
SENATE BILL 6118

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By Senators Nelson, Schow, Sellar, West, Winsley, Oke, Deccio, McDonald, Anderson, McCaslin and Moyer

Read first time 01/12/94. Referred to Committee on Law & Justice.

1 AN ACT Relating to creating a youthful offender system; amending
2 RCW 9.94A.123, 9.94A.130, 9.94A.210, 18.155.010, 18.155.020,
3 18.155.030, and 46.61.524; reenacting and amending RCW 9.94A.120,
4 9.94A.030, and 9.94A.440; adding new sections to chapter 9.94A RCW; and
5 prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
8 to read as follows:

9 (1)(a) It is the intent of the legislature that the youthful
10 offender system established under this section benefit the state by
11 providing as a sentencing option for certain youthful offenders a
12 controlled and regimented environment that affirms dignity of self and
13 others, promotes the value of work and self-discipline, and develops
14 useful skills and abilities through enriched programming.

15 (b) It is the further intent of the legislature in enacting this
16 section that female and male offenders for whom charges have been
17 directly filed in the superior court and who have been convicted in the
18 superior court receive equitable treatment in sentencing, particularly
19 in regard to the option of being sentenced to the youthful offender

1 system under RCW 9.94A.120. Accordingly, it is the legislature's
2 intent that necessary measures be taken by the department of
3 corrections to establish separate housing for female and male offenders
4 who are sentenced to the youthful offender system without compromising
5 the equitable treatment of either.

6 (2)(a)(i) A juvenile may be sentenced to the youthful offender
7 system created under this section under the circumstances set forth in
8 RCW 9.94A.120. In order to sentence a person to the youthful offender
9 system, the court shall first impose on the person a sentence to the
10 department of corrections in accordance with RCW 9.94A.120. The court
11 shall thereafter suspend the sentence conditioned on completion of a
12 sentence to the youthful offender system, including a period of
13 community supervision. The court shall impose a sentence to the
14 youthful offender system for a determinate period of at least one year
15 and less than five years and a mandatory period of community
16 supervision for a period of one year. Upon the successful completion
17 of the programs in the youthful offender system, including the
18 mandatory period of supervision, the sentence to the department of
19 corrections is completed. When a person is returned to the superior
20 court for revocation under subsection (5) of this section, the court
21 shall impose the original sentence following the revocation of the
22 sentence to the youthful offender system. The revocation must be in
23 accordance with section 6 of this act.

24 (ii) During a period of incarceration under the youthful offender
25 system, privileges including, but not limited to, televisions, radios,
26 entertainment systems, cigarettes, and access to snacks is not
27 available for a youthful offender unless the privileges have been
28 earned under a merit system.

29 (b) RCW 9.94A.150(1), concerning earned early release time credits,
30 does not apply to a person sentenced to the youthful offender system.

31 (3)(a) The department of corrections shall develop and implement a
32 youthful offender system for offenders sentenced under subsection (2)
33 of this section. The secretary of corrections shall direct and control
34 the youthful offender system. The youthful offender system must be
35 based on the following principles:

36 (i) The system must provide for teaching offenders self-discipline
37 by providing clear consequences for inappropriate behavior;

38 (ii) The system must include a daily regimen that involves
39 offenders in physical training, self-discipline exercises, educational

1 and work programs, and meaningful interaction, with a component for a
2 tiered system for swift and strict discipline for noncompliance;

3 (iii) The system must use staff models and mentors to promote
4 within an offender the development of socially accepted attitudes and
5 behaviors;

6 (iv) The system must provide offenders with instruction on problem-
7 solving skills and must incorporate methods to reinforce the use of
8 cognitive behavior strategies that change offenders' orientation toward
9 criminal thinking and behavior;

10 (v) The system must promote among offenders the creation and
11 development of new group cultures that result in the application of
12 positive peer influence that promotes behavioral change; and

13 (vi) The system must provide offenders the opportunity to gradually
14 reenter the community while demonstrating the capacity for self-
15 discipline and the attainment of respect for the community.

16 (b) The secretary of corrections shall have final approval on the
17 hiring and transferring of staff for the youthful offender system. In
18 staffing the youthful offender system, the secretary of corrections
19 shall select persons who are trained in the treatment of juveniles or
20 will be trained in the treatment of juveniles before working with the
21 juveniles, are trained to act as role models and mentors under (a)(iii)
22 of this subsection, and are best equipped to enable the youthful
23 offender system to meet the principles specified in (a) of this
24 subsection. The secretary of corrections shall make a recommendation
25 to the department of personnel regarding the classification of
26 positions with the youthful offender system, taking into account the
27 level of education and training required for the positions.

28 (4) The youthful offender system must provide for community
29 supervision that must consist of highly structured surveillance and
30 monitoring and educational and treatment programs. The department of
31 corrections' adult community supervision staff shall administer
32 community supervision. However, revocation of supervision is subject
33 to subsections (2) and (5) of this section.

34 (5)(a) The department of corrections shall implement a procedure
35 for the transfer of an offender to another facility for vocational or
36 training services or if an offender in the system poses a danger to the
37 offender's self or others, has been convicted of a class A felony, and
38 has attained the age of eighteen years. Except as otherwise provided
39 in (c) of this subsection, the indeterminate sentence review board

1 shall review a transfer determination by the department of corrections
2 before the actual transfer of an inmate.

3 (b) An offender who is mentally ill or developmentally disabled may
4 be transferred to another facility.

5 (c) The department of corrections shall implement a procedure for
6 returning offenders who cannot successfully complete the sentence to
7 the youthful offender system to the superior court for the imposition
8 of the original sentence.

9 (6) The department of corrections shall determine the number of
10 offenders in a program element under the youthful offender system
11 within available appropriations.

12 (7) The department of corrections may and is encouraged to contract
13 with a private or public entity for the provision of services and
14 facilities under the youthful offender system. The contracting for the
15 facilities must not delay the availability of necessary required space.

16 (8) By January 1, 1995, the department of corrections shall develop
17 and the department of corrections shall implement a process for
18 monitoring and evaluating the youthful offender system. In
19 implementing the system, the department of corrections may contract
20 with a private agency for assistance.

21 (9)(a) By January 1, 1995, the department of corrections shall
22 submit a report to the legislature concerning the youthful offender
23 system that includes but is not limited to the following:

24 (i) The specific content and structure of the programs for
25 offenders in the youthful offender system, including staffing ratios
26 for each program, a description of the daily routine of offenders that
27 includes the amount of offenders' time that is allocated to each
28 program, and an explanation of how the programs are related to the
29 principles described in subsection (3) of this section;

30 (ii) The process used for transition to community supervision,
31 whether offenders may be returned to the original environment for the
32 community supervision period, the specific means of community
33 supervision, and the specific educational and treatment programs
34 provided to offenders during their community supervision period;

35 (iii) The procedure for transferring an offender to another
36 facility for vocational or training services or when an offender poses
37 a danger to the offender's self or others, and identification of the
38 facilities used for these purposes; and

1 (iv) The specific criteria and procedures for determining
2 successful completion of the programs in the youthful offender system,
3 for determining whether an offender cannot successfully complete the
4 sentence, and for revocation of community supervision.

5 (b) By January 1, 1995, the department of corrections shall submit
6 a report to the legislature concerning the number of offenders entering
7 the youthful offender system and a profile of the typical offender
8 entering the system, including an analysis of the criminal and
9 demographic backgrounds of the offenders, and update the committee
10 quarterly.

11 (c) The department of social and health services division of
12 juvenile rehabilitation shall independently monitor and evaluate the
13 youthful offender system addressing the criteria described in (a) of
14 this subsection.

15 (10) A prosecuting attorney in the state shall maintain records
16 regarding juveniles who are sentenced to the youthful offender system.
17 The records must indicate which juveniles have been filed on as adults
18 or are sentenced to the system and the offenses committed by the
19 juveniles.

20 (11) The legislature recognizes that the increased number of
21 violent juvenile crimes is a problem faced by all the states of this
22 nation. By creating the youthful offender system, the state of
23 Washington stands at the forefront of the states in creating a new
24 approach to solving the problem of violent juvenile offenders. The
25 legislature also declares that the cost of implementing and operating
26 the youthful offender system will create a burden on the state's
27 limited resources. Accordingly, the legislature directs the department
28 of corrections to seek out and accept available federal, state, and
29 local public funds, including project demonstration funds, and private
30 moneys and private systems for the purpose of conducting the youthful
31 offender system.

32 **Sec. 2.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.
33 593) and 1993 c 31 s 3 are each reenacted and amended to read as
34 follows:

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

1 (1) Except as authorized in subsections (2), (~~(4)~~) (5), (6), and
2 (~~(7)~~) (8) of this section, the court shall impose a sentence within
3 the sentence range for the offense.

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

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

12 (4) An offender under the age of eighteen who is no longer under
13 juvenile jurisdiction shall be sentenced as follows:

14 (a) As an adult under subsections (5) through (19) of this section;
15 or

16 (b) To the youthful offender system in the department in accordance
17 with section 1 of this act if the offender is younger than eighteen
18 years of age. However, the offender shall be ineligible for sentencing
19 to the youthful offender system if the offender received a prior
20 sentence to the department or to the youthful offender system.

21 (5) A persistent offender shall be sentenced to a term of total
22 confinement for life without the possibility of parole or, when
23 authorized by RCW 10.95.030 for the crime of aggravated murder in the
24 first degree, sentenced to death, notwithstanding the maximum sentence
25 under any other law. An offender convicted of the crime of murder in
26 the first degree shall be sentenced to a term of total confinement not
27 less than twenty years. An offender convicted of the crime of assault
28 in the first degree or assault of a child in the first degree where the
29 offender used force or means likely to result in death or intended to
30 kill the victim shall be sentenced to a term of total confinement not
31 less than five years. An offender convicted of the crime of rape in
32 the first degree shall be sentenced to a term of total confinement not
33 less than five years. The foregoing minimum terms of total confinement
34 are mandatory and shall not be varied or modified as provided in
35 subsection (2) of this section. In addition, all offenders subject to
36 the provisions of this subsection shall not be eligible for community
37 custody, earned early release time, furlough, home detention, partial
38 confinement, work crew, work release, or any other form of early
39 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),

1 or any other form of authorized leave of absence from the correctional
2 facility while not in the direct custody of a corrections officer or
3 officers during such minimum terms of total confinement except in the
4 case of an offender in need of emergency medical treatment or for the
5 purpose of commitment to an inpatient treatment facility in the case of
6 an offender convicted of the crime of rape in the first degree.

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

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

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

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

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

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

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

29 ~~((+6))~~ (7) If a sentence range has not been established for the
30 defendant's crime, the court shall impose a determinate sentence which
31 may include not more than one year of confinement, community service
32 work, a term of community supervision not to exceed one year, and/or
33 other legal financial obligations. The court may impose a sentence
34 which provides more than one year of confinement if the court finds,
35 considering the purpose of this chapter, that there are substantial and
36 compelling reasons justifying an exceptional sentence.

37 ~~((+7))~~ (8)(a)(i) When an offender is convicted of a sex offense
38 other than a violation of RCW 9A.44.050 or a sex offense that is also
39 a serious violent offense and has no prior convictions for a sex

1 offense or any other felony sex offenses in this or any other state,
2 the sentencing court, on its own motion or the motion of the state or
3 the defendant, may order an examination to determine whether the
4 defendant is amenable to treatment.

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

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

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

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

18 (C) Monitoring plans, including any requirements regarding living
19 conditions, lifestyle requirements, and monitoring by family members
20 and others;

21 (D) Anticipated length of treatment; and

22 (E) Recommended crime-related prohibitions.

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

29 (ii) After receipt of the reports, the court shall consider whether
30 the offender and the community will benefit from use of this special
31 sexual offender sentencing alternative and consider the victim's
32 opinion whether the offender should receive a treatment disposition
33 under this subsection. If the court determines that this special sex
34 offender sentencing alternative is appropriate, the court shall then
35 impose a sentence within the sentence range. If this sentence is less
36 than eight years of confinement, the court may suspend the execution of
37 the sentence and impose the following conditions of suspension:

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

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

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

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

23 (III) Report as directed to the court and a community corrections
24 officer;

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

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

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

37 (iv) At the time of sentencing, the court shall set a treatment
38 termination hearing for three months prior to the anticipated date for
39 completion of treatment. Prior to the treatment termination hearing,

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

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

21 (vi) Except as provided in (a)(vii) of this subsection, after July
22 1, 1991, examinations and treatment ordered pursuant to this subsection
23 shall only be conducted by sex offender treatment providers certified
24 by the department of health pursuant to chapter 18.155 RCW.

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

34 For purposes of this subsection, "victim" means any person who has
35 sustained emotional, psychological, physical, or financial injury to
36 person or property as a result of the crime charged. "Victim" also
37 means a parent or guardian of a victim who is a minor child unless the
38 parent or guardian is the perpetrator of the offense.

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

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

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

- 32 (i) Devote time to a specific employment or occupation;
- 33 (ii) Remain within prescribed geographical boundaries and notify
34 the court or the community corrections officer prior to any change in
35 the offender's address or employment;
- 36 (iii) Report as directed to the court and a community corrections
37 officer;
- 38 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

36 (d) Offenders convicted and sentenced for a sex offense committed
37 prior to July 1, 1987, may, subject to available funds, request an
38 evaluation by the department of corrections to determine whether they
39 are amenable to treatment. If the offender is determined to be

1 amenable to treatment, the offender may request placement in a
2 treatment program within a correctional facility operated by the
3 department. Placement in such treatment program is subject to
4 available funds.

5 ~~((+8))~~ (9)(a) When a court sentences a person to a term of total
6 confinement to the custody of the department of corrections for an
7 offense categorized as a sex offense or a serious violent offense
8 committed after July 1, 1988, but before July 1, 1990, assault in the
9 second degree, assault of a child in the second degree, any crime
10 against a person where it is determined in accordance with RCW
11 9.94A.125 that the defendant or an accomplice was armed with a deadly
12 weapon at the time of commission, or any felony offense under chapter
13 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
14 in addition to the other terms of the sentence, sentence the offender
15 to a one-year term of community placement beginning either upon
16 completion of the term of confinement or at such time as the offender
17 is transferred to community custody in lieu of earned early release in
18 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
19 offender under this subsection to the statutory maximum period of
20 confinement then the community placement portion of the sentence shall
21 consist entirely of such community custody to which the offender may
22 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
23 period of community custody actually served shall be credited against
24 the community placement portion of the sentence.

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

1 shall be credited against the community placement portion of the
2 sentence. Unless a condition is waived by the court, the terms of
3 community placement for offenders sentenced pursuant to this section
4 shall include the following conditions:

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

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

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

11 (iv) An offender in community custody shall not unlawfully possess
12 controlled substances;

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

15 (vi) The residence location and living arrangements are subject to
16 the prior approval of the department of corrections during the period
17 of community placement.

18 (c) The court may also order any of the following special
19 conditions:

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

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

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

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

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

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

32 (~~(9)~~) (10) If the court imposes a sentence requiring confinement
33 of thirty days or less, the court may, in its discretion, specify that
34 the sentence be served on consecutive or intermittent days. A sentence
35 requiring more than thirty days of confinement shall be served on
36 consecutive days. Local jail administrators may schedule court-ordered
37 intermittent sentences as space permits.

38 (~~(10)~~) (11) If a sentence imposed includes payment of a legal
39 financial obligation, the sentence shall specify the total amount of

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

20 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
21 9.94A.142(1), a court may not impose a sentence providing for a term of
22 confinement or community supervision or community placement which
23 exceeds the statutory maximum for the crime as provided in chapter
24 9A.20 RCW.

25 ~~((12))~~ (13) All offenders sentenced to terms involving community
26 supervision, community service, community placement, or legal financial
27 obligation shall be under the supervision of the secretary of the
28 department of corrections or such person as the secretary may designate
29 and shall follow explicitly the instructions of the secretary including
30 reporting as directed to a community corrections officer, remaining
31 within prescribed geographical boundaries, notifying the community
32 corrections officer of any change in the offender's address or
33 employment, and paying the supervision fee assessment. The department
34 may require offenders to pay for special services rendered on or after
35 July 25, 1993, including electronic monitoring, day reporting, and
36 telephone reporting, dependent upon the offender's ability to pay. The
37 department may pay for these services for offenders who are not able to
38 pay.

1 (~~(13)~~) (14) All offenders sentenced to terms involving community
2 supervision, community service, or community placement under the
3 supervision of the department of corrections shall not own, use, or
4 possess firearms or ammunition. Offenders who own, use, or are found
5 to be in actual or constructive possession of firearms or ammunition
6 shall be subject to the appropriate violation process and sanctions.
7 "Constructive possession" as used in this subsection means the power
8 and intent to control the firearm or ammunition. "Firearm" as used in
9 this subsection means a weapon or device from which a projectile may be
10 fired by an explosive such as gunpowder.

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

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

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

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

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

38 (~~(19)~~) (20) All court-ordered legal financial obligations
39 collected by the department and remitted to the county clerk shall be

1 credited and paid where restitution is ordered. Restitution shall be
2 paid prior to any other payments of monetary obligations.

3 **Sec. 3.** RCW 9.94A.030 and 1994 c 1 s 3 (Initiative Measure No.
4 593), 1993 c 338 s 2, 1993 c 251 s 4, and 1993 c 164 s 1 are each
5 reenacted and amended to read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

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

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

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

24 (5) "Community placement" means that period during which the
25 offender is subject to the conditions of community custody and/or
26 postrelease supervision, which begins either upon completion of the
27 term of confinement (postrelease supervision) or at such time as the
28 offender is transferred to community custody in lieu of earned early
29 release. Community placement may consist of entirely community
30 custody, entirely postrelease supervision, or a combination of the two.

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

33 (7) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 46.61.524. For first-time offenders, the supervision may include
37 crime-related prohibitions and other conditions imposed pursuant to RCW
38 9.94A.120((+5)) (6). For purposes of the interstate compact for out-

1 of-state supervision of parolees and probationers, RCW 9.95.270,
2 community supervision is the functional equivalent of probation and
3 should be considered the same as probation by other states.

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

6 (9) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

9 (10) "Court-ordered legal financial obligation" means a sum of
10 money that is ordered by a superior court of the state of Washington
11 for legal financial obligations which may include restitution to the
12 victim, statutorily imposed crime victims' compensation fees as
13 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
14 drug funds, court-appointed attorneys' fees, and costs of defense,
15 fines, and any other financial obligation that is assessed to the
16 offender as a result of a felony conviction. Upon conviction for
17 vehicular assault while under the influence of intoxicating liquor or
18 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
19 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
20 legal financial obligations may also include payment to a public agency
21 of the expense of an emergency response to the incident resulting in
22 the conviction, subject to the provisions in RCW 38.52.430.

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

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

35 (b) "Criminal history" shall always include juvenile convictions
36 for sex offenses and shall also include a defendant's other prior
37 convictions in juvenile court if: (i) The conviction was for an
38 offense which is a felony or a serious traffic offense and is criminal
39 history as defined in RCW 13.40.020(~~(+6)(a)~~); (ii) the defendant was

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

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

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

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

27 (16) "Drug offense" means:

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

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

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

37 (17) "Escape" means:

38 (a) Escape in the first degree (RCW 9A.76.110), escape in the
39 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW
2 72.65.070), or willful failure to be available for supervision by the
3 department while in community custody (RCW 72.09.310); or

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

7 (18) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
10 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

30 (21) "Most serious offense" means any of the following felonies or
31 a felony attempt to commit any of the following felonies, as now
32 existing or hereafter amended:

33 (a) Any felony defined under any law as a class A felony or
34 criminal solicitation of or criminal conspiracy to commit a class A
35 felony;

36 (b) Assault in the second degree;

37 (c) Assault of a child in the second degree;

38 (d) Child molestation in the second degree;

39 (e) Controlled substance homicide;

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

1 detention, work crew, and a combination of work crew and home detention
2 as defined in this section.

3 (25) "Persistent offender" is an offender who:

4 (a) Has been convicted in this state of any felony considered a
5 most serious offense; and

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

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

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

20 (28) "Serious traffic offense" means:

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

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

29 (29) "Serious violent offense" is a subcategory of violent offense
30 and means:

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

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

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

3 (31) "Sex offense" means:

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

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

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

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

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

20 (34) "Transition training" means written and verbal instructions
21 and assistance provided by the department to the offender during the
22 two weeks prior to the offender's successful completion of the work
23 ethic camp program. The transition training shall include instructions
24 in the offender's requirements and obligations during the offender's
25 period of community custody.

26 (35) "Victim" means any person who has sustained emotional,
27 psychological, physical, or financial injury to person or property as
28 a direct result of the crime charged.

29 (36) "Violent offense" means:

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

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

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

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

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

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

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

32 (40) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance. Home detention may not
35 be imposed for offenders convicted of a violent offense, any sex
36 offense, any drug offense, reckless burning in the first or second
37 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
38 degree as defined in RCW 9A.36.031, assault of a child in the third
39 degree, unlawful imprisonment as defined in RCW 9A.40.040, or

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

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

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

35 **Sec. 4.** RCW 9.94A.123 and 1987 c 402 s 2 are each amended to read
36 as follows:

37 The legislature finds that the sexual offender treatment programs
38 at western and eastern state hospitals, while not proven to be totally

1 effective, may be of some benefit in positively affecting the behavior
2 of certain sexual offenders. Given the significance of the problems of
3 sexual assault and sexual abuse of children, it is therefore
4 appropriate to review and revise these treatment efforts.

5 At the same time, concerns regarding the lack of adequate security
6 at the existing programs must be satisfactorily addressed. In an
7 effort to promote public safety, it is the intent of the legislature to
8 transfer the responsibility for felony sexual offenders from the
9 department of social and health services to the department of
10 corrections.

11 Therefore, no person committing a felony sexual offense on or after
12 July 1, 1987, may be committed under RCW 9.94A.120(~~((+7))~~) (8)(b) to the
13 department of social and health services at eastern state hospital or
14 western state hospital. Any person committed to the department of
15 social and health services under RCW 9.94A.120(~~((+7))~~) (8)(b) for an
16 offense committed before July 1, 1987, and still in the custody of the
17 department of social and health services on June 30, 1993, shall be
18 transferred to the custody of the department of corrections. Any
19 person eligible for evaluation or treatment under RCW 9.94A.120(~~((+7))~~)
20 (8)(b) shall be committed to the department of corrections.

21 **Sec. 5.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
22 as follows:

23 The power to defer or suspend the imposition or execution of
24 sentence is hereby abolished in respect to sentences prescribed for
25 felonies committed after June 30, 1984, except for offenders sentenced
26 under RCW 9.94A.120(~~((+7))~~) (8)(a), the special sexual offender
27 sentencing alternative, whose sentence may be suspended, and except for
28 sentences imposed under section 1 of this act and RCW 9.94A.120.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 9.94A RCW
30 to read as follows:

31 Suspension of original sentence of a person sentenced under the
32 youthful offender sentence alternative may be revoked if the offender
33 violates or fails to carry out any of the conditions of the youthful
34 offender program. Upon the revocation of the suspension, the court
35 shall impose the sentence previously suspended or any unexecuted
36 portion of the sentence. The court may not impose a sentence greater

1 than the original sentence, with credit given for time served and money
2 paid on fines and costs.

3 Before entering an order acknowledging successful completion of the
4 youthful offender program, the court may revoke or modify its order
5 suspending the imposition or execution of the original sentence. If
6 the ends of justice will be served and if warranted by the reformation
7 of the offender, the court may terminate the period of probation and
8 discharge the person so held.

9 **Sec. 7.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read
10 as follows:

11 (1) A sentence within the standard range for the offense shall not
12 be appealed. For purposes of this section, a sentence imposed on a
13 first offender under RCW 9.94A.120(~~(+5)~~) (6) shall also be deemed to
14 be within the standard range for the offense and shall not be appealed.

15 (2) A sentence outside the sentence range for the offense is
16 subject to appeal by the defendant or the state. The appeal shall be
17 to the court of appeals in accordance with rules adopted by the supreme
18 court.

19 (3) Pending review of the sentence, the sentencing court or the
20 court of appeals may order the defendant confined or placed on
21 conditional release, including bond.

22 (4) To reverse a sentence which is outside the sentence range, the
23 reviewing court must find: (a) Either that the reasons supplied by the
24 sentencing judge are not supported by the record which was before the
25 judge or that those reasons do not justify a sentence outside the
26 standard range for that offense; or (b) that the sentence imposed was
27 clearly excessive or clearly too lenient.

28 (5) A review under this section shall be made solely upon the
29 record that was before the sentencing court. Written briefs shall not
30 be required and the review and decision shall be made in an expedited
31 manner according to rules adopted by the supreme court.

32 (6) The court of appeals shall issue a written opinion in support
33 of its decision whenever the judgment of the sentencing court is
34 reversed and may issue written opinions in any other case where the
35 court believes that a written opinion would provide guidance to
36 sentencing judges and others in implementing this chapter and in
37 developing a common law of sentencing within the state.

1 (7) The department may petition for a review of a sentence
2 committing an offender to the custody or jurisdiction of the
3 department. The review shall be limited to errors of law. Such
4 petition shall be filed with the court of appeals no later than ninety
5 days after the department has actual knowledge of terms of the
6 sentence. The petition shall include a certification by the department
7 that all reasonable efforts to resolve the dispute at the superior
8 court level have been exhausted.

9 **Sec. 8.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
10 each reenacted and amended to read as follows:

11 (1) Decision not to prosecute.

12 STANDARD: A prosecuting attorney may decline to prosecute, even
13 though technically sufficient evidence to prosecute exists, in
14 situations where prosecution would serve no public purpose, would
15 defeat the underlying purpose of the law in question or would result in
16 decreased respect for the law.

17 GUIDELINE/COMMENTARY:

18 Examples

19 The following are examples of reasons not to prosecute which could
20 satisfy the standard.

21 (a) Contrary to Legislative Intent - It may be proper to decline to
22 charge where the application of criminal sanctions would be clearly
23 contrary to the intent of the legislature in enacting the particular
24 statute.

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

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

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

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

32 (iv) The statute has not been recently reconsidered by the
33 legislature.

34 This reason is not to be construed as the basis for declining cases
35 because the law in question is unpopular or because it is difficult to
36 enforce.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (i) Assault cases where the victim has suffered little or no
5 injury;

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

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 STANDARD:

18 Crimes against persons will be filed if sufficient admissible
19 evidence exists, which, when considered with the most plausible,
20 reasonably foreseeable defense that could be raised under the evidence,
21 would justify conviction by a reasonable and objective fact-finder.
22 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
23 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
24 9A.64.020 the prosecutor should avoid prefiling agreements or
25 diversions intended to place the accused in a program of treatment or
26 counseling, so that treatment, if determined to be beneficial, can be
27 provided pursuant to RCW 9.94A.120(~~(+7)~~) (8).

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

33 See table below for the crimes within these categories.

34 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

35 CRIMES AGAINST PERSONS

36 Aggravated Murder

37 1st Degree Murder

38 2nd Degree Murder

1 1st Degree Kidnaping
2 1st Degree Assault
3 1st Degree Assault of a Child
4 1st Degree Rape
5 1st Degree Robbery
6 1st Degree Rape of a Child
7 1st Degree Arson
8 2nd Degree Kidnaping
9 2nd Degree Assault
10 2nd Degree Assault of a Child
11 2nd Degree Rape
12 2nd Degree Robbery
13 1st Degree Burglary
14 1st Degree Manslaughter
15 2nd Degree Manslaughter
16 1st Degree Extortion
17 Indecent Liberties
18 Incest
19 2nd Degree Rape of a Child
20 Vehicular Homicide
21 Vehicular Assault
22 3rd Degree Rape
23 3rd Degree Rape of a Child
24 1st Degree Child Molestation
25 2nd Degree Child Molestation
26 3rd Degree Child Molestation
27 2nd Degree Extortion
28 1st Degree Promoting Prostitution
29 Intimidating a Juror
30 Communication with a Minor
31 Intimidating a Witness
32 Intimidating a Public Servant
33 Bomb Threat (if against person)
34 3rd Degree Assault
35 3rd Degree Assault of a Child
36 Unlawful Imprisonment
37 Promoting a Suicide Attempt
38 Riot (if against person)

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

1 ALL OTHER UNCLASSIFIED FELONIES

2 Selection of Charges/Degree of Charge

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

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

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

9 (2) The prosecutor should not overcharge to obtain a guilty plea.

10 Overcharging includes:

11 (a) Charging a higher degree;

12 (b) Charging additional counts.

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

19 GUIDELINES/COMMENTARY:

20 Police Investigation

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

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

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

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

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

35 Exceptions

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

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

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

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

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

10 Investigation Techniques

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

- 13 (1) Polygraph testing;
- 14 (2) Hypnosis;
- 15 (3) Electronic surveillance;
- 16 (4) Use of informants.

17 Pre-Filing Discussions with Defendant

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

21 **Sec. 9.** RCW 18.155.010 and 1990 c 3 s 801 are each amended to read
22 as follows:

23 The legislature finds that sex offender therapists who examine and
24 treat sex offenders pursuant to the special sexual offender sentencing
25 alternative under RCW 9.94A.120(~~((+7))~~) (8)(a) and who may treat
26 juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in
27 protecting the public from sex offenders who remain in the community
28 following conviction. The legislature finds that the qualifications,
29 practices, techniques, and effectiveness of sex offender treatment
30 providers vary widely and that the court's ability to effectively
31 determine the appropriateness of granting the sentencing alternative
32 and monitoring the offender to ensure continued protection of the
33 community is undermined by a lack of regulated practices. The
34 legislature recognizes the right of sex offender therapists to
35 practice, consistent with the paramount requirements of public safety.
36 Public safety is best served by regulating sex offender therapists
37 whose clients are being evaluated and being treated pursuant to RCW
38 9.94A.120(~~((+7))~~) (8)(a) and 13.40.160. This chapter shall be construed

1 to require only those sex offender therapists who examine and treat sex
2 offenders pursuant to RCW 9.94A.120(~~(+7)~~) (8)(a) and 13.40.160 to
3 obtain a sexual offender treatment certification as provided in this
4 chapter.

5 **Sec. 10.** RCW 18.155.020 and 1990 c 3 s 802 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter:

9 (1) "Certified sex offender treatment provider" means a licensed,
10 certified, or registered health professional who is certified to
11 examine and treat sex offenders pursuant to RCW 9.94A.120(~~(+7)~~) (8)(a)
12 and 13.40.160.

13 (2) "Department" means the department of health.

14 (3) "Secretary" means the secretary of health.

15 (4) "Sex offender treatment provider" means a person who counsels
16 or treats sex offenders accused of or convicted of a sex offense as
17 defined by RCW 9.94A.030.

18 **Sec. 11.** RCW 18.155.030 and 1990 c 3 s 803 are each amended to
19 read as follows:

20 (1) No person shall represent himself or herself as a certified sex
21 offender treatment provider without first applying for and receiving a
22 certificate pursuant to this chapter.

23 (2) Only a certified sex offender treatment provider may perform or
24 provide the following services:

25 (a) Evaluations conducted for the purposes of and pursuant to RCW
26 9.94A.120(~~(+7)~~) (8)(a) and 13.40.160;

27 (b) Treatment of convicted sex offenders who are sentenced and
28 ordered into treatment pursuant to RCW 9.94A.120(~~(+7)~~) (8)(a) and
29 adjudicated juvenile sex offenders who are ordered into treatment
30 pursuant to RCW 13.40.160.

31 **Sec. 12.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to read
32 as follows:

33 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
34 shall, as a condition of community supervision imposed under RCW
35 9.94A.383 or community placement imposed under RCW 9.94A.120(~~(+8)~~)
36 (9), complete a diagnostic evaluation by an alcohol or drug dependency

1 agency approved by the department of social and health services or a
2 qualified probation department, as defined under RCW 46.61.516 that has
3 been approved by the department of social and health services. This
4 report shall be forwarded to the department of licensing. If the
5 person is found to have an alcohol or drug problem that requires
6 treatment, the person shall complete treatment in a program approved by
7 the department of social and health services under chapter 70.96A RCW.
8 If the person is found not to have an alcohol or drug problem that
9 requires treatment, he or she shall complete a course in an information
10 school approved by the department of social and health services under
11 chapter 70.96A RCW. The convicted person shall pay all costs for any
12 evaluation, education, or treatment required by this section, unless
13 the person is eligible for an existing program offered or approved by
14 the department of social and health services. Nothing in (~~this act~~)
15 chapter 348, Laws of 1991 requires the addition of new treatment or
16 assessment facilities nor affects the department of social and health
17 services use of existing programs and facilities authorized by law.

18 (2) As provided for under RCW 46.20.285, the department shall
19 revoke the license, permit to drive, or a nonresident privilege of a
20 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
21 assault under RCW 46.61.522. The department shall determine the
22 eligibility of a person convicted of vehicular homicide under RCW
23 46.61.520(1)(a) or vehicular assault under (~~{RCW}~~) RCW
24 46.61.522(1)(b) to receive a license based upon the report provided by
25 the designated alcoholism treatment facility or probation department,
26 and shall deny reinstatement until satisfactory progress in an approved
27 program has been established and the person is otherwise qualified.

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