the private sector;

14 (d) Encourage the development of and provide for selection of,
15 contracting for, and supervision of work programs with participating
16 private enterprise firms;

17 (e) Develop and design correctional industries work programs;

18 (f) Invest available funds in correctional industries enterprises
19 and meaningful work programs that minimize the impact on in-state jobs
20 and businesses.

21 (3) The board of directors shall at least annually review the work
22 performance of the director of correctional industries division with
23 the secretary.

24 (4) The director of correctional industries division shall review
25 and evaluate the productivity, funding, and appropriateness of all
26 correctional work programs and report on their effectiveness to the
27 board and to the secretary.

28 (5) The board of directors shall have the authority to identify and
29 establish trade advisory or apprenticeship committees to advise them on
30 correctional industries work programs. The secretary shall appoint the
31 members of the committees.

32 Where a labor management trade advisory and apprenticeship
33 committee has already been established by the department pursuant to
34 RCW 72.62.050 the existing committee shall also advise the board of
35 directors.

36 **Sec. 13.** RCW 72.09.080 and 1989 c 185 s 5 are each amended to read
37 as follows:

1 (1) The correctional industries board of directors shall consist of
2 nine voting members, appointed by the governor (~~(upon recommendation by~~
3 ~~the secretary)~~). Each member shall serve a three-year staggered term.
4 Initially, the governor shall appoint three members to one-year terms,
5 three members to two-year terms, and three members to three-year terms.
6 The speaker of the house of representatives and the president of the
7 senate shall each appoint one member from each of the two largest
8 caucuses in their respective houses. The legislators so appointed
9 shall be nonvoting members and shall serve two-year terms, or until
10 they cease to be members of the house from which they were appointed,
11 whichever occurs first. The nine members appointed by the governor
12 shall include three representatives from (~~both~~) labor (~~and~~
13 ~~industry~~), three representatives from business representing cross-
14 sections of industries and all sizes of employers, and three members
15 from the general public.

16 (2) The board of directors shall elect a chair and such other
17 officers as it deems appropriate from among the voting members.

18 (3) The voting members of the board of directors shall serve with
19 compensation pursuant to RCW 43.03.240 and shall be reimbursed by the
20 department for travel expenses and per diem under RCW 43.03.050 and
21 43.03.060, as now or hereafter amended. Legislative members shall be
22 reimbursed under RCW 44.04.120, as now or hereafter amended.

23 (4) The secretary shall provide such staff services, facilities,
24 and equipment as the board shall require to carry out its duties.

25 **Sec. 14.** RCW 72.09.110 and 1991 c 133 s 1 are each amended to read
26 as follows:

27 All inmates working in prison industries shall participate in the
28 cost of corrections, including costs to develop and implement
29 correctional industries programs(~~(. The secretary shall develop a~~
30 ~~formula which can be used to determine the extent to which the wages of~~
31 ~~these inmates will be deducted for this purpose. The amount so~~
32 ~~deducted shall be placed in the general fund and shall be a reasonable~~
33 ~~amount which will not unduly discourage the incentive to work)~~), by
34 means of deductions from their gross wages. The secretary may direct
35 the state treasurer to deposit a portion of these moneys in the crime
36 victims compensation account. (~~Except~~) The secretary shall direct
37 that all moneys received by an inmate((~~7~~)) for testifying in any

1 judicial proceeding(~~(7-90)~~) shall be deposited into the crime victims
2 compensation account.

3 When the secretary finds it appropriate and not unduly destructive
4 of the work incentive, the secretary (~~(shall)~~) may also provide
5 deductions for (~~(restitution7)~~) savings(~~(7)~~) and family support.

6 **Sec. 15.** RCW 72.60.160 and 1981 c 136 s 103 are each amended to
7 read as follows:

8 All articles, materials, services, and supplies (~~(herein)~~)
9 authorized by this chapter to be produced or manufactured in
10 correctional institutions (~~(may)~~) shall be purchased from the
11 institution producing or manufacturing the same by any state agency
12 (~~(or political subdivision of the state)~~) through state contract as set
13 forth in RCW 43.19.534, and the secretary shall require those
14 institutions under his direction to give preference to the purchasing
15 of their needs of such articles as are so produced.

16 NEW SECTION. **Sec. 16.** By January 1, 1994, the secretary of
17 corrections shall submit a report to the chief clerk of the house of
18 representatives and secretary of the senate containing an
19 identification and description of any impediments which the secretary
20 believes might prevent the department from achieving compliance with
21 the inmate work participation percentages specified in section 11 of
22 this act. The secretary also shall include, in the report, alternative
23 ways to remove any identified impediments. The chief clerk and
24 secretary shall distribute the report to the appropriate standing
25 committees.

26 NEW SECTION. **Sec. 17.** The following acts or parts of acts are
27 each repealed:

- 28 (1) RCW 72.09.102 and 1986 c 94 s 1; and
29 (2) RCW 72.60.190 and 1981 c 136 s 104, 1979 ex.s. c 160 s 4, &
30 1959 c 28 s 72.60.190.

31 NEW SECTION. **Sec. 18.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- END ---