
HOUSE BILL 2369

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By Representatives Sherstad, Koster, Goldsmith, Hickel, D. Sommers, Hargrove, Campbell, Smith, Thompson, Mulliken, McMahan and Benton

Read first time 01/10/96. Referred to Committee on Corrections.

1 AN ACT Relating to enhanced punishment for second or subsequent
2 violent sex offenses; amending RCW 10.95.050, 10.95.060, 10.95.070,
3 10.95.090, 10.95.120, and 9.94A.120; reenacting and amending RCW
4 9.94A.320; adding a new section to chapter 10.95 RCW; adding a new
5 section to chapter 72.09 RCW; prescribing penalties; and providing an
6 effective date.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 10.95 RCW
9 to read as follows:

10 (1) When an offender is charged with a violent sex offense that is
11 alleged to have been committed after the offender has already been
12 convicted of another violent sex offense, the prosecuting attorney has
13 discretion to pursue the special penalty provisions contained in this
14 section.

15 (2) If the notice provisions of this section are met, then the
16 sentence for a person convicted of a second or subsequent violent sex
17 offense shall be determined in a special death penalty sentencing
18 proceeding to be held pursuant to chapter 10.95 RCW.

1 (a) If the trier of fact determines pursuant to RCW 10.95.060 that
2 leniency is not merited, then the death penalty shall be imposed.

3 (b) If the trier of fact determines pursuant to RCW 10.95.060 that
4 leniency is merited, then the offender shall be sentenced to total
5 confinement for life without possibility of release or parole. The
6 term of total confinement for life shall not be varied or modified as
7 provided in RCW 9.94A.120(2). The person shall not be eligible for
8 community custody, earned early release time, furlough, home detention,
9 partial confinement, work crew, work release, or any other form of
10 early release as defined under RCW 9.94A.150, or any other form of
11 authorized leave of absence from the correctional facility.

12 (3) A prosecuting attorney who elects to pursue the special penalty
13 provisions contained in this section must file and serve a written
14 notice of this intent on the defendant or the defendant's attorney
15 within thirty days of the defendant's arraignment unless the court, for
16 good cause shown, extends or reopens the period for filing and service
17 of the notice. Except with the consent of the prosecuting attorney,
18 during the period in which the prosecuting attorney may file the
19 notice, the defendant may not tender, nor may the court accept, a plea
20 of guilty to the charged violent sex offense. If the prosecuting
21 attorney does not file and serve a written notice pursuant to this
22 subsection, the special penalty provisions of this section do not
23 apply.

24 (4) For purposes of this chapter, "violent sex offense" means an
25 offense that qualifies both as a sex offense and as a violent offense
26 as those terms are defined in RCW 9.94A.030.

27 **Sec. 2.** RCW 9.94A.320 and 1995 c 385 s 2, 1995 c 285 s 28, and
28 1995 c 129 s 3 (Initiative Measure No. 159) are each reenacted and
29 amended to read as follows:

30 TABLE 2

31 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

32 XV Aggravated Murder 1 (RCW 10.95.020)
33 Second or Subsequent Violent Sex Offense
34 (RCW 10.95.--- (section 1 of this
35 act))

1 XIV Murder 1 (RCW 9A.32.030)
2 Homicide by abuse (RCW 9A.32.055)
3 XIII Murder 2 (RCW 9A.32.050)
4 XII Assault 1 (RCW 9A.36.011)
5 Assault of a Child 1 (RCW 9A.36.120)
6 XI Rape 1 (RCW 9A.44.040)
7 Rape of a Child 1 (RCW 9A.44.073)
8 X Kidnapping 1 (RCW 9A.40.020)
9 Rape 2 (RCW 9A.44.050)
10 Rape of a Child 2 (RCW 9A.44.076)
11 Child Molestation 1 (RCW 9A.44.083)
12 Damaging building, etc., by explosion with
13 threat to human being (RCW
14 70.74.280(1))
15 Over 18 and deliver heroin or narcotic
16 from Schedule I or II to someone
17 under 18 (RCW 69.50.406)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 IX Assault of a Child 2 (RCW 9A.36.130)
21 Robbery 1 (RCW 9A.56.200)
22 Manslaughter 1 (RCW 9A.32.060)
23 Explosive devices prohibited (RCW
24 70.74.180)
25 Indecent Liberties (with forcible
26 compulsion) (RCW 9A.44.100(1)(a))
27 Endangering life and property by
28 explosives with threat to human being
29 (RCW 70.74.270)
30 Over 18 and deliver narcotic from Schedule
31 III, IV, or V or a nonnarcotic from
32 Schedule I-V to someone under 18 and
33 3 years junior (RCW 69.50.406)
34 Controlled Substance Homicide (RCW
35 69.50.415)

1 Sexual Exploitation (RCW 9.68A.040)
2 Inciting Criminal Profiteering (RCW
3 9A.82.060(1)(b))
4 Vehicular Homicide, by being under the
5 influence of intoxicating liquor or
6 any drug (RCW 46.61.520)

7 VIII Arson 1 (RCW 9A.48.020)
8 Promoting Prostitution 1 (RCW 9A.88.070)
9 Selling for profit (controlled or
10 counterfeit) any controlled substance
11 (RCW 69.50.410)
12 Manufacture, deliver, or possess with
13 intent to deliver heroin or cocaine
14 (RCW 69.50.401(a)(1)(i))
15 Manufacture, deliver, or possess with
16 intent to deliver methamphetamine
17 (RCW 69.50.401(a)(1)(ii))
18 Vehicular Homicide, by the operation of
19 any vehicle in a reckless manner (RCW
20 46.61.520)

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

1 Unlawful Possession of a Firearm in the
2 first degree (RCW 9.41.040(1)(a))

3 VI Bribery (RCW 9A.68.010)
4 Manslaughter 2 (RCW 9A.32.070)
5 Rape of a Child 3 (RCW 9A.44.079)
6 Intimidating a Juror/Witness (RCW
7 9A.72.110, 9A.72.130)
8 Damaging building, etc., by explosion with
9 no threat to human being (RCW
10 70.74.280(2))
11 Endangering life and property by
12 explosives with no threat to human
13 being (RCW 70.74.270)
14 Incest 1 (RCW 9A.64.020(1))
15 Manufacture, deliver, or possess with
16 intent to deliver narcotics from
17 Schedule I or II (except heroin or
18 cocaine) (RCW 69.50.401(a)(1)(i))
19 Intimidating a Judge (RCW 9A.72.160)
20 Bail Jumping with Murder 1 (RCW
21 9A.76.170(2)(a))
22 Theft of a Firearm (RCW 9A.56.300)

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

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

14 IV Residential Burglary (RCW 9A.52.025)
15 Theft of Livestock 1 (RCW 9A.56.080)
16 Robbery 2 (RCW 9A.56.210)
17 Assault 2 (RCW 9A.36.021)
18 Escape 1 (RCW 9A.76.110)
19 Arson 2 (RCW 9A.48.030)
20 Commercial Bribery (RCW 9A.68.060)
21 Bribing a Witness/Bribe Received by
22 Witness (RCW 9A.72.090, 9A.72.100)
23 Malicious Harassment (RCW 9A.36.080)
24 Threats to Bomb (RCW 9.61.160)
25 Willful Failure to Return from Furlough
26 (RCW 72.66.060)
27 Hit and Run « Injury Accident (RCW
28 46.52.020(4))
29 Vehicular Assault (RCW 46.61.522)
30 Manufacture, deliver, or possess with
31 intent to deliver narcotics from
32 Schedule III, IV, or V or
33 nonnarcotics from Schedule I-V
34 (except marijuana or
35 methamphetamines) (RCW
36 69.50.401(a)(1)(ii) through (iv))
37 Influencing Outcome of Sporting Event (RCW
38 9A.82.070)

1 Use of Proceeds of Criminal Profiteering
2 (RCW 9A.82.080 (1) and (2))
3 Knowingly Trafficking in Stolen Property
4 (RCW 9A.82.050(2))

5 III Criminal Mistreatment 2 (RCW 9A.42.030)
6 Extortion 2 (RCW 9A.56.130)
7 Unlawful Imprisonment (RCW 9A.40.040)
8 Assault 3 (RCW 9A.36.031)
9 Assault of a Child 3 (RCW 9A.36.140)
10 Custodial Assault (RCW 9A.36.100)
11 Unlawful possession of firearm in the
12 second degree (RCW 9.41.040(1)(b))
13 Harassment (RCW 9A.46.020)
14 Promoting Prostitution 2 (RCW 9A.88.080)
15 Willful Failure to Return from Work
16 Release (RCW 72.65.070)
17 Burglary 2 (RCW 9A.52.030)
18 Introducing Contraband 2 (RCW 9A.76.150)
19 Communication with a Minor for Immoral
20 Purposes (RCW 9.68A.090)
21 Patronizing a Juvenile Prostitute (RCW
22 9.68A.100)
23 Escape 2 (RCW 9A.76.120)
24 Perjury 2 (RCW 9A.72.030)
25 Bail Jumping with class B or C Felony (RCW
26 9A.76.170(2)(c))
27 Intimidating a Public Servant (RCW
28 9A.76.180)
29 Tampering with a Witness (RCW 9A.72.120)
30 Manufacture, deliver, or possess with
31 intent to deliver marijuana (RCW
32 69.50.401(a)(1)(ii))
33 Delivery of a material in lieu of a
34 controlled substance (RCW
35 69.50.401(c))
36 Manufacture, distribute, or possess with
37 intent to distribute an imitation
38 controlled substance (RCW
39 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Unlawful Practice of Law (RCW 2.48.180)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Theft 1 (RCW 9A.56.030)
10 Trafficking in Insurance Claims (RCW
11 48.30A.015)
12 Unlicensed Practice of a Profession or
13 Business (RCW 18.130.190(7))
14 Health Care False Claims (RCW 48.80.030)
15 Possession of controlled substance that is
16 either heroin or narcotics from
17 Schedule I or II (RCW 69.50.401(d))
18 Possession of phencyclidine (PCP) (RCW
19 69.50.401(d))
20 Create, deliver, or possess a counterfeit
21 controlled substance (RCW
22 69.50.401(b))
23 Computer Trespass 1 (RCW 9A.52.110)
24 Escape from Community Custody (RCW
25 72.09.310)

26 I Theft 2 (RCW 9A.56.040)
27 Possession of Stolen Property 2 (RCW
28 9A.56.160)
29 Forgery (RCW 9A.60.020)
30 Taking Motor Vehicle Without Permission
31 (RCW 9A.56.070)
32 Vehicle Prowl 1 (RCW 9A.52.095)
33 Attempting to Elude a Pursuing Police
34 Vehicle (RCW 46.61.024)
35 Malicious Mischief 2 (RCW 9A.48.080)
36 Reckless Burning 1 (RCW 9A.48.040)
37 Unlawful Issuance of Checks or Drafts (RCW
38 9A.56.060)

1 Unlawful Use of Food Stamps (RCW 9.91.140
2 (2) and (3))
3 False Verification for Welfare (RCW
4 74.08.055)
5 Forged Prescription (RCW 69.41.020)
6 Forged Prescription for a Controlled
7 Substance (RCW 69.50.403)
8 Possess Controlled Substance that is a
9 Narcotic from Schedule III, IV, or V
10 or Non-narcotic from Schedule I-V
11 (except phencyclidine) (RCW
12 69.50.401(d))

13 **Sec. 3.** RCW 10.95.050 and 1981 c 138 s 5 are each amended to read
14 as follows:

15 (1) If a defendant is adjudicated guilty of aggravated first degree
16 murder or a second or subsequent violent sex offense pursuant to
17 section 1 of this act, whether by acceptance of a plea of guilty, by
18 verdict of a jury, or by decision of the trial court sitting without a
19 jury, a special sentencing proceeding shall be held if a notice of
20 special sentencing proceeding was filed and served as provided by RCW
21 10.95.040 or section 1 of this act. No sort of plea, admission, or
22 agreement may abrogate the requirement that a special sentencing
23 proceeding be held.

24 (2) A jury shall decide the matters presented in the special
25 sentencing proceeding unless a jury is waived in the discretion of the
26 court and with the consent of the defendant and the prosecuting
27 attorney.

28 (3) If the defendant's guilt was determined by a jury verdict, the
29 trial court shall reconvene the same jury to hear the special
30 sentencing proceeding. The proceeding shall commence as soon as
31 practicable after completion of the trial at which the defendant's
32 guilt was determined. If, however, unforeseen circumstances make it
33 impracticable to reconvene the same jury to hear the special sentencing
34 proceeding, the trial court may dismiss that jury and convene a jury
35 pursuant to subsection (4) of this section.

36 (4) If the defendant's guilt was determined by plea of guilty or by
37 decision of the trial court sitting without a jury, or if a retrial of
38 the special sentencing proceeding is necessary for any reason including

1 but not limited to a mistrial in a previous special sentencing
2 proceeding or as a consequence of a remand from an appellate court, the
3 trial court shall impanel a jury of twelve persons plus whatever
4 alternate jurors the trial court deems necessary. The defense and
5 prosecution shall each be allowed to peremptorily challenge twelve
6 jurors. If there is more than one defendant, each defendant shall be
7 allowed an additional peremptory challenge and the prosecution shall be
8 allowed a like number of additional challenges. If alternate jurors
9 are selected, the defense and prosecution shall each be allowed one
10 peremptory challenge for each alternate juror to be selected and if
11 there is more than one defendant each defendant shall be allowed an
12 additional peremptory challenge for each alternate juror to be selected
13 and the prosecution shall be allowed a like number of additional
14 challenges.

15 **Sec. 4.** RCW 10.95.060 and 1981 c 138 s 6 are each amended to read
16 as follows:

17 (1) At the commencement of the special sentencing proceeding, the
18 trial court shall instruct the jury as to the nature and purpose of the
19 proceeding and as to the consequences of its decision, as provided in
20 RCW 10.95.030 or section 1 of this act.

21 (2) At the special sentencing proceeding both the prosecution and
22 defense shall be allowed to make an opening statement. The prosecution
23 shall first present evidence and then the defense may present evidence.
24 Rebuttal evidence may be presented by each side. Upon conclusion of
25 the evidence, the court shall instruct the jury and then the
26 prosecution and defense shall be permitted to present argument. The
27 prosecution shall open and conclude the argument.

28 (3) The court shall admit any relevant evidence which it deems to
29 have probative value regardless of its admissibility under the rules of
30 evidence, including hearsay evidence and evidence of the defendant's
31 previous criminal activity regardless of whether the defendant has been
32 charged or convicted as a result of such activity. The defendant shall
33 be accorded a fair opportunity to rebut or offer any hearsay evidence.

34 In addition to evidence of whether or not there are sufficient
35 mitigating circumstances to merit leniency, if the jury sitting in the
36 special sentencing proceeding has not heard evidence of the aggravated
37 first degree murder or a second or subsequent violent sex offense
38 pursuant to section 1 of this act of which the defendant stands

1 convicted, both the defense and prosecution may introduce evidence
2 concerning the facts and circumstances of the murder or violent sex
3 offenses.

4 (4) Upon conclusion of the evidence and argument at the special
5 sentencing proceeding, the jury shall retire to deliberate upon the
6 following question: "Having in mind the crime of which the defendant
7 has been found guilty, are you convinced beyond a reasonable doubt that
8 there are not sufficient mitigating circumstances to merit leniency?"

9 In order to return an affirmative answer to the question posed by
10 this subsection, the jury must so find unanimously.

11 **Sec. 5.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to read
12 as follows:

13 In deciding the question posed by RCW 10.95.060(4), the jury, or
14 the court if a jury is waived, may consider any relevant factors,
15 including but not limited to the following:

16 (1) Whether the defendant has or does not have a significant
17 history, either as a juvenile or an adult, of prior criminal activity;

18 (2) Whether the murder was or violent sex offenses were committed
19 while the defendant was under the influence of extreme mental
20 disturbance;

21 (3) Whether the victim consented to the act of murder;

22 (4) Whether the defendant was an accomplice to a murder or violent
23 sex offenses committed by another person where the defendant's
24 participation in the murder or violent sex offenses was relatively
25 minor;

26 (5) Whether the defendant acted under duress or domination of
27 another person;

28 (6) Whether, at the time of the murder or violent sex offenses, the
29 capacity of the defendant to appreciate the wrongfulness of his or her
30 conduct or to conform his or her conduct to the requirements of law was
31 substantially impaired as a result of mental disease or defect.
32 However, a person found to be mentally retarded under RCW 10.95.030(2)
33 may in no case be sentenced to death;

34 (7) Whether the age of the defendant at the time of the crime calls
35 for leniency; and

36 (8) Whether there is a likelihood that the defendant will pose a
37 danger to others in the future.

1 **Sec. 6.** RCW 10.95.090 and 1981 c 138 s 9 are each amended to read
2 as follows:

3 If any sentence of death imposed pursuant to this chapter is
4 commuted by the governor, or held to be invalid by a final judgment of
5 a court after all avenues of appeal have been exhausted by the parties
6 to the action, or if the death penalty established by this chapter is
7 held to be invalid by a final judgment of a court which is binding on
8 all courts in the state, the sentence for aggravated first degree
9 murder or a second or subsequent violent sex offense pursuant to
10 section 1 of this act if there was an affirmative response to the
11 question posed by RCW 10.95.060(4) shall be life imprisonment as
12 provided in RCW 10.95.030(1) or section 1(1) of this act.

13 **Sec. 7.** RCW 10.95.120 and 1981 c 138 s 12 are each amended to read
14 as follows:

15 In all cases in which a person is convicted of aggravated first
16 degree murder or a second or subsequent violent sex offense pursuant to
17 section 1 of this act, the trial court shall, within thirty days after
18 the entry of the judgment and sentence, submit a report to the clerk of
19 the supreme court of Washington, to the defendant or his or her
20 attorney, and to the prosecuting attorney which provides the
21 information specified under subsections (1) through (8) of this
22 section. The report shall be in the form of a standard questionnaire
23 prepared and supplied by the supreme court of Washington and shall
24 include the following:

25 (1) Information about the defendant, including the following:

26 (a) Name, date of birth, gender, marital status, and race and/or
27 ethnic origin;

28 (b) Number and ages of children;

29 (c) Whether his or her parents are living, and date of death where
30 applicable;

31 (d) Number of children born to his or her parents;

32 (e) The defendant's educational background, intelligence level, and
33 intelligence quotient;

34 (f) Whether a psychiatric evaluation was performed, and if so,
35 whether it indicated that the defendant was:

36 (i) Able to distinguish right from wrong;

37 (ii) Able to perceive the nature and quality of his or her act; and

38 (iii) Able to cooperate intelligently with his or her defense;

1 (g) Any character or behavior disorders found or other pertinent
2 psychiatric or psychological information;

3 (h) The work record of the defendant;

4 (i) A list of the defendant's prior convictions including the
5 offense, date, and sentence imposed; and

6 (j) The length of time the defendant has resided in Washington and
7 the county in which he or she was convicted.

8 (2) Information about the trial, including:

9 (a) The defendant's plea;

10 (b) Whether defendant was represented by counsel;

11 (c) Whether there was evidence introduced or instructions given as
12 to defenses to aggravated first degree murder or a second or subsequent
13 violent sex offense pursuant to section 1 of this act, including
14 excusable homicide, justifiable homicide, insanity, duress, entrapment,
15 alibi, intoxication, or other specific defense;

16 (d) Any other offenses charged against the defendant and tried at
17 the same trial and whether they resulted in conviction;

18 (e) What aggravating circumstances were alleged against the
19 defendant and which of these circumstances was found to have been
20 applicable; and

21 (f) Names and charges filed against other defendant(s) if tried
22 jointly and disposition of the charges.

23 (3) Information concerning the special sentencing proceeding,
24 including:

25 (a) The date the defendant was convicted and date the special
26 sentencing proceeding commenced;

27 (b) Whether the jury for the special sentencing proceeding was the
28 same jury that returned the guilty verdict, providing an explanation if
29 it was not;

30 (c) Whether there was evidence of mitigating circumstances;

31 (d) Whether there was, in the court's opinion, credible evidence of
32 the mitigating circumstances as provided in RCW 10.95.070;

33 (e) The jury's answer to the question posed in RCW 10.95.060(4);

34 (f) The sentence imposed.

35 (4) Information about the victim, including:

36 (a) Whether he or she was related to the defendant by blood or
37 marriage;

38 (b) The victim's occupation and whether he or she was an employer
39 or employee of the defendant;

1 (c) Whether the victim was acquainted with the defendant, and if
2 so, how well;

3 (d) The length of time the victim resided in Washington and the
4 county;

5 (e) Whether the victim was the same race and/or ethnic origin as
6 the defendant;

7 (f) Whether the victim was the same sex as the defendant;

8 (g) Whether the victim was held hostage during the crime and if so,
9 how long;

10 (h) The nature and extent of any physical harm or torture inflicted
11 upon the victim (~~(prior to death)~~);

12 (i) The victim's age; and

13 (j) The type of weapon used in the crime, if any.

14 (5) Information about the representation of the defendant,
15 including:

16 (a) Date counsel secured;

17 (b) Whether counsel was retained or appointed, including the reason
18 for appointment;

19 (c) The length of time counsel has practiced law and nature of his
20 or her practice; and

21 (d) Whether the same counsel served at both the trial and special
22 sentencing proceeding, and if not, why not.

23 (6) General considerations, including:

24 (a) Whether the race and/or ethnic origin of the defendant, victim,
25 or any witness was an apparent factor at trial;

26 (b) What percentage of the county population is the same race
27 and/or ethnic origin of the defendant;

28 (c) Whether members of the defendant's or victim's race and/or
29 ethnic origin were represented on the jury;

30 (d) Whether there was evidence that such members were
31 systematically excluded from the jury;

32 (e) Whether the sexual orientation of the defendant, victim, or any
33 witness was a factor in the trial;

34 (f) Whether any specific instruction was given to the jury to
35 exclude race, ethnic origin, or sexual orientation as an issue;

36 (g) Whether there was extensive publicity concerning the case in
37 the community;

38 (h) Whether the jury was instructed to disregard such publicity;

1 (i) Whether the jury was instructed to avoid any influence of
2 passion, prejudice, or any other arbitrary factor when considering its
3 verdict or its findings in the special sentencing proceeding;

4 (j) The nature of the evidence resulting in such instruction; and

5 (k) General comments of the trial judge concerning the
6 appropriateness of the sentence considering the crime, defendant, and
7 other relevant factors.

8 (7) Information about the chronology of the case, including the
9 date that:

10 (a) The defendant was arrested;

11 (b) Trial began;

12 (c) The verdict was returned;

13 (d) Post-trial motions were ruled on;

14 (e) Special sentencing proceeding began;

15 (f) Sentence was imposed;

16 (g) Trial judge's report was completed; and

17 (h) Trial judge's report was filed.

18 (8) The trial judge shall sign and date the questionnaire when it
19 is completed.

20 **Sec. 8.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
21 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), (6), and (8)
25 of this section, the court shall impose a sentence within the sentence
26 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 persistent offender shall be sentenced to a term of total
36 confinement for life without the possibility of parole or, when
37 authorized by RCW 10.95.030 for the crime of aggravated murder in the
38 first degree or by section 1 of this act for a second or subsequent

1 violent sex offense, sentenced to death, notwithstanding the maximum
2 sentence under any other law. An offender convicted of the crime of
3 murder in the first degree shall be sentenced to a term of total
4 confinement not less than twenty years. An offender convicted of the
5 crime of assault in the first degree or assault of a child in the first
6 degree where the offender used force or means likely to result in death
7 or intended to kill the victim shall be sentenced to a term of total
8 confinement not less than five years. An offender convicted of the
9 crime of rape in the first degree shall be sentenced to a term of total
10 confinement not less than five years. The foregoing minimum terms of
11 total confinement are mandatory and shall not be varied or modified as
12 provided in subsection (2) of this section. In addition, all offenders
13 subject to the provisions of this subsection shall not be eligible for
14 community custody, earned early release time, furlough, home detention,
15 partial confinement, work crew, work release, or any other form of
16 early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7),
17 or (8), or any other form of authorized leave of absence from the
18 correctional facility while not in the direct custody of a corrections
19 officer or officers during such minimum terms of total confinement
20 except in the case of an offender in need of emergency medical
21 treatment or for the purpose of commitment to an inpatient treatment
22 facility in the case of an offender convicted of the crime of rape in
23 the first degree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (D) Anticipated length of treatment; and

33 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

32 (III) Report as directed to the court and a community corrections
33 officer;

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

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

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

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

24 (v) The court may revoke the suspended sentence at any time during
25 the period of community supervision and order execution of the sentence
26 if: (A) The defendant violates the conditions of the suspended
27 sentence, or (B) the court finds that the defendant is failing to make
28 satisfactory progress in treatment. All confinement time served during
29 the period of community supervision shall be credited to the offender
30 if the suspended sentence is revoked.

31 (vi) Except as provided in (a)(vii) of this subsection, after July
32 1, 1991, examinations and treatment ordered pursuant to this subsection
33 shall only be conducted by sex offender treatment providers certified
34 by the department of health pursuant to chapter 18.155 RCW.

35 (vii) A sex offender therapist who examines or treats a sex
36 offender pursuant to this subsection (8) does not have to be certified
37 by the department of health pursuant to chapter 18.155 RCW if the court
38 finds that: (A) The offender has already moved to another state or
39 plans to move to another state for reasons other than circumventing the

1 certification requirements; (B) no certified providers are available
2 for treatment within a reasonable geographical distance of the
3 offender's home; and (C) the evaluation and treatment plan comply with
4 this subsection (8) and the rules adopted by the department of health.

5 For purposes of this subsection, "victim" means any person who has
6 sustained emotional, psychological, physical, or financial injury to
7 person or property as a result of the crime charged. "Victim" also
8 means a parent or guardian of a victim who is a minor child unless the
9 parent or guardian is the perpetrator of the offense.

10 (b) 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 or her community supervision term in confinement in the custody
34 of the department of corrections.

35 Nothing in this subsection (8)(b) 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 (8)(b) does not apply
38 to any crime committed after July 1, 1990.

1 (c) 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 (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 not sentenced under subsection (6) of this section,
18 committed on or after July 1, 1988, the court shall in addition to the
19 other terms of the sentence, sentence the offender to a one-year term
20 of community placement beginning either upon completion of the term of
21 confinement or at such time as the offender is transferred to community
22 custody in lieu of earned early release in accordance with RCW
23 9.94A.150 (1) and (2). When the court sentences an offender under this
24 subsection to the statutory maximum period of confinement then the
25 community placement portion of the sentence shall consist entirely of
26 such community custody to which the offender may become eligible, in
27 accordance with RCW 9.94A.150 (1) and (2). Any period of community
28 custody actually served shall be credited against the community
29 placement portion of the sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 requiring more than thirty days of confinement shall be served on
2 consecutive days. Local jail administrators may schedule court-ordered
3 intermittent sentences as space permits.

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

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

29 (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. The department
38 may require offenders to pay for special services rendered on or after
39 July 25, 1993, including electronic monitoring, day reporting, and

1 telephone reporting, dependent upon the offender's ability to pay. The
2 department may pay for these services for offenders who are not able to
3 pay.

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

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

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

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

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

37 (19) In any sentence of partial confinement, the court may require
38 the defendant to serve the partial confinement in work release, in a

1 program of home detention, on work crew, or in a combined program of
2 work crew and home detention.

3 (20) All court-ordered legal financial obligations collected by the
4 department and remitted to the county clerk shall be credited and paid
5 where restitution is ordered. Restitution shall be paid prior to any
6 other payments of monetary obligations.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 72.09 RCW
8 to read as follows:

9 The department shall not provide sex offender treatment or
10 counseling services to any person sentenced to life imprisonment for a
11 second or subsequent violent sex offense under section 1 of this act.

12 NEW SECTION. **Sec. 10.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 11.** This act shall take effect July 1, 1996,
17 and apply to second or subsequent violent sex offenses as defined in
18 section 1 of this act committed on or after July 1, 1996.

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