
HOUSE BILL 1886

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By Representatives H. Myers, Padden, Cooper, Morris, Ogden, Peery, Tate, Ludwig, Fuhrman, Paris, Wineberry, May, Winsley, Sheldon, Rasmussen and Orr.

Read first time February 13, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to alcohol and drug evaluation and treatment for
2 individuals convicted of vehicular homicide or vehicular assault;
3 amending RCW 46.61.520, 9.94A.120, and 9.94A.030; adding a new section
4 to chapter 46.61 RCW; providing an effective date; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 46.61.520 and 1983 c 164 s 1 are each amended to read
8 as follows:

9 (1) When the death of any person ensues within three years as a
10 proximate result of injury proximately caused by the driving of any
11 vehicle by any person, the driver is guilty of vehicular homicide if
12 the driver was operating a motor vehicle:

13 (a) While under the influence of intoxicating liquor or any drug,
14 as defined by RCW 46.61.502(, or by the operation of any vehicle);

15 (b) In a reckless manner; or

1 (c) With disregard for the safety of others(~~(, the person so~~
2 ~~operating such vehicle is guilty of vehicular homicide)~~).

3 (2) Vehicular homicide is a class B felony punishable under chapter
4 9A.20 RCW.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 46.61 RCW
6 to read as follows:

7 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
8 shall, as a condition of community supervision imposed under RCW
9 9.94A.383 or community placement imposed under RCW 9.94A.120(8),
10 complete a diagnostic evaluation by an alcohol or drug dependency
11 agency approved by the department of social and health services or a
12 qualified probation department, as defined under RCW 46.61.516 that has
13 been approved by the department of social and health services. This
14 report shall be forwarded to the department of licensing. If the
15 person is found to have an alcohol or drug problem that requires
16 treatment, the person shall complete treatment in a program approved by
17 the department of social and health services at an approved alcoholism
18 treatment facility or an approved drug treatment center. If the person
19 is found not to have an alcohol or drug problem that requires
20 treatment, he or she shall complete a course in an alcohol information
21 school approved by the department of social and health services.

22 (2) As provided for under RCW 46.20.285, the department shall
23 revoke the license, permit to drive, or a nonresident privilege of a
24 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
25 assault under RCW 46.61.522. The department shall determine the
26 eligibility of a person convicted of vehicular homicide under RCW
27 46.61.520(1)(a) or vehicular assault under 46.61.522(1)(b) to receive
28 a license based upon the report provided by the designated alcoholism
29 treatment facility or probation department, and shall deny

1 reinstatement until satisfactory progress in an approved program has
2 been established and the person is otherwise qualified.

3 **Sec. 3.** RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read
4 as follows:

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

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

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

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

18 (4) An offender convicted of the crime of murder in the first
19 degree shall be sentenced to a term of total confinement not less than
20 twenty years. An offender convicted of the crime of assault in the
21 first degree where the offender used force or means likely to result in
22 death or intended to kill the victim shall be sentenced to a term of
23 total confinement not less than five years. An offender convicted of
24 the crime of rape in the first degree shall be sentenced to a term of
25 total confinement not less than five years, and shall not be eligible
26 for furlough, work release or other authorized leave of absence from
27 the correctional facility during such minimum five-year term except for
28 the purpose of commitment to an inpatient treatment facility. The
29 foregoing minimum terms of total confinement are mandatory and shall

1 not be varied or modified as provided in subsection (2) of this
2 section.

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

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

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

16 (c) Pursue a prescribed, secular course of study or vocational
17 training;

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

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

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

25 (6) If a sentence range has not been established for the
26 defendant's crime, the court shall impose a determinate sentence which
27 may include not more than one year of confinement, community service
28 work, a term of community supervision not to exceed one year, and/or
29 other legal financial obligations. The court may impose a sentence
30 which provides more than one year of confinement if the court finds,

1 considering the purpose of this chapter, that there are substantial and
2 compelling reasons justifying an exceptional sentence.

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

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

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

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

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

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

26 (D) Anticipated length of treatment; and

27 (E) Recommended crime-related prohibitions.

28 The court on its own motion may order, or on a motion by the state
29 shall order, a second examination regarding the offender's amenability
30 to treatment. The evaluator shall be selected by the party making the

1 motion. The defendant shall pay the cost of any second examination
2 ordered unless the court finds the defendant to be indigent in which
3 case the state shall pay the cost.

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

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

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

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

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

5 (III) Report as directed to the court and a community corrections
6 officer;

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

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

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

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

1 treatment termination hearing the court may: (A) Modify conditions of
2 community supervision, and either (B) terminate treatment, or (C)
3 extend treatment for up to the remaining period of community
4 supervision.

5 (v) The court may revoke the suspended sentence at any time during
6 the period of community supervision and order execution of the sentence
7 if: (A) The defendant violates the conditions of the suspended
8 sentence, or (B) the court finds that the defendant is failing to make
9 satisfactory progress in treatment. All confinement time served during
10 the period of community supervision shall be credited to the offender
11 if the suspended sentence is revoked.

12 (vi) After July 1, 1991, examinations and treatment ordered
13 pursuant to this subsection shall only be conducted by sex offender
14 treatment providers certified by the department of health pursuant to
15 chapter 18.155 RCW.

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

21 (b) When an offender is convicted of any felony sex offense
22 committed before July 1, 1987, and is sentenced to a term of
23 confinement of more than one year but less than six years, the
24 sentencing court may, on its own motion or on the motion of the
25 offender or the state, order the offender committed for up to thirty
26 days to the custody of the secretary of social and health services for
27 evaluation and report to the court on the offender's amenability to
28 treatment at these facilities. If the secretary of social and health
29 services cannot begin the evaluation within thirty days of the court's
30 order of commitment, the offender shall be transferred to the state for

1 confinement pending an opportunity to be evaluated at the appropriate
2 facility. The court shall review the reports and may order that the
3 term of confinement imposed be served in the sexual offender treatment
4 program at the location determined by the secretary of social and
5 health services or the secretary's designee, only if the report
6 indicates that the offender is amenable to the treatment program
7 provided at these facilities. The offender shall be transferred to the
8 state pending placement in the treatment program. Any offender who has
9 escaped from the treatment program shall be referred back to the
10 sentencing court.

11 If the offender does not comply with the conditions of the
12 treatment program, the secretary of social and health services may
13 refer the matter to the sentencing court. The sentencing court shall
14 commit the offender to the department of corrections to serve the
15 balance of the term of confinement.

16 If the offender successfully completes the treatment program before
17 the expiration of the term of confinement, the court may convert the
18 balance of confinement to community supervision and may place
19 conditions on the offender including crime-related prohibitions and
20 requirements that the offender perform any one or more of the
21 following:

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

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

26 (iii) Report as directed to the court and a community corrections
27 officer;

28 (iv) Undergo available outpatient treatment.

29 If the offender violates any of the terms of community supervision,
30 the court may order the offender to serve out the balance of the

1 community supervision term in confinement in the custody of the
2 department of corrections.

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

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

12 Except for an offender who has been convicted of a violation of RCW
13 9A.44.040 or 9A.44.050, if the offender completes the treatment program
14 before the expiration of his term of confinement, the department of
15 corrections may request the court to convert the balance of confinement
16 to community supervision and to place conditions on the offender
17 including crime-related prohibitions and requirements that the offender
18 perform any one or more of the following:

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

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

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

25 (iv) Undergo available outpatient treatment.

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

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

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

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

1 served shall be credited against the community placement portion of the
2 sentence.

3 (b) When a court sentences a person to a term of total confinement
4 to the custody of the department of corrections for an offense
5 categorized as a sex offense or serious violent offense committed on or
6 after July 1, 1990, or vehicular homicide or vehicular assault
7 committed after June 30, 1991, the court shall in addition to other
8 terms of the sentence, sentence the offender to community placement for
9 two years or up to the period of earned early release awarded pursuant
10 to RCW 9.94A.150 (1) and (2), whichever is longer. The community
11 placement shall begin either upon completion of the term of confinement
12 or at such time as the offender is transferred to community custody in
13 lieu of earned early release in accordance with RCW 9.94A.150 (1) and
14 (2). When the court sentences an offender under this subsection to the
15 statutory maximum period of confinement then the community placement
16 portion of the sentence shall consist entirely of the community custody
17 to which the offender may become eligible, in accordance with RCW
18 9.94A.150 (1) and (2). Any period of community custody actually served
19 shall be credited against the community placement portion of the
20 sentence. Unless a condition is waived by the court, the terms of
21 community placement for offenders sentenced pursuant to this section
22 shall include the following conditions:

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

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

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

29 (iv) An offender in community custody shall not unlawfully possess
30 controlled substances; ((and))

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

3 (vi) Any condition required by section 2 of this act.

4 (c) The court may also order any of the following special
5 conditions:

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

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

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

12 (iv) The offender shall not consume alcohol;

13 (v) The residence location and living arrangements of a sex
14 offender shall be subject to the prior approval of the department of
15 corrections; or

16 (vi) The offender shall comply with any crime-related prohibitions.

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

21 (9) If the court imposes a sentence requiring confinement of thirty
22 days or less, the court may, in its discretion, specify that the
23 sentence be served on consecutive or intermittent days. A sentence
24 requiring more than thirty days of confinement shall be served on
25 consecutive days. Local jail administrators may schedule court-ordered
26 intermittent sentences as space permits.

27 (10) If a sentence imposed includes payment of a legal financial
28 obligation, the sentence shall specify the total amount of the legal
29 financial obligation owed, and shall require the offender to pay a
30 specified monthly sum toward that legal financial obligation.

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

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

22 (12) All offenders sentenced to terms involving community
23 supervision, community service, community placement, or legal financial
24 obligation shall be under the supervision of the secretary of the
25 department of corrections or such person as the secretary may designate
26 and shall follow explicitly the instructions of the secretary including
27 reporting as directed to a community corrections officer, remaining
28 within prescribed geographical boundaries, and notifying the community
29 corrections officer of any change in the offender's address or
30 employment.

1 (13) The sentencing court shall give the offender credit for all
2 confinement time served before the sentencing if that confinement was
3 solely in regard to the offense for which the offender is being
4 sentenced.

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

10 (15) The court shall order restitution whenever the offender is
11 convicted of a felony that results in injury to any person or damage to
12 or loss of property, whether the offender is sentenced to confinement
13 or placed under community supervision, unless extraordinary
14 circumstances exist that make restitution inappropriate in the court's
15 judgment. The court shall set forth the extraordinary circumstances in
16 the record if it does not order restitution.

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

24 (17) In any sentence of partial confinement, the court may require
25 the defendant to serve the partial confinement in work release or in a
26 program of home detention.

27 (18) All court-ordered legal financial obligations collected by the
28 department and remitted to the county clerk shall be credited and paid
29 where restitution is ordered. Restitution shall be paid prior to any
30 other payments of monetary obligations.

1 **Sec. 4.** RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

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

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

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

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

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

28 (6) "Community service" means compulsory service, without
29 compensation, performed for the benefit of the community by the
30 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter (~~by a~~
4 ~~court~~) or section 2 of this act. For first-time offenders, the
5 supervision may include crime-related prohibitions and other conditions
6 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
7 compact for out-of-state supervision of parolees and probationers, RCW
8 9.95.270, community supervision is the functional equivalent of
9 probation and should be considered the same as probation by other
10 states.

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

13 (9) "Conviction" means an adjudication of guilt pursuant to Titles
14 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
15 acceptance of a plea of guilty.

16 (10) "Court-ordered legal financial obligation" means a sum of
17 money that is ordered by a superior court of the state of Washington
18 for legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims' compensation fees as
20 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
21 drug funds, court-appointed attorneys' fees, and costs of defense,
22 fines, and any other financial obligation that is assessed to the
23 offender as a result of a felony conviction.

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

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

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

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

18 (14) "Determinate sentence" means a sentence that states with
19 exactitude the number of actual years, months, or days of total
20 confinement, of partial confinement, of community supervision, the
21 number of actual hours or days of community service work, or dollars or
22 terms of a legal financial obligation. The fact that an offender
23 through "earned early release" can reduce the actual period of
24 confinement shall not affect the classification of the sentence as a
25 determinate sentence.

26 (15) "Disposable earnings" means that part of the earnings of an
27 individual remaining after the deduction from those earnings of any
28 amount required by law to be withheld. For the purposes of this
29 definition, "earnings" means compensation paid or payable for personal
30 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the
2 payments exempt from garnishment, attachment, or other process to
3 satisfy a court-ordered legal financial obligation, specifically
4 includes periodic payments pursuant to pension or retirement programs,
5 or insurance policies of any type, but does not include payments made
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
7 or Title 74 RCW.

8 (16) "Drug offense" means:

9 (a) Any felony violation of chapter 69.50 RCW except possession of
10 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
11 controlled substance (RCW 69.50.403);

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

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

18 (17) "Escape" means:

19 (a) Escape in the first degree (RCW 9A.76.110), escape in the
20 second degree (RCW 9A.76.120), willful failure to return from furlough
21 (RCW 72.66.060), willful failure to return from work release (RCW
22 72.65.070), or willful failure to comply with any limitations on the
23 inmate's movements while in community custody (RCW 72.09.310); or

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

27 (18) "Felony traffic offense" means:

28 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
29 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
30 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

18 (21) "Nonviolent offense" means an offense which is not a violent
19 offense.

20 (22) "Offender" means a person who has committed a felony
21 established by state law and is eighteen years of age or older or is
22 less than eighteen years of age but whose case has been transferred by
23 the appropriate juvenile court to a criminal court pursuant to RCW
24 13.40.110. Throughout this chapter, the terms "offender" and
25 "defendant" are used interchangeably.

26 (23) "Partial confinement" means confinement for no more than one
27 year in a facility or institution operated or utilized under contract
28 by the state or any other unit of government, or, if home detention has
29 been ordered by the court, in the residence of either the defendant or
30 a member of the defendant's immediate family, for a substantial

1 portion of each day with the balance of the day spent in the community.
2 Partial confinement includes work release and home detention as defined
3 in this section.

4 (24) "Postrelease supervision" is that portion of an offender's
5 community placement that is not community custody.

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

10 (26) "Serious traffic offense" means:

11 (a) Driving while intoxicated (RCW 46.61.502), actual physical
12 control while intoxicated (RCW 46.61.504), reckless driving (RCW
13 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

17 (27) "Serious violent offense" is a subcategory of violent offense
18 and means:

19 (a) Murder in the first degree, homicide by abuse, murder in the
20 second degree, assault in the first degree, kidnapping in the first
21 degree, or rape in the first degree, or an attempt, criminal
22 solicitation, or criminal conspiracy to commit one of these felonies;
23 or

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

27 (28) "Sentence range" means the sentencing court's discretionary
28 range in imposing a nonappealable sentence.

29 (29) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
2 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
3 attempt, criminal solicitation, or criminal conspiracy to commit such
4 crimes;

5 (b) A felony with a finding of sexual motivation under RCW
6 9.94A.127; or

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

10 (30) "Sexual motivation" means that one of the purposes for which
11 the defendant committed the crime was for the purpose of his or her
12 sexual gratification.

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

17 (32) "Victim" means any person who has sustained emotional,
18 psychological, physical, or financial injury to person or property as
19 a direct result of the crime charged.

20 (33) "Violent offense" means:

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

1 or any drug as defined by RCW 46.61.502, or by the operation of any
2 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 (34) "Work release" means a program of partial confinement
10 available to offenders who are employed or engaged as a student in a
11 regular course of study at school. Participation in work release shall
12 be conditioned upon the offender attending work or school at regularly
13 defined hours and abiding by the rules of the work release facility.

14 (35) "Home detention" means a program of partial confinement
15 available to offenders wherein the offender is confined in a private
16 residence subject to electronic surveillance. Home detention may not
17 be imposed for offenders convicted of a violent offense, any sex
18 offense, any drug offense, reckless burning in the first or second
19 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
20 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
21 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
22 detention may be imposed for offenders convicted of possession of a
23 controlled substance (RCW 69.50.401(d)) or forged prescription for a
24 controlled substance (RCW 69.50.403) if the offender fulfills the
25 participation conditions set forth in this subsection and is monitored
26 for drug use by treatment alternatives to street crime (TASC) or a
27 comparable court or agency-referred program. Home detention may be
28 imposed for offenders convicted of burglary in the second degree as
29 defined in RCW 9A.52.030 or residential burglary conditioned upon the
30 offender: (a) Successfully completing twenty-one days in a work

1 release program, (b) having no convictions for burglary in the second
2 degree or residential burglary during the preceding two years and not
3 more than two prior convictions for burglary or residential burglary,
4 (c) having no convictions for a violent felony offense during the
5 preceding two years and not more than two prior convictions for a
6 violent felony offense, (d) having no prior charges of escape, and (e)
7 fulfilling the other conditions of the home detention program.
8 Participation in a home detention program shall be conditioned upon:
9 (a) The offender obtaining or maintaining current employment or
10 attending a regular course of school study at regularly defined hours,
11 or the offender performing parental duties to offspring or minors
12 normally in the custody of the offender, (b) abiding by the rules of
13 the home detention program, and (c) compliance with court-ordered legal
14 financial obligations. The home detention program may also be made
15 available to offenders whose charges and convictions do not otherwise
16 disqualify them if medical or health-related conditions, concerns or
17 treatment would be better addressed under the home detention program,
18 or where the health and welfare of the offender, other inmates, or
19 staff would be jeopardized by the offender's incarceration.
20 Participation in the home detention program for medical or health-
21 related reasons is conditioned on the offender abiding by the rules of
22 the home detention program and complying with court-ordered
23 restitution.

24 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
25 preservation of the public peace, health, or safety, or support of the
26 state government and its existing public institutions, and shall take
27 effect July 1, 1991.