

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2490

52nd Legislature
1992 Regular Session

Passed by the House February 17, 1992
Yeas 98 Nays 0

**Speaker of the
House of Representatives**

Passed by the Senate March 5, 1992
Yeas 49 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2490 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2490

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Padden, Morris, D. Sommers, Hochstatter, Forner, Brough, Broback, Silver, Fuhrman, Horn, P. Johnson, Bowman, Wynne, Morton, Carlson, Chandler, Mitchell and Tate)

Read first time 02/07/92.

1 AN ACT Relating to escape from community placement or community
2 supervision; amending RCW 9.94A.320, 9.94A.360, 9.94A.440, and
3 72.09.310; reenacting and amending RCW 9.94A.030 and 9.94A.120; and
4 prescribing penalties.

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

6 **Sec. 1.** RCW 9.94A.030 and 1991 c 348 s 4, 1991 c 290 s 3, and 1991
7 c 181 s 1 are each reenacted and amended to read as follows:

8 Unless the context clearly requires otherwise, the definitions in
9 this section apply throughout this chapter.

10 (1) "Collect," or any derivative thereof, "collect and remit," or
11 "collect and deliver," when used with reference to the department of
12 corrections, means that the department is responsible for monitoring
13 and enforcing the offender's sentence with regard to the legal
14 financial obligation, receiving payment thereof from the offender, and,

1 consistent with current law, delivering daily the entire payment to the
2 superior court clerk without depositing it in a departmental account.

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

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

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

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

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

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

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

3 (9) "Conviction" means an adjudication of guilt pursuant to Titles
4 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
5 acceptance of a plea of guilty.

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

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

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

26 (b) "Criminal history" shall always include juvenile convictions
27 for sex offenses and shall also include a defendant's other prior
28 convictions in juvenile court if: (i) The conviction was for an
29 offense which is a felony or a serious traffic offense and is criminal
30 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was

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

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

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

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

27 (16) "Drug offense" means:

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

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

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

7 (17) "Escape" means:

8 (a) Escape in the first degree (RCW 9A.76.110), escape in the
9 second degree (RCW 9A.76.120), willful failure to return from furlough
10 (RCW 72.66.060), willful failure to return from work release (RCW
11 72.65.070), or willful failure to ~~((comply with any limitations on the
12 inmate's movements))~~ be available for supervision by the department
13 while in community custody (RCW 72.09.310); or

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

17 (18) "Felony traffic offense" means:

18 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
19 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
20 and-run injury-accident (RCW 46.52.020(4)); or

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

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

26 (20)(a) "First-time offender" means any person who is convicted of
27 a felony (i) not classified as a violent offense or a sex offense under
28 this chapter, or (ii) that is not the manufacture, delivery, or
29 possession with intent to manufacture or deliver a controlled substance
30 classified in schedule I or II that is a narcotic drug or the selling

1 for profit [of] any controlled substance or counterfeit substance
2 classified in schedule I, RCW 69.50.204, except leaves and flowering
3 tops of marihuana, and except as provided in (b) of this subsection,
4 who previously has never been convicted of a felony in this state,
5 federal court, or another state, and who has never participated in a
6 program of deferred prosecution for a felony offense.

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

10 (21) "Nonviolent offense" means an offense which is not a violent
11 offense.

12 (22) "Offender" means a person who has committed a felony
13 established by state law and is eighteen years of age or older or is
14 less than eighteen years of age but whose case has been transferred by
15 the appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (23) "Partial confinement" means confinement for no more than one
19 year in a facility or institution operated or utilized under contract
20 by the state or any other unit of government, or, if home detention or
21 work crew has been ordered by the court, in an approved residence, for
22 a substantial portion of each day with the balance of the day spent in
23 the community. Partial confinement includes work release, home
24 detention, work crew, and a combination of work crew and home detention
25 as defined in this section.

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

28 (25) "Restitution" means the requirement that the offender pay a
29 specific sum of money over a specific period of time to the court as

1 payment of damages. The sum may include both public and private costs.
2 The imposition of a restitution order does not preclude civil redress.

3 (26) "Serious traffic offense" means:

4 (a) Driving while under the influence of intoxicating liquor or any
5 drug (RCW 46.61.502), actual physical control while under the influence
6 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
7 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
8 or

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

12 (27) "Serious violent offense" is a subcategory of violent offense
13 and means:

14 (a) Murder in the first degree, homicide by abuse, murder in the
15 second degree, assault in the first degree, kidnapping in the first
16 degree, or rape in the first degree, or an attempt, criminal
17 solicitation, or criminal conspiracy to commit one of these felonies;
18 or

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

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

24 (29) "Sex offense" means:

25 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
26 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
27 attempt, criminal solicitation, or criminal conspiracy to commit such
28 crimes;

29 (b) A felony with a finding of sexual motivation under RCW
30 9.94A.127; or

1 (c) 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 sex
3 offense under (a) of this subsection.

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

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

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

14 (33) "Violent offense" means:

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

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

1 (c) 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 violent
3 offense under (a) or (b) of this subsection.

4 (34) "Work crew" means a program of partial confinement consisting
5 of civic improvement tasks for the benefit of the community of not less
6 than thirty-five hours per week that complies with RCW 9.94A.135. The
7 civic improvement tasks shall be performed on public property or on
8 private property owned or operated by nonprofit entities, except that,
9 for emergency purposes only, work crews may perform snow removal on any
10 private property. The civic improvement tasks shall have minimal
11 negative impact on existing private industries or the labor force in
12 the county where the service or labor is performed. The civic
13 improvement tasks shall not affect employment opportunities for people
14 with developmental disabilities contracted through sheltered workshops
15 as defined in RCW 82.04.385. Only those offenders sentenced to a
16 facility operated or utilized under contract by a county are eligible
17 to participate on a work crew. Offenders sentenced for a sex offense
18 as defined in subsection (29) of this section are not eligible for the
19 work crew program.

20 (35) "Work release" means a program of partial confinement
21 available to offenders who are employed or engaged as a student in a
22 regular course of study at school. Participation in work release shall
23 be conditioned upon the offender attending work or school at regularly
24 defined hours and abiding by the rules of the work release facility.

25 (36) "Home detention" means a program of partial confinement
26 available to offenders wherein the offender is confined in a private
27 residence subject to electronic surveillance. Home detention may not
28 be imposed for offenders convicted of a violent offense, any sex
29 offense, any drug offense, reckless burning in the first or second
30 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, unlawful imprisonment as defined in
2 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
3 detention may be imposed for offenders convicted of possession of a
4 controlled substance (RCW 69.50.401(d)) or forged prescription for a
5 controlled substance (RCW 69.50.403) if the offender fulfills the
6 participation conditions set forth in this subsection and is monitored
7 for drug use by treatment alternatives to street crime (TASC) or a
8 comparable court or agency-referred program.

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

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

1 other inmates, or staff would be jeopardized by the offender's
2 incarceration. Participation in the home detention program for medical
3 or health-related reasons is conditioned on the offender abiding by the
4 rules of the home detention program and complying with court-ordered
5 restitution.

6 **Sec. 2.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991
7 c 104 s 3 are each reenacted and amended to read as follows:

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

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

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

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

21 (4) An offender convicted of the crime of murder in the first
22 degree shall be sentenced to a term of total confinement not less than
23 twenty years. An offender convicted of the crime of assault in the
24 first degree where the offender used force or means likely to result in
25 death or intended to kill the victim shall be sentenced to a term of
26 total confinement not less than five years. An offender convicted of
27 the crime of rape in the first degree shall be sentenced to a term of
28 total confinement not less than five years, and shall not be eligible
29 for furlough, work release or other authorized leave of absence from

1 the correctional facility during such minimum five-year term except for
2 the purpose of commitment to an inpatient treatment facility. The
3 foregoing minimum terms of total confinement are mandatory and shall
4 not be varied or modified as provided in subsection (2) of this
5 section.

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

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

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

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

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

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

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

28 (6) If a sentence range has not been established for the
29 defendant's crime, the court shall impose a determinate sentence which
30 may include not more than one year of confinement, community service

1 work, a term of community supervision not to exceed one year, and/or
2 other legal financial obligations. The court may impose a sentence
3 which provides more than one year of confinement if the court finds,
4 considering the purpose of this chapter, that there are substantial and
5 compelling reasons justifying an exceptional sentence.

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

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

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

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

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

26 (C) Monitoring plans, including any requirements regarding living
27 conditions, lifestyle requirements, and monitoring by family members
28 and others;

29 (D) Anticipated length of treatment; and

30 (E) Recommended crime-related prohibitions.

1 The court on its own motion may order, or on a motion by the state
2 shall order, a second examination regarding the offender's amenability
3 to treatment. The evaluator shall be selected by the party making the
4 motion. The defendant shall pay the cost of any second examination
5 ordered unless the court finds the defendant to be indigent in which
6 case the state shall pay the cost.

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

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

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

1 not to exceed the sentence range of confinement for that offense,
2 crime-related prohibitions, and requirements that the offender perform
3 any one or more of the following:

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

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

8 (III) Report as directed to the court and a community corrections
9 officer;

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

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

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

22 (iv) At the time of sentencing, the court shall set a treatment
23 termination hearing for three months prior to the anticipated date for
24 completion of treatment. Prior to the treatment termination hearing,
25 the treatment professional and community corrections officer shall
26 submit written reports to the court and parties regarding the
27 defendant's compliance with treatment and monitoring requirements, and
28 recommendations regarding termination from treatment, including
29 proposed community supervision conditions. Either party may request
30 and the court may order another evaluation regarding the advisability

1 of termination from treatment. The defendant shall pay the cost of any
2 additional evaluation ordered unless the court finds the defendant to
3 be indigent in which case the state shall pay the cost. At the
4 treatment termination hearing the court may: (A) Modify conditions of
5 community supervision, and either (B) terminate treatment, or (C)
6 extend treatment for up to the remaining period of community
7 supervision.

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

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

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

24 (b) When an offender is convicted of any felony sex offense
25 committed before July 1, 1987, and is sentenced to a term of
26 confinement of more than one year but less than six years, the
27 sentencing court may, on its own motion or on the motion of the
28 offender or the state, order the offender committed for up to thirty
29 days to the custody of the secretary of social and health services for
30 evaluation and report to the court on the offender's amenability to

1 treatment at these facilities. If the secretary of social and health
2 services cannot begin the evaluation within thirty days of the court's
3 order of commitment, the offender shall be transferred to the state for
4 confinement pending an opportunity to be evaluated at the appropriate
5 facility. The court shall review the reports and may order that the
6 term of confinement imposed be served in the sexual offender treatment
7 program at the location determined by the secretary of social and
8 health services or the secretary's designee, only if the report
9 indicates that the offender is amenable to the treatment program
10 provided at these facilities. The offender shall be transferred to the
11 state pending placement in the treatment program. Any offender who has
12 escaped from the treatment program shall be referred back to the
13 sentencing court.

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

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

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

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

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

1 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

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

1 custody to which the offender may become eligible, in accordance with
2 RCW 9.94A.150 (1) and (2). Any period of community custody actually
3 served shall be credited against the community placement portion of the
4 sentence.

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

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

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

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

1 (iv) An offender in community custody shall not unlawfully possess
2 controlled substances; ~~((and))~~

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

5 (vi) The residence location and living arrangements are subject to
6 the prior approval of the department of corrections during the period
7 of community placement.

8 (c) The court may also order any of the following special
9 conditions:

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

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

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

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

17 ~~(v) ((The residence location and living arrangements of a sex~~
18 ~~offender shall be subject to the prior approval of the department of~~
19 ~~corrections; or~~

20 ~~(vi))~~) The offender shall comply with any crime-related
21 prohibitions.

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

26 (9) If the court imposes a sentence requiring confinement of thirty
27 days or less, the court may, in its discretion, specify that the
28 sentence be served on consecutive or intermittent days. A sentence
29 requiring more than thirty days of confinement shall be served on

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

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

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

28 (12) All offenders sentenced to terms involving community
29 supervision, community service, community placement, or legal financial
30 obligation shall be under the supervision of the secretary of the

1 department of corrections or such person as the secretary may designate
2 and shall follow explicitly the instructions of the secretary including
3 reporting as directed to a community corrections officer, remaining
4 within prescribed geographical boundaries, notifying the community
5 corrections officer of any change in the offender's address or
6 employment, and paying the supervision fee assessment.

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

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

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

26 (16) The court shall order restitution whenever the offender is
27 convicted of a felony that results in injury to any person or damage to
28 or loss of property, whether the offender is sentenced to confinement
29 or placed under community supervision, unless extraordinary
30 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in
2 the record if it does not order restitution.

3 (17) As a part of any sentence, the court may impose and enforce an
4 order that relates directly to the circumstances of the crime for which
5 the offender has been convicted, prohibiting the offender from having
6 any contact with other specified individuals or a specific class of
7 individuals for a period not to exceed the maximum allowable sentence
8 for the crime, regardless of the expiration of the offender's term of
9 community supervision or community placement.

10 (18) In any sentence of partial confinement, the court may require
11 the defendant to serve the partial confinement in work release, in a
12 program of home detention, on work crew, or in a combined program of
13 work crew and home detention.

14 (19) All court-ordered legal financial obligations collected by the
15 department and remitted to the county clerk shall be credited and paid
16 where restitution is ordered. Restitution shall be paid prior to any
17 other payments of monetary obligations.

18 **Sec. 3.** RCW 9.94A.320 and 1991 c 32 s 3 are each amended to read
19 as follows:

20 TABLE 2

21
22 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

23 XV Aggravated Murder 1 (RCW 10.95.020)

24 XIV Murder 1 (RCW 9A.32.030)

25 Homicide by abuse (RCW 9A.32.055)

1 XIII Murder 2 (RCW 9A.32.050)

2 XII Assault 1 (RCW 9A.36.011)

3 XI Rape 1 (RCW 9A.44.040)

4 Rape of a Child 1 (RCW 9A.44.073)

5 X Kidnapping 1 (RCW 9A.40.020)

6 Rape 2 (RCW 9A.44.050)

7 Rape of a Child 2 (RCW 9A.44.076)

8 Child Molestation 1 (RCW 9A.44.083)

9 Damaging building, etc., by explosion with threat to human

10 being (RCW 70.74.280(1))

11 Over 18 and deliver heroin or narcotic from Schedule I or

12 II to someone under 18 (RCW 69.50.406)

13 Leading Organized Crime (RCW 9A.82.060(1)(a))

14 IX Robbery 1 (RCW 9A.56.200)

15 Manslaughter 1 (RCW 9A.32.060)

16 Explosive devices prohibited (RCW 70.74.180)

17 Indecent Liberties (with forcible compulsion) (RCW

18 9A.44.100(1)(a))

19 Endangering life and property by explosives with threat

20 to human being (RCW 70.74.270)

21 Over 18 and deliver narcotic from Schedule III, IV, or V or

22 a nonnarcotic from Schedule I-V to someone under 18 and

23 3 years junior (RCW 69.50.406)

24 Controlled Substance Homicide (RCW 69.50.415)

25 Sexual Exploitation (RCW 9.68A.040)

26 Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))

1 VIII Arson 1 (RCW 9A.48.020)
2 Promoting Prostitution 1 (RCW 9A.88.070)
3 Selling for profit (controlled or counterfeit) any
4 controlled substance (RCW 69.50.410)
5 Manufacture, deliver, or possess with intent to deliver
6 heroin or cocaine (RCW 69.50.401(a)(1)(i))
7 Manufacture, deliver, or possess with intent to deliver
8 methamphetamine (RCW 69.50.401(a)(1)(ii))
9 Vehicular Homicide, by being under the influence of
10 intoxicating liquor or any drug or by the operation of
11 any vehicle in a reckless manner (RCW 46.61.520)

12 VII Burglary 1 (RCW 9A.52.020)
13 Vehicular Homicide, by disregard for the safety of others
14 (RCW 46.61.520)
15 Introducing Contraband 1 (RCW 9A.76.140)
16 Indecent Liberties (without forcible compulsion)
17 (RCW 9A.44.100(1) (b) and (c))
18 Child Molestation 2 (RCW 9A.44.086)
19 Dealing in depictions of minor engaged in sexually
20 explicit conduct (RCW 9.68A.050)
21 Sending, bringing into state depictions of minor
22 engaged in sexually explicit conduct (RCW 9.68A.060)
23 Involving a minor in drug dealing (RCW 69.50.401(f))

24 VI Bribery (RCW 9A.68.010)
25 Manslaughter 2 (RCW 9A.32.070)
26 Rape of a Child 3 (RCW 9A.44.079)
27 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
28 Damaging building, etc., by explosion with no threat to

1 human being (RCW 70.74.280(2))
2 Endangering life and property by explosives with no
3 threat to human being (RCW 70.74.270)
4 Incest 1 (RCW 9A.64.020(1))
5 Manufacture, deliver, or possess with intent to deliver
6 narcotics from Schedule I or II (except heroin or cocaine)
7 (RCW 69.50.401(a)(1)(i))
8 Intimidating a Judge (RCW 9A.72.160)
9 Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
10 V Criminal Mistreatment 1 (RCW 9A.42.020)
11 Rape 3 (RCW 9A.44.060)
12 Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
13 Child Molestation 3 (RCW 9A.44.089)
14 Kidnapping 2 (RCW 9A.40.030)
15 Extortion 1 (RCW 9A.56.120)
16 Incest 2 (RCW 9A.64.020(2))
17 Perjury 1 (RCW 9A.72.020)
18 Extortionate Extension of Credit (RCW 9A.82.020)
19 Advancing money or property for extortionate extension of
20 credit (RCW 9A.82.030)
21 Extortionate Means to Collect Extensions of Credit (RCW
22 9A.82.040)
23 Rendering Criminal Assistance 1 (RCW 9A.76.070)
24 Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
25 Delivery of imitation controlled substance by person
26 eighteen or over to person under eighteen (RCW
27 69.52.030(2))
28 IV Residential Burglary (RCW 9A.52.025)

1 Theft of Livestock 1 (RCW 9A.56.080)
2 Robbery 2 (RCW 9A.56.210)
3 Assault 2 (RCW 9A.36.021)
4 Escape 1 (RCW 9A.76.110)
5 Arson 2 (RCW 9A.48.030)
6 Bribing a Witness/Bribe Received by Witness
7 (RCW 9A.72.090, 9A.72.100)
8 Malicious Harassment (RCW 9A.36.080)
9 Threats to Bomb (RCW 9.61.160)
10 Willful Failure to Return from Furlough (RCW 72.66.060)
11 Hit and Run -- Injury Accident (RCW 46.52.020(4))
12 Vehicular Assault (RCW 46.61.522)
13 Manufacture, deliver, or possess with intent to deliver
14 narcotics from Schedule III, IV, or V or nonnarcotics
15 from Schedule I-V (except marijuana or methamphetamines)
16 (RCW 69.50.401(a)(1)(ii) through (iv))
17 Influencing Outcome of Sporting Event (RCW 9A.82.070)
18 Use of Proceeds of Criminal Profiteering (RCW 9A.82.080
19 (1) and (2))
20 Knowingly Trafficking in Stolen Property (RCW
21 9A.82.050(2))

22 III Criminal mistreatment 2 (RCW 9A.42.030)
23 Extortion 2 (RCW 9A.56.130)
24 Unlawful Imprisonment (RCW 9A.40.040)
25 Assault 3 (RCW 9A.36.031)
26 Custodial Assault (RCW 9A.36.100)
27 Unlawful possession of firearm or pistol by felon (RCW
28 9.41.040)
29 Harassment (RCW 9A.46.020)

1 Promoting Prostitution 2 (RCW 9A.88.080)
2 Willful Failure to Return from Work Release (RCW
3 72.65.070)
4 Burglary 2 (RCW 9A.52.030)
5 Introducing Contraband 2 (RCW 9A.76.150)
6 Communication with a Minor for Immoral Purposes (RCW
7 9.68A.090)
8 Patronizing a Juvenile Prostitute (RCW 9.68A.100)
9 Escape 2 (RCW 9A.76.120)
10 Perjury 2 (RCW 9A.72.030)
11 Bail Jumping with class B or C Felony (RCW
12 9A.76.170(2)(c))
13 Intimidating a Public Servant (RCW 9A.76.180)
14 Tampering with a Witness (RCW 9A.72.120)
15 Manufacture, deliver, or possess with intent to deliver
16 marijuana (RCW 69.50.401(a)(1)(ii))
17 Delivery of a material in lieu of a controlled substance
18 (RCW 69.50.401(c))
19 Manufacture, distribute, or possess with intent to
20 distribute an imitation controlled substance (RCW
21 69.52.030(1))
22 Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
23 Theft of livestock 2 (RCW 9A.56.080)
24 Securities Act violation (RCW 21.20.400)

25 II Malicious Mischief 1 (RCW 9A.48.070)
26 Possession of Stolen Property 1 (RCW 9A.56.150)
27 Theft 1 (RCW 9A.56.030)
28 Possession of controlled substance that is either heroin
29 or narcotics from Schedule I or II (RCW 69.50.401(d))

1 Possession of phencyclidine (PCP) (RCW 69.50.401(d))
2 Create, deliver, or possess a counterfeit controlled
3 substance (RCW 69.50.401(b))
4 Computer Trespass 1 (RCW 9A.52.110)
5 Reckless Endangerment 1 (RCW 9A.36.045)
6 Escape from Community Custody
7 (RCW 72.09.310)
8 I Theft 2 (RCW 9A.56.040)
9 Possession of Stolen Property 2 (RCW 9A.56.160)
10 Forgery (RCW 9A.60.020)
11 Taking Motor Vehicle Without Permission (RCW 9A.56.070)
12 Vehicle Prowl 1 (RCW 9A.52.095)
13 Attempting to Elude a Pursuing Police Vehicle (RCW
14 46.61.024)
15 Malicious Mischief 2 (RCW 9A.48.080)
16 Reckless Burning 1 (RCW 9A.48.040)
17 Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
18 Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
19 False Verification for Welfare (RCW 74.08.055)
20 Forged Prescription (RCW 69.41.020)
21 Forged Prescription for a Controlled Substance (RCW
22 69.50.403)
23 Possess Controlled Substance that is a Narcotic from
24 Schedule III, IV, or V or Non-narcotic from Schedule
25 I-V (except phencyclidine) (RCW 69.50.401(d))

26 **Sec. 4.** RCW 9.94A.360 and 1990 c 3 s 706 are each amended to read
27 as follows:

1 The offender score is measured on the horizontal axis of the
2 sentencing grid. The offender score rules are as follows:

3 The offender score is the sum of points accrued under this section
4 rounded down to the nearest whole number.

5 (1) A prior conviction is a conviction which exists before the date
6 of sentencing for the offense for which the offender score is being
7 computed. Convictions entered or sentenced on the same date as the
8 conviction for which the offender score is being computed shall be
9 deemed "other current offenses" within the meaning of RCW 9.94A.400.

10 (2) Except as provided in subsection (4) of this section, class A
11 and sex prior felony convictions shall always be included in the
12 offender score. Class B prior felony convictions other than sex
13 offenses shall not be included in the offender score, if since the last
14 date of release from confinement (including full-time residential
15 treatment) pursuant to a felony conviction, if any, or entry of
16 judgment and sentence, the offender had spent ten consecutive years in
17 the community without being convicted of any felonies. Class C prior
18 felony convictions other than sex offenses shall not be included in the
19 offender score if, since the last date of release from confinement
20 (including full-time residential treatment) pursuant to a felony
21 conviction, if any, or entry of judgment and sentence, the offender had
22 spent five consecutive years in the community without being convicted
23 of any felonies. Serious traffic convictions shall not be included in
24 the offender score if, since the last date of release from confinement
25 (including full-time residential treatment) pursuant to a felony
26 conviction, if any, or entry of judgment and sentence, the offender
27 spent five years in the community without being convicted of any
28 serious traffic or felony traffic offenses. This subsection applies to
29 both adult and juvenile prior convictions.

1 (3) Out-of-state convictions for offenses shall be classified
2 according to the comparable offense definitions and sentences provided
3 by Washington law.

4 (4) Always include juvenile convictions for sex offenses. Include
5 other class A juvenile felonies only if the offender was 15 or older at
6 the time the juvenile offense was committed. Include other class B and
7 C juvenile felony convictions only if the offender was 15 or older at
8 the time the juvenile offense was committed and the offender was less
9 than 23 at the time the offense for which he or she is being sentenced
10 was committed.

11 (5) Score prior convictions for felony anticipatory offenses
12 (attempts, criminal solicitations, and criminal conspiracies) the same
13 as if they were convictions for completed offenses.

14 (6) In the case of multiple prior convictions, for the purpose of
15 computing the offender score, count all convictions separately, except:

16 (a) Prior adult offenses which were found, under RCW
17 9.94A.400(1)(a), to encompass the same criminal conduct, shall be
18 counted as one offense, the offense that yields the highest offender
19 score. The current sentencing court shall determine with respect to
20 other prior adult offenses for which sentences were served concurrently
21 whether those offenses shall be counted as one offense or as separate
22 offenses, and if the court finds that they shall be counted as one
23 offense, then the offense that yields the highest offender score shall
24 be used;

25 (b) Juvenile prior convictions entered or sentenced on the same
26 date shall count as one offense, the offense that yields the highest
27 offender score, except for juvenile prior convictions for violent
28 offenses with separate victims, which shall count as separate offenses;
29 and

1 (c) In the case of multiple prior convictions for offenses
2 committed before July 1, 1986, for the purpose of computing the
3 offender score, count all adult convictions served concurrently as one
4 offense, and count all juvenile convictions entered on the same date as
5 one offense. Use the conviction for the offense that yields the
6 highest offender score.

7 (7) If the present conviction is one of the anticipatory offenses
8 of criminal attempt, solicitation, or conspiracy, count each prior
9 conviction as if the present conviction were for a completed offense.

10 (8) If the present conviction is for a nonviolent offense and not
11 covered by subsection (12) or (13) of this section, count one point for
12 each adult prior felony conviction and one point for each juvenile
13 prior violent felony conviction and 1/2 point for each juvenile prior
14 nonviolent felony conviction.

15 (9) If the present conviction is for a violent offense and not
16 covered in subsection (10), (11), (12), or (13) of this section, count
17 two points for each prior adult and juvenile violent felony conviction,
18 one point for each prior adult nonviolent felony conviction, and 1/2
19 point for each prior juvenile nonviolent felony conviction.

20 (10) If the present conviction is for Murder 1 or 2, Assault 1,
21 Kidnaping 1, Homicide by Abuse, or Rape 1, count three points for prior
22 adult and juvenile convictions for crimes in these categories, two
23 points for each prior adult and juvenile violent conviction (not
24 already counted), one point for each prior adult nonviolent felony
25 conviction, and 1/2 point for each prior juvenile nonviolent felony
26 conviction.

27 (11) If the present conviction is for Burglary 1, count prior
28 convictions as in subsection (9) of this section; however count two
29 points for each prior adult Burglary 2 or residential burglary

1 conviction, and one point for each prior juvenile Burglary 2 or
2 residential burglary conviction.

3 (12) If the present conviction is for a felony traffic offense
4 count two points for each adult or juvenile prior conviction for
5 Vehicular Homicide or Vehicular Assault; for each felony offense or
6 serious traffic offense, count one point for each adult and 1/2 point
7 for each juvenile prior conviction.

8 (13) If the present conviction is for a drug offense count three
9 points for each adult prior felony drug offense conviction and two
10 points for each juvenile drug offense. All other adult and juvenile
11 felonies are scored as in subsection (9) of this section if the current
12 drug offense is violent, or as in subsection (8) of this section if the
13 current drug offense is nonviolent.

14 (14) If the present conviction is for Willful Failure to Return
15 from Furlough, RCW 72.66.060, (~~(or)~~) Willful Failure to Return from
16 Work Release, RCW 72.65.070, or Escape from Community Custody, RCW
17 72.09.310, count only prior escape convictions in the offender score.
18 Count adult prior escape convictions as one point and juvenile prior
19 escape convictions as 1/2 point.

20 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
21 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
22 juvenile prior convictions as 1/2 point.

23 (16) If the present conviction is for Burglary 2 or residential
24 burglary, count priors as in subsection (8) of this section; however,
25 count two points for each adult and juvenile prior Burglary 1
26 conviction, two points for each adult prior Burglary 2 or residential
27 burglary conviction, and one point for each juvenile prior Burglary 2
28 or residential burglary conviction.

1 (17) If the present conviction is for a sex offense, count priors
2 as in subsections (8) through (16) of this section; however count three
3 points for each adult and juvenile prior sex offense conviction.

4 (18) If the present conviction is for an offense committed while
5 the offender was under community placement, add one point.

6 **Sec. 5.** RCW 9.94A.440 and 1989 c 332 s 2 are each amended to read
7 as follows:

8 (1) Decision not to prosecute.

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

14 GUIDELINE/COMMENTARY:

15 Examples

16 The following are examples of reasons not to prosecute which could
17 satisfy the standard.

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

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

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

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

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

1 (iv) The statute has not been recently reconsidered by the
2 legislature.

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

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

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

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

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

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

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

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

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

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

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

28 (f) High Disproportionate Cost of Prosecution - It may be proper to
29 decline to charge where the cost of locating or transporting, or the
30 burden on, prosecution witnesses is highly disproportionate to the

1 importance of prosecuting the offense in question. This reason should
2 be limited to minor cases and should not be relied upon in serious
3 cases.

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

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

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

17 (i) Assault cases where the victim has suffered little or no
18 injury;

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

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

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

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

26 Notification

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

29 (2) Decision to prosecute.

30 STANDARD:

1 Crimes against persons will be filed if sufficient admissible
2 evidence exists, which, when considered with the most plausible,
3 reasonably foreseeable defense that could be raised under the evidence,
4 would justify conviction by a reasonable and objective fact-finder.
5 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
6 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
7 9A.64.020 the prosecutor should avoid prefiling agreements or
8 diversions intended to place the accused in a program of treatment or
9 counseling, so that treatment, if determined to be beneficial, can be
10 provided pursuant to RCW 9.94A.120(7).

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

16 See table below for the crimes within these categories.

17 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

18 CRIMES AGAINST PERSONS

19 Aggravated Murder
20 1st Degree Murder
21 2nd Degree Murder
22 1st Degree Kidnaping
23 1st Degree Assault
24 1st Degree Rape
25 1st Degree Robbery
26 1st Degree Rape of a Child
27 1st Degree Arson

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

1 CRIMES AGAINST PROPERTY/OTHER CRIMES

2 2nd Degree Arson

3 1st Degree Escape

4 2nd Degree Burglary

5 1st Degree Theft

6 1st Degree Perjury

7 1st Degree Introducing Contraband

8 1st Degree Possession of Stolen Property

9 Bribery

10 Bribing a Witness

11 Bribe received by a Witness

12 Bomb Threat (if against property)

13 1st Degree Malicious Mischief

14 2nd Degree Theft

15 2nd Degree Escape

16 2nd Degree Introducing Contraband

17 2nd Degree Possession of Stolen Property

18 2nd Degree Malicious Mischief

19 1st Degree Reckless Burning

20 Taking a Motor Vehicle without Authorization

21 Forgery

22 2nd Degree Perjury

23 2nd Degree Promoting Prostitution

24 Tampering with a Witness

25 Trading in Public Office

26 Trading in Special Influence

27 Receiving/Granting Unlawful Compensation

28 Bigamy

29 Eluding a Pursuing Police Vehicle

1 Willful Failure to Return from Furlough

2 Escape from Community Custody

3 Riot (if against property)

4 Thefts of Livestock

5 ALL OTHER UNCLASSIFIED FELONIES

6 Selection of Charges/Degree of Charge

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

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

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

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

15 (a) Charging a higher degree;

16 (b) Charging additional counts.

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

23 GUIDELINES/COMMENTARY:

24 Police Investigation

25 A prosecuting attorney is dependent upon law enforcement agencies
26 to conduct the necessary factual investigation which must precede the
27 decision to prosecute. The prosecuting attorney shall ensure that a
28 thorough factual investigation has been conducted before a decision to

1 prosecute is made. In ordinary circumstances the investigation should
2 include the following:

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

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

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

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

11 Exceptions

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

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

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

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

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

24 Investigation Techniques

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

27 (1) Polygraph testing;

28 (2) Hypnosis;

29 (3) Electronic surveillance;

30 (4) Use of informants.

1 Pre-Filing Discussions with Defendant

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

5 **Sec. 6.** RCW 72.09.310 and 1988 c 153 s 6 are each amended to read
6 as follows:

7 An inmate in community custody who willfully (~~((fails to comply with~~
8 ~~any one or more of the controls placed on the inmate's movements by the~~
9 ~~department of corrections))~~ discontinues making himself or herself
10 available to the department for supervision by making his or her
11 whereabouts unknown or by failing to maintain contact with the
12 department as directed by the community corrections officer shall be
13 deemed an escapee and fugitive from justice, and upon conviction shall
14 be guilty of a class C felony under chapter 9A.20 RCW.