
SENATE BILL 5906

State of Washington

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By Senators Long, Hargrove, Haugen, Smith, Winsley, Swecker, Quigley, Hale, Finkbeiner, Strannigan, A. Anderson, West, Bauer, Rasmussen and Oke

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1 AN ACT Relating to disciplinary confinement; amending RCW
2 9.94A.030, 9.94A.132, 9.94A.137, 9.94A.150, 70.48.210, 72.09.130,
3 9.94A.123, 9.94A.127, 9.94A.130, 9.94A.180, 9.94A.210, 9.94A.390,
4 9.94A.400, 13.40.135, 18.155.010, 18.155.020, 18.155.030, 43.43.754,
5 and 46.61.524; reenacting and amending RCW 9.94A.120 and 9.94A.440;
6 adding a new section to chapter 9.94A RCW; and prescribing penalties.

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

8 **Sec. 1.** RCW 9.94A.030 and 1994 c 261 s 16 are each amended to read
9 as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

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

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

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

5 (4) "Community custody" means that portion of an inmate's sentence
6 of confinement in lieu of: (a) Release before the expiration of a
7 maximum sentence; or (b) earned early release time. Community custody
8 must be served in the community subject to controls placed on the
9 inmate's movement and activities by the department of corrections.

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

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

21 (7) "Community supervision" means a period of time during which a
22 convicted offender is subject to crime-related prohibitions and other
23 sentence conditions imposed by a court pursuant to this chapter or RCW
24 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
25 may include crime-related prohibitions and other conditions imposed
26 pursuant to RCW 9.94A.120(~~((+5))~~) (6). For purposes of the interstate
27 compact for out-of-state supervision of parolees and probationers, RCW
28 9.95.270, community supervision is the functional equivalent of
29 probation and should be considered the same as probation by other
30 states.

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

33 (9) "Conviction" means an adjudication of guilt pursuant to Titles
34 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
35 acceptance of a plea of guilty.

36 (10) "Court-ordered legal financial obligation" means a sum of
37 money that is ordered by a superior court of the state of Washington
38 for legal financial obligations which may include restitution to the
39 victim, statutorily imposed crime victims' compensation fees as

1 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
2 drug funds, court-appointed attorneys' fees, and costs of defense,
3 fines, and any other financial obligation that is assessed to the
4 offender as a result of a felony conviction. Upon conviction for
5 vehicular assault while under the influence of intoxicating liquor or
6 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
7 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
8 legal financial obligations may also include payment to a public agency
9 of the expense of an emergency response to the incident resulting in
10 the conviction, subject to the provisions in RCW 38.52.430.

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

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

23 (b) "Criminal history" shall always include juvenile convictions
24 for sex offenses and shall also include a defendant's other prior
25 convictions in juvenile court if: (i) The conviction was for an
26 offense which is a felony or a serious traffic offense and is criminal
27 history as defined in RCW 13.40.020(9); (ii) the defendant was fifteen
28 years of age or older at the time the offense was committed; and (iii)
29 with respect to prior juvenile class B and C felonies or serious
30 traffic offenses, the defendant was less than twenty-three years of age
31 at the time the offense for which he or she is being sentenced was
32 committed.

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

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

1 because of "earned early release credit" (~~can reduce the actual period~~
2 ~~of~~) or "disciplinary confinement" shall not affect the classification
3 of the sentence as a determinate sentence.

4 (15) "Disciplinary confinement" means a period of total confinement
5 imposed by the department due to an offender's violation of a
6 disciplinary rule adopted by the department.

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

19 (~~(16)~~) (17) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of
21 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
22 controlled substance (RCW 69.50.403);

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

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

29 (~~(17)~~) (18) "Escape" means:

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

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

38 (~~(18)~~) (19) "Felony traffic offense" means:

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

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

7 (~~((19))~~) (20) "Fines" means the requirement that the offender pay
8 a specific sum of money over a specific period of time to the court.

9 (~~((20))~~) (21)(a) "First-time offender" means any person who is
10 convicted of a felony (i) not classified as a violent offense or a sex
11 offense under this chapter, or (ii) that is not the manufacture,
12 delivery, or possession with intent to manufacture or deliver a
13 controlled substance classified in schedule I or II that is a narcotic
14 drug or the selling for profit of any controlled substance or
15 counterfeit substance classified in schedule I, RCW 69.50.204, except
16 leaves and flowering tops of marihuana, and except as provided in (b)
17 of this subsection, who previously has never been convicted of a felony
18 in this state, federal court, or another state, and who has never
19 participated in a program of deferred prosecution for a felony offense.

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

23 (~~((21))~~) (22) "Home detention" means a program of partial
24 confinement available to offenders wherein the offender is confined in
25 a private residence subject to electronic surveillance.

26 (23) "Mandatory term of total confinement" means the minimum period
27 of time that an offender must serve in total confinement for conviction
28 of an offense.

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

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

35 (b) Assault in the second degree;

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

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

39 (f) Extortion in the first degree;

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

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

3 ~~((25))~~ (28) "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))~~ (29) "Postrelease supervision" is that portion of an
15 offender's community placement that is not community custody.

16 ~~((27))~~ (30) "Restitution" means the requirement that the offender
17 pay a specific sum of money over a specific period of time to the court
18 as payment of damages. The sum may include both public and private
19 costs. The imposition of a restitution order does not preclude civil
20 redress.

21 ~~((28))~~ (31) "Serious traffic offense" means:

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

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

30 ~~((29))~~ (32) "Serious violent offense" is a subcategory of violent
31 offense and means:

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

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

1 (~~(30)~~) (33) "Sentence range" means the sentencing court's
2 discretionary range in imposing a nonappealable sentence.

3 (~~(31)~~) (34) "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)~~) (35) "Sexual motivation" means that one of the purposes
14 for which the defendant committed the crime was for the purpose of his
15 or her sexual gratification.

16 (~~(33)~~) (36) "Total confinement" means confinement inside the
17 physical boundaries of a facility or institution operated or utilized
18 under contract by the state or any other unit of government for twenty-
19 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (~~(34)~~) (37) "Transition training" means written and verbal
21 instructions and assistance provided by the department to the offender
22 during the two weeks prior to the offender's successful completion of
23 the work ethic camp program. The transition training shall include
24 instructions in the offender's requirements and obligations during the
25 offender's period of community custody.

26 (~~(35)~~) (38) "Victim" means any person who has sustained
27 emotional, psychological, physical, or financial injury to person or
28 property as a direct result of the crime charged.

29 (~~(36)~~) (39) "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))~~ (40) "Work crew" means a program of partial confinement
10 consisting of civic improvement tasks for the benefit of the community
11 of not less than thirty-five hours per week that complies with RCW
12 9.94A.135. The civic improvement tasks shall have minimal negative
13 impact on existing private industries or the labor force in the county
14 where the service or labor is performed. The civic improvement tasks
15 shall not affect employment opportunities for people with developmental
16 disabilities contracted through sheltered workshops as defined in RCW
17 82.04.385. Only those offenders sentenced to a facility operated or
18 utilized under contract by a county or the state are eligible to
19 participate on a work crew. Offenders sentenced for a sex offense as
20 defined in subsection ~~((31))~~ (34) of this section are not eligible
21 for the work crew program.

22 ~~((38))~~ (41) "Work ethic camp" means an alternative incarceration
23 program designed to reduce recidivism and lower the cost of corrections
24 by requiring offenders to complete a comprehensive array of real-world
25 job and vocational experiences, character-building work ethics
26 training, life management skills development, substance abuse
27 rehabilitation, counseling, literacy training, and basic adult
28 education.

29 ~~((39))~~ (42) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a
31 regular course of study at school. Participation in work release shall
32 be conditioned upon the offender attending work or school at regularly
33 defined hours and abiding by the rules of the work release facility.

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

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

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

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

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

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

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

9 (2)(a) When an offender is sentenced for a serious violent offense
10 or a sex offense that is a class A felony committed on or after January
11 1, 1996, and the standard range for the offense is a term of
12 confinement totaling more than one year, the maximum sentence must
13 consist of two parts: (i) A specified mandatory term of total
14 confinement that is equal to eighty-five percent of the maximum
15 sentence; and (ii) a specified maximum term of disciplinary confinement
16 that is equal to fifteen percent of the maximum sentence. The offender
17 shall not be released before the expiration of his or her maximum
18 sentence except as allowed under RCW 9.94A.150 and 72.09.130.

19 (b) When an offender is sentenced for an offense other than an
20 offense under (a) of this subsection committed on or after January 1,
21 1996, and the standard range for the offense is a term of confinement
22 totaling more than one year, the maximum sentence must consist of two
23 parts: (i) A specified mandatory term of total confinement that is
24 equal to two-thirds of the maximum sentence; and (ii) a specified
25 maximum term of disciplinary confinement that is equal to one-third of
26 the sentence. The offender shall not be released before the expiration
27 of his or her maximum sentence except as allowed under RCW 9.94A.150
28 and 72.09.130.

29 (c) When a court pronounces a sentence under this section, it shall
30 explain: (i) The minimum amount of time the offender will serve in
31 total confinement in a correctional institution; (ii) any credit for
32 time served in a county jail facility, including any earned early
33 release credits under RCW 9.92.151, for which the offender may be
34 eligible; and (iii) the maximum amount of time the offender may serve
35 in disciplinary confinement, assuming the offender commits one or more
36 infractions while in total confinement that result in the imposition of
37 disciplinary confinement. The court shall also explain that the amount
38 of time the offender actually serves in total confinement may be
39 extended by the department of corrections for disciplinary infractions

1 and that the offender has absolutely no expectation of release before
2 the expiration of his or her maximum sentence. The court's explanation
3 must be included in a written summary of the sentence.

4 (d) The court's explanation of the potential length of an
5 offender's confinement does not create any right in an offender to a
6 release before the expiration of his or her maximum sentence. The
7 provisions of this chapter, and any rules adopted under this chapter,
8 do not create a constitutional right in any person. Offenders do not
9 have any state-created liberty or property interests by virtue of these
10 provisions or rules.

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

15 ~~((+3))~~ (4) Whenever a sentence outside the standard range is
16 imposed, the court shall set forth the reasons for its decision in
17 written findings of fact and conclusions of law. A sentence outside
18 the standard range shall be a determinate sentence.

19 ~~((+4))~~ (5) A persistent offender shall be sentenced to a term of
20 total confinement for life without the possibility of parole or, when
21 authorized by RCW 10.95.030 for the crime of aggravated murder in the
22 first degree, sentenced to death, notwithstanding the maximum sentence
23 under any other law. An offender convicted of the crime of murder in
24 the first degree shall be sentenced to a term of total confinement not
25 less than twenty years. An offender convicted of the crime of assault
26 in the first degree or assault of a child in the first degree where the
27 offender used force or means likely to result in death or intended to
28 kill the victim shall be sentenced to a term of total confinement not
29 less than five years. An offender convicted of the crime of rape in
30 the first degree shall be sentenced to a term of total confinement not
31 less than five years. The foregoing minimum terms of total confinement
32 are mandatory and shall not be varied or modified as provided in
33 subsection ~~((+2))~~ (3) of this section. In addition, all offenders
34 subject to the provisions of this subsection shall not be eligible for
35 community custody, earned early release time, furlough, home detention,
36 partial confinement, work crew, work release, or any other form of
37 early release as defined under RCW 9.94A.150 ~~((+1), (2), (3), (5), (7),~~
38 ~~or (8))~~ (2), (3), (4), (6), (8), or (9), or any other form of
39 authorized leave of absence from the correctional facility while not in

1 the direct custody of a corrections officer or officers during such
2 minimum terms of total confinement except in the case of an offender in
3 need of emergency medical treatment or for the purpose of commitment to
4 an inpatient treatment facility in the case of an offender convicted of
5 the crime of rape in the first degree. The mandatory term of total
6 confinement established under subsection (1) of this section must be
7 equal to or greater than any minimum term of total confinement under
8 this subsection.

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

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

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

22 (c) Pursue a prescribed, secular course of study or vocational
23 training;

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

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

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

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

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

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

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

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

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

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

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 ~~(iv) Undergo available outpatient treatment.~~

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

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

10 ~~(e))~~ 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 ~~((e))~~ (b) of this subsection shall confer eligibility
36 for such programs for offenders convicted and sentenced for a sex
37 offense committed prior to July 1, 1987. This subsection ~~((e))~~ (b)
38 does not apply to any crime committed after July 1, 1990.

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

9 ~~((8))~~ (9)(a) When a court sentences a person to a term of total
10 confinement to the custody of the department of corrections for an
11 offense categorized as a sex offense or a serious violent offense
12 committed after July 1, 1988, but before July 1, 1990, assault in the
13 second degree, assault of a child in the second degree, any crime
14 against a person where it is determined in accordance with RCW
15 9.94A.125 that the defendant or an accomplice was armed with a deadly
16 weapon at the time of commission, or any felony offense under chapter
17 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
18 in addition to the other terms of the sentence, sentence the offender
19 to a one-year term of community placement beginning either upon
20 completion of the term of confinement or at such time as the offender
21 is transferred to community custody in lieu of release before the
22 expiration of the maximum sentence in accordance with RCW 9.94A.150(1)
23 or earned early release in accordance with RCW 9.94A.150 ~~((1) and)~~
24 (2) and (3). When the court sentences an offender under this
25 subsection to the statutory maximum period of confinement then the
26 community placement portion of the sentence shall consist entirely of
27 such community custody to which the offender may become eligible, in
28 accordance with RCW 9.94A.150 ~~((1) and (2))~~. Any period of community
29 custody actually served shall be credited against the community
30 placement portion of the sentence.

31 (b) When a court sentences a person to a term of total confinement
32 to the custody of the department of corrections for an offense
33 categorized as a sex offense or serious violent offense committed on or
34 after July 1, 1990, the court shall in addition to other terms of the
35 sentence, sentence the offender to community placement for two years
36 ~~((or up to the period of earned early release awarded pursuant to))~~, or
37 for that period of time remaining in lieu of an unsupervised release
38 before the expiration of the offender's maximum sentence under RCW
39 9.94A.150 ~~((1) and (2))~~, whichever is longer. The community

1 placement shall begin either upon completion of the term of confinement
2 or at such time as the offender is transferred to community custody in
3 lieu of (~~earned early~~) an unsupervised release (~~in accordance with~~
4 ~~RCW 9.94A.150 (1) and (2)~~) before the expiration of a maximum
5 sentence. When the court sentences an offender under this subsection
6 to the statutory maximum period of confinement then the community
7 placement portion of the sentence shall consist entirely of the
8 community custody to which the offender may become eligible, in
9 accordance with RCW 9.94A.150 (~~(1) and (2)~~). Any period of community
10 custody actually served shall be credited against the community
11 placement portion of the sentence. Unless a condition is waived by the
12 court, the terms of community placement for offenders sentenced
13 pursuant to this section shall include the following conditions:

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

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

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

20 (iv) An offender in community custody shall not unlawfully possess
21 controlled substances;

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

24 (vi) The residence location and living arrangements are subject to
25 the prior approval of the department of corrections during the period
26 of community placement.

27 (c) The court may also order any of the following special
28 conditions:

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

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

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

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

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

37 (d) Prior to transfer to, or during, community placement, any
38 conditions of community placement may be removed or modified so as not

1 to be more restrictive by the sentencing court, upon recommendation of
2 the department of corrections.

3 ~~((+9+))~~ (10) If the court imposes a sentence requiring confinement
4 of thirty days or less, the court may, in its discretion, specify that
5 the sentence be served on consecutive or intermittent days. A sentence
6 requiring more than thirty days of confinement shall be served on
7 consecutive days. Local jail administrators may schedule court-ordered
8 intermittent sentences as space permits.

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

30 ~~((+11+))~~ (12) Except as provided under RCW 9.94A.140(1) and
31 9.94A.142(1), a court may not impose a sentence providing for a term of
32 confinement or community supervision or community placement which
33 exceeds the statutory maximum for the crime as provided in chapter
34 9A.20 RCW.

35 ~~((+12+))~~ (13) All offenders sentenced to terms involving community
36 supervision, community service, community placement, or legal financial
37 obligation shall be under the supervision of the secretary of the
38 department of corrections or such person as the secretary may designate
39 and shall follow explicitly the instructions of the secretary including

1 reporting as directed to a community corrections officer, remaining
2 within prescribed geographical boundaries, notifying the community
3 corrections officer of any change in the offender's address or
4 employment, and paying the supervision fee assessment. The department
5 may require offenders to pay for special services rendered on or after
6 July 25, 1993, including electronic monitoring, day reporting, and
7 telephone reporting, dependent upon the offender's ability to pay. The
8 department may pay for these services for offenders who are not able to
9 pay.

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

20 ~~((14))~~ (15) The sentencing court shall give the offender credit
21 for all confinement time served before the sentencing if that
22 confinement was solely in regard to the offense for which the offender
23 is being sentenced.

24 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)
25 and (2) governing whether sentences are to be served consecutively or
26 concurrently is an exceptional sentence subject to the limitations in
27 subsections ~~((2) and)~~ (3) and (4) of this section, and may be
28 appealed by the defendant or the state as set forth in RCW 9.94A.210
29 (2) through (6).

30 ~~((16))~~ (17) The court shall order restitution whenever the
31 offender is convicted of a felony that results in injury to any person
32 or damage to or loss of property, whether the offender is sentenced to
33 confinement or placed under community supervision, unless extraordinary
34 circumstances exist that make restitution inappropriate in the court's
35 judgment. The court shall set forth the extraordinary circumstances in
36 the record if it does not order restitution.

37 ~~((17))~~ (18) As a part of any sentence, the court may impose and
38 enforce an order that relates directly to the circumstances of the
39 crime for which the offender has been convicted, prohibiting the

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

5 ~~((18))~~ (19) In any sentence of partial confinement, the court may
6 require the defendant to serve the partial confinement in work release,
7 in a program of home detention, on work crew, or in a combined program
8 of work crew and home detention.

9 ~~((19))~~ (20) All court-ordered legal financial obligations
10 collected by the department and remitted to the county clerk shall be
11 credited and paid where restitution is ordered. Restitution shall be
12 paid prior to any other payments of monetary obligations.

13 **Sec. 3.** RCW 9.94A.132 and 1994 sp.s. c 7 s 533 are each amended to
14 read as follows:

15 The department is authorized to determine whether any person
16 subject to the confines of a correctional facility would substantially
17 benefit from successful participation in: (1) Literacy training, (2)
18 employment skills training, or (3) educational efforts to identify and
19 control sources of anger ~~((and,))~~. Upon a determination that the
20 person would substantially benefit, the department may require such
21 successful participation: (a) As a condition for offenders to avoid
22 receiving disciplinary confinement under RCW 9.94A.150(1); or (b) as a
23 condition for eligibility to obtain early release from the confines of
24 a correctional facility under RCW 9.94A.150(2).

25 The department shall adopt rules and procedures to administer this
26 section.

27 **Sec. 4.** RCW 9.94A.137 and 1993 c 338 s 4 are each amended to read
28 as follows:

29 (1) An offender is eligible to be sentenced to a work ethic camp if
30 the offender:

31 (a) Is sentenced to a term of total confinement of not less than
32 twenty-two months or more than thirty-six months;

33 (b) Is between the ages of eighteen and twenty-eight years; and

34 (c) Has no current or prior convictions for any sex offenses or
35 violent offenses.

36 (2) If the sentencing judge determines that the offender is
37 eligible for the work ethic camp and is likely to qualify under

1 subsection (3) of this section, the judge shall impose a sentence
2 within the standard range and may recommend that the offender serve the
3 sentence at a work ethic camp. The sentence shall provide that if the
4 offender successfully completes the program, the department shall
5 convert the period of work ethic camp confinement at the rate of one
6 day of work ethic camp confinement to three days of total standard
7 confinement. The court shall also provide that upon completion of the
8 work ethic camp program, the offender shall be released on community
9 custody for any remaining time of total confinement.

10 (3) The department shall place the offender in the work ethic camp
11 program, subject to capacity, unless the department determines that the
12 offender has physical or mental impairments that would prevent
13 participation and completion of the program, or the offender refuses to
14 agree to the terms and conditions of the program.

15 (4) An inmate who fails to complete the work ethic camp program,
16 who is administratively terminated from the program, or who otherwise
17 violates any conditions of supervision, as defined by the department,
18 shall be reclassified to serve the unexpired term of his or her
19 sentence as ordered by the sentencing judge and shall be subject to all
20 rules relating to: (a) Disciplinary confinement for offenses committed
21 on or after January 1, 1996; or (b) earned early release time for
22 offenses committed before January 1, 1996.

23 (5) The length of the work ethic camp program shall be at least one
24 hundred twenty days and not more than one hundred eighty days. Because
25 of the conversion ratio, earned early release time shall not accrue to
26 offenders who successfully complete the program.

27 (6) During the last two weeks prior to release from the work ethic
28 camp program the department shall provide the offender with
29 comprehensive transition training.

30 **Sec. 5.** RCW 9.94A.150 and 1992 c 145 s 8 are each amended to read
31 as follows:

32 No person serving a sentence imposed pursuant to this chapter and
33 committed to the custody of the department shall leave the confines of
34 the correctional facility or be released prior to the expiration of the
35 sentence except as follows:

36 (1)(a) Except as provided under (b) of this subsection, an offender
37 sentenced to confinement for a felony offense committed on or after
38 January 1, 1996, is eligible for release before the expiration of a

1 maximum sentence after the offender has served his or her specified
2 mandatory term of total confinement and any disciplinary confinement
3 imposed by the department due to the offender's violation of a
4 disciplinary rule adopted by the department under RCW 72.09.130(2). No
5 offender who violates a disciplinary rule is eligible for release
6 before the expiration of his or her maximum sentence until the offender
7 has served all disciplinary confinement imposed by the department. If
8 an offender is transferred from a county jail to the department of
9 corrections, the county jail facility shall certify to the department
10 the amount of time spent in custody at the facility and the amount of
11 earned early release time. Earned early release time received in a
12 county jail must be credited as time served to an offender.

13 (b) A person convicted of a sex offense or an offense categorized
14 as a serious violent offense, assault in the second degree, assault of
15 a child in the second degree, any crime against a person where it is
16 determined in accordance with RCW 9.94A.125 that the defendant or an
17 accomplice was armed with a deadly weapon at the time of commission, or
18 any felony offense under chapter 69.50 or 69.52 RCW may become
19 eligible, in accordance with a program developed by the department, for
20 transfer to community custody status in lieu of release before the
21 expiration of a maximum sentence under (a) of this subsection.

22 (2) Except as otherwise provided for in subsection ((+2)) (3) of
23 this section, the term of the sentence of an offender committed to a
24 correctional facility operated by the department for an offense
25 committed before January 1, 1996, may be reduced by earned early
26 release time in accordance with procedures that shall be developed and
27 promulgated by the correctional agency having jurisdiction in which the
28 offender is confined. The earned early release time shall be for good
29 behavior and good performance, as determined by the correctional agency
30 having jurisdiction. The correctional agency shall not credit the
31 offender with earned early release credits in advance of the offender
32 actually earning the credits. Any program established pursuant to this
33 section shall allow an offender to earn early release credits for
34 presentence incarceration. If an offender is transferred from a county
35 jail to the department of corrections, the county jail facility shall
36 certify to the department the amount of time spent in custody at the
37 facility and the amount of earned early release time. In the case of
38 an offender convicted of a serious violent offense or a sex offense
39 that is a class A felony committed on or after July 1, 1990, the

1 aggregate earned early release time may not exceed fifteen percent of
2 the sentence. In no other case shall the aggregate earned early
3 release time exceed one-third of the total sentence;

4 ~~((+2))~~ (3) A person convicted of a sex offense or an offense
5 categorized as a serious violent offense, assault in the second degree,
6 assault of a child in the second degree, any crime against a person
7 where it is determined in accordance with RCW 9.94A.125 that the
8 defendant or an accomplice was armed with a deadly weapon at the time
9 of commission, or any felony offense under chapter 69.50 or 69.52 RCW
10 may become eligible, in accordance with a program developed by the
11 department, for transfer to community custody status in lieu of earned
12 early release time pursuant to subsection ~~((+1))~~ (2) of this section;

13 ~~((+3))~~ (4) An offender may leave a correctional facility pursuant
14 to an authorized furlough or leave of absence. In addition, offenders
15 may leave a correctional facility when in the custody of a corrections
16 officer or officers;

17 ~~((+4))~~ (5) The governor, upon recommendation from the clemency and
18 pardons board, may grant an extraordinary release for reasons of
19 serious health problems, senility, advanced age, extraordinary
20 meritorious acts, or other extraordinary circumstances;

21 ~~((+5))~~ (6) No more than the final six months of the sentence may
22 be served in partial confinement designed to aid the offender in
23 finding work and reestablishing him or herself in the community;

24 ~~((+6))~~ (7) The governor may pardon any offender;

25 ~~((+7))~~ (8) The department of corrections may release an offender
26 from confinement any time within ten days before a release date
27 calculated under this section; and

28 ~~((+8))~~ (9) An offender may leave a correctional facility prior to
29 completion of his sentence if the sentence has been reduced as provided
30 in RCW 9.94A.160.

31 NEW SECTION. Sec. 6. A new section is added to chapter 9.94A RCW
32 to read as follows:

33 (1) Home detention may not be imposed for offenders convicted of a
34 violent offense, any sex offense, any drug offense, reckless burning in
35 the first or second degree as defined in RCW 9A.48.040 or 9A.48.050,
36 assault in the third degree as defined in RCW 9A.36.031, assault of a
37 child in the third degree, unlawful imprisonment as defined in RCW
38 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention

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

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

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

34 **Sec. 7.** RCW 70.48.210 and 1990 c 3 s 203 are each amended to read
35 as follows:

36 (1) All cities and counties are authorized to establish and
37 maintain farms, camps, and work release programs and facilities, as

1 well as special detention facilities. The facilities shall meet the
2 requirements of chapter 70.48 RCW and any rules adopted thereunder.

3 (2) Farms and camps may be established either inside or outside the
4 territorial limits of a city or county. A sentence of confinement in
5 a city or county jail may include placement in a farm or camp. Unless
6 directed otherwise by court order, the chief law enforcement officer or
7 department of corrections, may transfer the prisoner to a farm or camp.
8 The sentencing court, chief law enforcement officer, or department of
9 corrections may not transfer to a farm or camp a greater number of
10 prisoners than can be furnished with constructive employment and can be
11 reasonably accommodated.

12 (3) The city or county may establish a city or county work release
13 program and housing facilities for the prisoners in the program. In
14 such regard, factors such as employment conditions and the condition of
15 jail facilities should be considered. When a work release program is
16 established the following provisions apply:

17 (a) A person convicted of a felony and placed in a city or county
18 jail is eligible for the work release program. A person sentenced to
19 a city or county jail is eligible for the work release program. The
20 program may be used as a condition of probation for a criminal offense.
21 Good conduct is a condition of participation in the program.

22 (b) The court may permit a person who is currently, regularly
23 employed to continue his or her employment. The chief law enforcement
24 officer or department of corrections shall make all necessary
25 arrangements if possible. The court may authorize the person to seek
26 suitable employment and may authorize the chief law enforcement officer
27 or department of corrections to make reasonable efforts to find
28 suitable employment for the person. A person participating in the work
29 release program may not work in an establishment where there is a labor
30 dispute.

31 (c) The work release prisoner shall be confined in a work release
32 facility or jail unless authorized to be absent from the facility for
33 program-related purposes, unless the court directs otherwise.

34 (d) Each work release prisoner's earnings may be collected by the
35 chief law enforcement officer or a designee. The chief law enforcement
36 officer or a designee may deduct from the earnings moneys for the
37 payments for the prisoner's board, personal expenses inside and outside
38 the jail, a share of the administrative expenses of this section,
39 court-ordered victim compensation, and court-ordered restitution.

1 Support payments for the prisoner's dependents, if any, shall be made
2 as directed by the court. With the prisoner's consent, the remaining
3 funds may be used to pay the prisoner's preexisting debts. Any
4 remaining balance shall be returned to the prisoner.

5 (e) The prisoner's sentence for an offense committed before January
6 1, 1996, may be reduced by earned early release time in accordance with
7 procedures that shall be developed and promulgated by the work release
8 facility. The earned early release time shall be for good behavior and
9 good performance as determined by the facility. The facility shall not
10 credit the offender with earned early release credits in advance of the
11 offender actually earning the credits. In the case of an offender
12 convicted of a serious violent offense or a sex offense that is a class
13 A felony committed on or after July 1, 1990, the aggregate earned early
14 release time may not exceed fifteen percent of the sentence. In no
15 other case may the aggregate earned early release time exceed one-third
16 of the total sentence.

17 (f) If the work release prisoner violates the conditions of custody
18 or employment, the prisoner shall be returned to the sentencing court.
19 The sentencing court may require the prisoner to spend the remainder of
20 the sentence in actual confinement and may cancel any earned reduction
21 of the sentence.

22 (4) A special detention facility may be operated by a
23 noncorrectional agency or by noncorrectional personnel by contract with
24 the governing unit. The employees shall meet the standards of training
25 and education established by the criminal justice training commission
26 as authorized by RCW 43.101.080. The special detention facility may
27 use combinations of features including, but not limited to, low-
28 security or honor prisoner status, work farm, work release, community
29 review, prisoner facility maintenance and food preparation, training
30 programs, or alcohol or drug rehabilitation programs. Special
31 detention facilities may establish a reasonable fee schedule to cover
32 the cost of facility housing and programs. The schedule shall be on a
33 sliding basis that reflects the person's ability to pay.

34 **Sec. 8.** RCW 72.09.130 and 1981 c 136 s 17 are each amended to read
35 as follows:

36 (1) The department shall adopt a system providing incentives for
37 good conduct and disincentives for poor conduct. The system may

1 include increases or decreases in the degree of liberty granted the
2 inmate within the programs operated by the department ((and)).

3 (2) For offenses committed on or after January 1, 1996, the system
4 shall specify disciplinary infractions that may result in the
5 imposition of disciplinary confinement and the length of the
6 disciplinary confinement that may be imposed for each disciplinary
7 infraction. These disciplinary rules may cover violation of
8 institution rules, refusal to work, refusal to participate in treatment
9 or other rehabilitative programs, and other matters determined by the
10 department. The system must be fair, measurable, and understandable to
11 offenders, staff, and the public. At least once in each twelve-month
12 period, the department shall inform the offender in writing as to his
13 or her conduct and performance. This written evaluation must include
14 reasons for imposing or not imposing disciplinary confinement. The
15 imposition of disciplinary confinement is considered to be a
16 disciplinary sanction imposed upon an offender, and the procedure for
17 imposing the disciplinary confinement and the rights of the offender in
18 the procedure are those established by the department for other
19 disciplinary sanctions.

20 By January 1, 1996, the department shall adopt a written
21 description of the system. The department shall provide a copy of this
22 description to each offender in its custody convicted of an offense
23 committed after December 31, 1995.

24 (3) For offenses committed before January 1, 1996, the system must
25 include recommended increases or decreases in the number of earned
26 early release days that an inmate can earn for good conduct and good
27 performance. Earned early release days shall be recommended by the
28 department as a form of tangible reward for accomplishment. The system
29 shall be fair, measurable, and understandable to offenders, staff, and
30 the public. At least once in each twelve-month period, the department
31 shall inform the offender in writing as to his or her conduct and
32 performance. This written evaluation shall include reasons for
33 awarding or not awarding recommended earned early release days for good
34 conduct and good performance. The term "good performance" as used in
35 this section means successfully performing a work, work training, or
36 educational task to levels of expectation as specified in writing by
37 the department. The term "good conduct" as used in this section refers
38 to compliance with department rules.

1 Within one year after July 1, 1981, the department shall adopt, and
2 provide a written description of, the system. The department shall
3 provide a copy of this description to each offender in its custody.

4 **Sec. 9.** RCW 9.94A.123 and 1987 c 402 s 2 are each amended to read
5 as follows:

6 The legislature finds that the sexual offender treatment programs
7 at western and eastern state hospitals, while not proven to be totally
8 effective, may be of some benefit in positively affecting the behavior
9 of certain sexual offenders. Given the significance of the problems of
10 sexual assault and sexual abuse of children, it is therefore
11 appropriate to review and revise these treatment efforts.

12 At the same time, concerns regarding the lack of adequate security
13 at the existing programs must be satisfactorily addressed. In an
14 effort to promote public safety, it is the intent of the legislature to
15 transfer the responsibility for felony sexual offenders from the
16 department of social and health services to the department of
17 corrections.

18 Therefore, no person committing a felony sexual offense on or after
19 July 1, 1987, may be committed under RCW 9.94A.120(~~((7)(b))~~) (8)(b) to
20 the department of social and health services at eastern state hospital
21 or western state hospital. Any person committed to the department of
22 social and health services under RCW 9.94A.120(~~((7)(b))~~) (8)(b) for an
23 offense committed before July 1, 1987, and still in the custody of the
24 department of social and health services on June 30, 1993, shall be
25 transferred to the custody of the department of corrections. Any
26 person eligible for evaluation or treatment under RCW
27 9.94A.120(~~((7)(b))~~) (8)(b) shall be committed to the department of
28 corrections.

29 **Sec. 10.** RCW 9.94A.127 and 1990 c 3 s 601 are each amended to read
30 as follows:

31 (1) The prosecuting attorney shall file a special allegation of
32 sexual motivation in every criminal case other than sex offenses as
33 defined in RCW 9.94A.030(~~((29) (a) or (c))~~) (34) (a) or (c) when
34 sufficient admissible evidence exists, which, when considered with the
35 most plausible, reasonably foreseeable defense that could be raised
36 under the evidence, would justify a finding of sexual motivation by a
37 reasonable and objective fact-finder.

1 (2) In a criminal case wherein there has been a special allegation
2 the state shall prove beyond a reasonable doubt that the accused
3 committed the crime with a sexual motivation. The court shall make a
4 finding of fact of whether or not a sexual motivation was present at
5 the time of the commission of the crime, or if a jury trial is had, the
6 jury shall, if it finds the defendant guilty, also find a special
7 verdict as to whether or not the defendant committed the crime with a
8 sexual motivation. This finding shall not be applied to sex offenses
9 as defined in RCW 9.94A.030(~~((+29)-(a) or (c))~~) (34) (a) or (c).

10 (3) The prosecuting attorney shall not withdraw the special
11 allegation of sexual motivation without approval of the court through
12 an order of dismissal of the special allegation. The court shall not
13 dismiss this special allegation unless it finds that such an order is
14 necessary to correct an error in the initial charging decision or
15 unless there are evidentiary problems which make proving the special
16 allegation doubtful.

17 **Sec. 11.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to read
18 as follows:

19 The power to defer or suspend the imposition or execution of
20 sentence is hereby abolished in respect to sentences prescribed for
21 felonies committed after June 30, 1984, except for offenders sentenced
22 under RCW 9.94A.120(~~((+7)(a))~~) (8)(a), the special sexual offender
23 sentencing alternative, whose sentence may be suspended.

24 **Sec. 12.** RCW 9.94A.180 and 1991 c 181 s 4 are each amended to read
25 as follows:

26 (1) An offender sentenced to a term of partial confinement shall be
27 confined in the facility for at least eight hours per day or, if
28 serving a work crew sentence shall comply with the conditions of that
29 sentence as set forth in RCW 9.94A.030(~~((+23))~~) (27) and 9.94A.135. The
30 offender shall be required as a condition of partial confinement to
31 report to the facility at designated times. An offender may be
32 required to comply with crime-related prohibitions during the period of
33 partial confinement.

34 (2) An offender in a county jail ordered to serve all or part of a
35 term of less than one year in work release, work crew, or a program of
36 home detention who violates the rules of the work release facility,
37 work crew, or program of home detention or fails to remain employed or

1 enrolled in school may be transferred to the appropriate county
2 detention facility without further court order but shall, upon request,
3 be notified of the right to request an administrative hearing on the
4 issue of whether or not the offender failed to comply with the order
5 and relevant conditions. Pending such hearing, or in the absence of a
6 request for the hearing, the offender shall serve the remainder of the
7 term of confinement as total confinement. This subsection shall not
8 affect transfer or placement of offenders committed to the state
9 department of corrections.

10 **Sec. 13.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to read
11 as follows:

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

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

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

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

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

33 (6) The court of appeals shall issue a written opinion in support
34 of its decision whenever the judgment of the sentencing court is
35 reversed and may issue written opinions in any other case where the
36 court believes that a written opinion would provide guidance to
37 sentencing judges and others in implementing this chapter and in
38 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. 14.** RCW 9.94A.390 and 1990 c 3 s 603 are each amended to read
10 as follows:

11 If the sentencing court finds that an exceptional sentence outside
12 the standard range should be imposed in accordance with RCW
13 9.94A.120(~~((2))~~) (3), the sentence is subject to review only as
14 provided for in RCW 9.94A.210(4).

15 The following are illustrative factors which the court may consider
16 in the exercise of its discretion to impose an exceptional sentence.
17 The following are illustrative only and are not intended to be
18 exclusive reasons for exceptional sentences.

19 (1) Mitigating Circumstances

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

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

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

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

30 (e) The defendant's capacity to appreciate the wrongfulness of his
31 conduct or to conform his conduct to the requirements of the law, was
32 significantly impaired (voluntary use of drugs or alcohol is excluded).

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

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

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

4 (2) Aggravating Circumstances

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

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

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

13 (i) The current offense involved multiple victims or multiple
14 incidents per victim;

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

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

19 (iv) The defendant used his or her position of trust, confidence,
20 or fiduciary responsibility to facilitate the commission of the current
21 offense.

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

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

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

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

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

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

1 (vi) The offender used his or her position or status to facilitate
2 the commission of the current offense, including positions of trust,
3 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
4 other medical professional); or

5 (e) The current offense included a finding of sexual motivation
6 pursuant to RCW 9.94A.127;

7 (f) The offense was part of an ongoing pattern of sexual abuse of
8 the same victim under the age of eighteen years manifested by multiple
9 incidents over a prolonged period of time; or

10 (g) The operation of the multiple offense policy of RCW 9.94A.400
11 results in a presumptive sentence that is clearly too lenient in light
12 of the purpose of this chapter, as expressed in RCW 9.94A.010.

13 **Sec. 15.** RCW 9.94A.400 and 1990 c 3 s 704 are each amended to read
14 as follows:

15 (1)(a) Except as provided in (b) of this subsection, whenever a
16 person is to be sentenced for two or more current offenses, the
17 sentence range for each current offense shall be determined by using
18 all other current and prior convictions as if they were prior
19 convictions for the purpose of the offender score: PROVIDED, That if
20 the court enters a finding that some or all of the current offenses
21 encompass the same criminal conduct then those current offenses shall
22 be counted as one crime. Sentences imposed under this subsection shall
23 be served concurrently. Consecutive sentences may only be imposed
24 under the exceptional sentence provisions of RCW 9.94A.120 and
25 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same
26 criminal conduct," as used in this subsection, means two or more crimes
27 that require the same criminal intent, are committed at the same time
28 and place, and involve the same victim. This definition does not apply
29 in cases involving vehicular assault or vehicular homicide if the
30 victims occupied the same vehicle. However, the sentencing judge may
31 consider multiple victims in such instances as an aggravating
32 circumstance under RCW 9.94A.390.

33 (b) Whenever a person is convicted of two or more serious violent
34 offenses, as defined in RCW 9.94A.030, arising from separate and
35 distinct criminal conduct, the sentence range for the offense with the
36 highest seriousness level under RCW 9.94A.320 shall be determined using
37 the offender's prior convictions and other current convictions that are
38 not serious violent offenses in the offender score and the sentence

1 range for other serious violent offenses shall be determined by using
2 an offender score of zero. The sentence range for any offenses that
3 are not serious violent offenses shall be determined according to (a)
4 of this subsection. All sentences imposed under (b) of this subsection
5 shall be served consecutively to each other and concurrently with
6 sentences imposed under (a) of this subsection.

7 (2) Whenever a person while under sentence of felony commits
8 another felony and is sentenced to another term of confinement, the
9 latter term shall not begin until expiration of all prior terms.

10 (3) Subject to subsections (1) and (2) of this section, whenever a
11 person is sentenced for a felony that was committed while the person
12 was not under sentence of a felony, the sentence shall run concurrently
13 with any felony sentence which has been imposed by any court in this or
14 another state or by a federal court subsequent to the commission of the
15 crime being sentenced unless the court pronouncing the current sentence
16 expressly orders that they be served consecutively.

17 (4) Whenever any person granted probation under RCW 9.95.210 or
18 9.92.060, or both, has the probationary sentence revoked and a prison
19 sentence imposed, that sentence shall run consecutively to any sentence
20 imposed pursuant to this chapter, unless the court pronouncing the
21 subsequent sentence expressly orders that they be served concurrently.

22 (5) However, in the case of consecutive sentences, all periods of
23 total confinement shall be served before any partial confinement,
24 community service, community supervision, or any other requirement or
25 conditions of any of the sentences. Except for exceptional sentences
26 as authorized under RCW 9.94A.120(~~((+2))~~) (3), if two or more sentences
27 that run consecutively include periods of community supervision, the
28 aggregate of the community supervision period shall not exceed twenty-
29 four months.

30 **Sec. 16.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
31 each reenacted and amended to read as follows:

32 (1) Decision not to prosecute.

33 STANDARD: A prosecuting attorney may decline to prosecute, even
34 though technically sufficient evidence to prosecute exists, in
35 situations where prosecution would serve no public purpose, would
36 defeat the underlying purpose of the law in question or would result in
37 decreased respect for the law.

38 GUIDELINE/COMMENTARY:

1 Examples

2 The following are examples of reasons not to prosecute which could
3 satisfy the standard.

4 (a) Contrary to Legislative Intent - It may be proper to decline to
5 charge where the application of criminal sanctions would be clearly
6 contrary to the intent of the legislature in enacting the particular
7 statute.

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

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

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

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

15 (iv) The statute has not been recently reconsidered by the
16 legislature.

17 This reason is not to be construed as the basis for declining cases
18 because the law in question is unpopular or because it is difficult to
19 enforce.

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

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

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

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

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

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

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

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

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

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

3 (f) High Disproportionate Cost of Prosecution - It may be proper to
4 decline to charge where the cost of locating or transporting, or the
5 burden on, prosecution witnesses is highly disproportionate to the
6 importance of prosecuting the offense in question. This reason should
7 be limited to minor cases and should not be relied upon in serious
8 cases.

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

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

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

22 (i) Assault cases where the victim has suffered little or no
23 injury;

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

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

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

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

31 Notification

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

34 (2) Decision to prosecute.

35 STANDARD:

36 Crimes against persons will be filed if sufficient admissible
37 evidence exists, which, when considered with the most plausible,
38 reasonably foreseeable defense that could be raised under the evidence,
39 would justify conviction by a reasonable and objective fact-finder.

1 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
2 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
3 9A.64.020 the prosecutor should avoid prefiling agreements or
4 diversions intended to place the accused in a program of treatment or
5 counseling, so that treatment, if determined to be beneficial, can be
6 provided pursuant to RCW 9.94A.120(~~(+7)~~) (8).

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

12 See table below for the crimes within these categories.

13 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

14 CRIMES AGAINST PERSONS

- 15 Aggravated Murder
- 16 1st Degree Murder
- 17 2nd Degree Murder
- 18 1st Degree Kidnaping
- 19 1st Degree Assault
- 20 1st Degree Assault of a Child
- 21 1st Degree Rape
- 22 1st Degree Robbery
- 23 1st Degree Rape of a Child
- 24 1st Degree Arson
- 25 2nd Degree Kidnaping
- 26 2nd Degree Assault
- 27 2nd Degree Assault of a Child
- 28 2nd Degree Rape
- 29 2nd Degree Robbery
- 30 1st Degree Burglary
- 31 1st Degree Manslaughter
- 32 2nd Degree Manslaughter
- 33 1st Degree Extortion
- 34 Indecent Liberties
- 35 Incest
- 36 2nd Degree Rape of a Child
- 37 Vehicular Homicide
- 38 Vehicular Assault

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

18 CRIMES AGAINST PROPERTY/OTHER CRIMES
19 2nd Degree Arson
20 1st Degree Escape
21 2nd Degree Burglary
22 1st Degree Theft
23 1st Degree Perjury
24 1st Degree Introducing Contraband
25 1st Degree Possession of Stolen Property
26 Bribery
27 Bribing a Witness
28 Bribe received by a Witness
29 Bomb Threat (if against property)
30 1st Degree Malicious Mischief
31 2nd Degree Theft
32 2nd Degree Escape
33 2nd Degree Introducing Contraband
34 2nd Degree Possession of Stolen Property
35 2nd Degree Malicious Mischief
36 1st Degree Reckless Burning
37 Taking a Motor Vehicle without Authorization
38 Forgery
39 2nd Degree Perjury

1 2nd Degree Promoting Prostitution
2 Tampering with a Witness
3 Trading in Public Office
4 Trading in Special Influence
5 Receiving/Granting Unlawful Compensation
6 Bigamy
7 Eluding a Pursuing Police Vehicle
8 Willful Failure to Return from Furlough
9 Escape from Community Custody
10 Riot (if against property)
11 Thefts of Livestock

12 ALL OTHER UNCLASSIFIED FELONIES

13 Selection of Charges/Degree of Charge

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

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

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

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

22 (a) Charging a higher degree;

23 (b) Charging additional counts.

24 This standard is intended to direct prosecutors to charge those
25 crimes which demonstrate the nature and seriousness of a defendant's
26 criminal conduct, but to decline to charge crimes which are not
27 necessary to such an indication. Crimes which do not merge as a matter
28 of law, but which arise from the same course of conduct, do not all
29 have to be charged.

30 GUIDELINES/COMMENTARY:

31 Police Investigation

32 A prosecuting attorney is dependent upon law enforcement agencies
33 to conduct the necessary factual investigation which must precede the
34 decision to prosecute. The prosecuting attorney shall ensure that a
35 thorough factual investigation has been conducted before a decision to
36 prosecute is made. In ordinary circumstances the investigation should
37 include the following:

- 1 (1) The interviewing of all material witnesses, together with the
2 obtaining of written statements whenever possible;
3 (2) The completion of necessary laboratory tests; and
4 (3) The obtaining, in accordance with constitutional requirements,
5 of the suspect's version of the events.

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

9 Exceptions

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

- 12 (1) Probable cause exists to believe the suspect is guilty; and
13 (2) The suspect presents a danger to the community or is likely to
14 flee if not apprehended; or
15 (3) The arrest of the suspect is necessary to complete the
16 investigation of the crime.

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

22 Investigation Techniques

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

- 25 (1) Polygraph testing;
26 (2) Hypnosis;
27 (3) Electronic surveillance;
28 (4) Use of informants.

29 Pre-Filing Discussions with Defendant

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

33 **Sec. 17.** RCW 13.40.135 and 1990 c 3 s 604 are each amended to read
34 as follows:

- 35 (1) The prosecuting attorney shall file a special allegation of
36 sexual motivation in every juvenile offense other than sex offenses as
37 defined in RCW 9.94A.030(~~((29) (a) or (c))~~) (34) (a) or (c) when
38 sufficient admissible evidence exists, which, when considered with the

1 most plausible, reasonably consistent defense that could be raised
2 under the evidence, would justify a finding of sexual motivation by a
3 reasonable and objective fact-finder.

4 (2) In a juvenile case wherein there has been a special allegation
5 the state shall prove beyond a reasonable doubt that the juvenile
6 committed the offense with a sexual motivation. The court shall make
7 a finding of fact of whether or not the sexual motivation was present
8 at the time of the commission of the offense. This finding shall not
9 be applied to sex offenses as defined in RCW 9.94A.030(~~((29)-(a)-or~~
10 ~~(c))~~) (34) (a) or (c).

11 (3) The prosecuting attorney shall not withdraw the special
12 allegation of "sexual motivation" without approval of the court through
13 an order of dismissal. The court shall not dismiss the special
14 allegation unless it finds that such an order is necessary to correct
15 an error in the initial charging decision or unless there are
16 evidentiary problems which make proving the special allegation
17 doubtful.

18 **Sec. 18.** RCW 18.155.010 and 1990 c 3 s 801 are each amended to
19 read as follows:

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

1 13.40.160 to obtain a sexual offender treatment certification as
2 provided in this chapter.

3 **Sec. 19.** RCW 18.155.020 and 1990 c 3 s 802 are each amended to
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in
6 this section apply throughout this chapter:

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

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

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

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

16 **Sec. 20.** RCW 18.155.030 and 1990 c 3 s 803 are each amended to
17 read as follows:

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

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

23 (a) Evaluations conducted for the purposes of and pursuant to RCW
24 9.94A.120(~~((7)(a))~~) (8)(a) and 13.40.160;

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

29 **Sec. 21.** RCW 43.43.754 and 1994 c 271 s 402 are each amended to
30 read as follows:

31 Every adult or juvenile individual convicted of a felony or
32 adjudicated guilty of an equivalent juvenile offense defined as a sex
33 offense under RCW 9.94A.030(~~((31)(a))~~) (34)(a) or a violent offense as
34 defined in RCW 9.94A.030 shall have a blood sample drawn for purposes
35 of DNA identification analysis. For persons convicted of such offenses
36 or adjudicated guilty of an equivalent juvenile offense who are serving

1 a term of confinement in a county jail or detention facility, the
2 county shall be responsible for obtaining blood samples prior to
3 release from the county jail or detention facility. For persons
4 convicted of such offenses or adjudicated guilty of an equivalent
5 juvenile offense, who are serving a term of confinement in a department
6 of corrections facility or a division of juvenile rehabilitation
7 facility, the facility holding the person shall be responsible for
8 obtaining blood samples prior to release from such facility. Any blood
9 sample taken pursuant to RCW 43.43.752 through 43.43.758 shall be used
10 solely for the purpose of providing DNA or other blood grouping tests
11 for identification analysis and prosecution of a sex offense or a
12 violent offense.

13 This section applies to all adults who are convicted after July 1,
14 1990. This section applies to all juveniles who are adjudicated guilty
15 after July 1, 1994.

16 **Sec. 22.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to read
17 as follows:

18 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
19 shall, as a condition of community supervision imposed under RCW
20 9.94A.383 or community placement imposed under RCW 9.94A.120(~~(+8)~~)
21 (9), complete a diagnostic evaluation by an alcohol or drug dependency
22 agency approved by the department of social and health services or a
23 qualified probation department, as defined under RCW 46.61.516 that has
24 been approved by the department of social and health services. This
25 report shall be forwarded to the department of licensing. If the
26 person is found to have an alcohol or drug problem that requires
27 treatment, the person shall complete treatment in a program approved by
28 the department of social and health services under chapter 70.96A RCW.
29 If the person is found not to have an alcohol or drug problem that
30 requires treatment, he or she shall complete a course in an information
31 school approved by the department of social and health services under
32 chapter 70.96A RCW. The convicted person shall pay all costs for any
33 evaluation, education, or treatment required by this section, unless
34 the person is eligible for an existing program offered or approved by
35 the department of social and health services. Nothing in this ~~(act)~~
36 section requires the addition of new treatment or assessment facilities
37 nor affects the department of social and health services use of
38 existing programs and facilities authorized by law.

1 (2) As provided for under RCW 46.20.285, the department shall
2 revoke the license, permit to drive, or a nonresident privilege of a
3 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
4 assault under RCW 46.61.522. The department shall determine the
5 eligibility of a person convicted of vehicular homicide under RCW
6 46.61.520(1)(a) or vehicular assault under (~~{RCW}~~) RCW
7 46.61.522(1)(b) to receive a license based upon the report provided by
8 the designated alcoholism treatment facility or probation department,
9 and shall deny reinstatement until satisfactory progress in an approved
10 program has been established and the person is otherwise qualified.

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