

2 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94) - 504

3 By Senators Nelson, Roach, Amondson, L. Smith, Anderson, McDonald
4 and Schow

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6 On page 121, after line 7 of the amendment, insert the following:

7 "NEW SECTION. **Sec. 469.** A new section is added to chapter 9.94A
8 RCW to read as follows:

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

15 (b) It is the further intent of the legislature in enacting this
16 section that female and male offenders for whom charges have been
17 directly filed in the superior court and who have been convicted in the
18 superior court receive equitable treatment in sentencing, particularly
19 in regard to the option of being sentenced to the youthful offender
20 system under RCW 9.94A.120. Accordingly, it is the legislature's
21 intent that necessary measures be taken by the department of
22 corrections to establish separate housing for female and male offenders
23 who are sentenced to the youthful offender system without compromising
24 the equitable treatment of either.

25 (2)(a)(i) A juvenile may be sentenced to the youthful offender
26 system created under this section under the circumstances set forth in
27 RCW 9.94A.120. In order to sentence a person to the youthful offender
28 system, the court shall first impose on the person a sentence to the
29 department of corrections in accordance with RCW 9.94A.120. The court
30 shall thereafter suspend the sentence conditioned on completion of a
31 sentence to the youthful offender system, including a period of
32 community supervision. The court shall impose a sentence to the
33 youthful offender system for a determinate period of at least one year
34 and less than five years and a mandatory period of community
35 supervision for a period of one year. Upon the successful completion
36 of the programs in the youthful offender system, including the
37 mandatory period of supervision, the sentence to the department of

1 corrections is completed. When a person is returned to the superior
2 court for revocation under subsection (5) of this section, the court
3 shall impose the original sentence following the revocation of the
4 sentence to the youthful offender system. The revocation must be in
5 accordance with section 474 of this act.

6 (ii) During a period of incarceration under the youthful offender
7 system, privileges including, but not limited to, televisions, radios,
8 entertainment systems, cigarettes, and access to snacks is not
9 available for a youthful offender unless the privileges have been
10 earned under a merit system.

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

13 (3)(a) The department of corrections shall develop and implement a
14 youthful offender system for offenders sentenced under subsection (2)
15 of this section. The secretary of corrections shall direct and control
16 the youthful offender system. The youthful offender system must be
17 based on the following principles:

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

20 (ii) The system must include a daily regimen that involves
21 offenders in physical training, self-discipline exercises, educational
22 and work programs, and meaningful interaction, with a component for a
23 tiered system for swift and strict discipline for noncompliance;

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

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

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

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

37 (b) The secretary of corrections shall have final approval on the
38 hiring and transferring of staff for the youthful offender system. In
39 staffing the youthful offender system, the secretary of corrections

1 shall select persons who are trained in the treatment of juveniles or
2 will be trained in the treatment of juveniles before working with the
3 juveniles, are trained to act as role models and mentors under (a)(iii)
4 of this subsection, and are best equipped to enable the youthful
5 offender system to meet the principles specified in (a) of this
6 subsection. The secretary of corrections shall make a recommendation
7 to the department of personnel regarding the classification of
8 positions with the youthful offender system, taking into account the
9 level of education and training required for the positions.

10 (4) The youthful offender system must provide for community
11 supervision that must consist of highly structured surveillance and
12 monitoring and educational and treatment programs. The department of
13 corrections' adult community supervision staff shall administer
14 community supervision. However, revocation of supervision is subject
15 to subsections (2) and (5) of this section.

16 (5)(a) The department of corrections shall implement a procedure
17 for the transfer of an offender to another facility for vocational or
18 training services or if an offender in the system poses a danger to the
19 offender's self or others, has been convicted of a class A felony, and
20 has attained the age of eighteen years. Except as otherwise provided
21 in (c) of this subsection, the indeterminate sentence review board
22 shall review a transfer determination by the department of corrections
23 before the actual transfer of an inmate.

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

26 (c) The department of corrections shall implement a procedure for
27 returning offenders who cannot successfully complete the sentence to
28 the youthful offender system to the superior court for the imposition
29 of the original sentence.

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

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

37 (8) By January 1, 1995, the department of corrections shall develop
38 and the department of corrections shall implement a process for
39 monitoring and evaluating the youthful offender system. In

1 implementing the system, the department of corrections may contract
2 with a private agency for assistance.

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

6 (i) The specific content and structure of the programs for
7 offenders in the youthful offender system, including staffing ratios
8 for each program, a description of the daily routine of offenders that
9 includes the amount of offenders' time that is allocated to each
10 program, and an explanation of how the programs are related to the
11 principles described in subsection (3) of this section;

12 (ii) The process used for transition to community supervision,
13 whether offenders may be returned to the original environment for the
14 community supervision period, the specific means of community
15 supervision, and the specific educational and treatment programs
16 provided to offenders during their community supervision period;

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

21 (iv) The specific criteria and procedures for determining
22 successful completion of the programs in the youthful offender system,
23 for determining whether an offender cannot successfully complete the
24 sentence, and for revocation of community supervision.

25 (b) By January 1, 1995, the department of corrections shall submit
26 a report to the legislature concerning the number of offenders entering
27 the youthful offender system and a profile of the typical offender
28 entering the system, including an analysis of the criminal and
29 demographic backgrounds of the offenders, and update the committee
30 quarterly.

31 (c) The department of social and health services division of
32 juvenile rehabilitation shall independently monitor and evaluate the
33 youthful offender system addressing the criteria described in (a) of
34 this subsection.

35 (10) A prosecuting attorney in the state shall maintain records
36 regarding juveniles who are sentenced to the youthful offender system.
37 The records must indicate which juveniles have been filed on as adults
38 or are sentenced to the system and the offenses committed by the
39 juveniles.

1 (11) The legislature recognizes that the increased number of
2 violent juvenile crimes is a problem faced by all the states of this
3 nation. By creating the youthful offender system, the state of
4 Washington stands at the forefront of the states in creating a new
5 approach to solving the problem of violent juvenile offenders. The
6 legislature also declares that the cost of implementing and operating
7 the youthful offender system will create a burden on the state's
8 limited resources. Accordingly, the legislature directs the department
9 of corrections to seek out and accept available federal, state, and
10 local public funds, including project demonstration funds, and private
11 moneys and private systems for the purpose of conducting the youthful
12 offender system.

13 **Sec. 470.** RCW 9.94A.120 and 1994 c 1 s 2 (Initiative Measure No.
14 593) and 1993 c 31 s 3 are each reenacted and amended to read as
15 follows:

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

18 (1) Except as authorized in subsections (2), ~~((+4+))~~ (5), (6), and
19 ~~((+7))~~ (8) of this section, the court shall impose a sentence within
20 the sentence range for the offense.

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

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

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

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

33 (b) To the youthful offender system in the department in accordance
34 with section 469 of this act if the offender is younger than eighteen
35 years of age. However, the offender shall be ineligible for sentencing
36 to the youthful offender system if the offender received a prior
37 sentence to the department or to the youthful offender system.

1 (5) A persistent offender shall be sentenced to a term of total
2 confinement for life without the possibility of parole or, when
3 authorized by RCW 10.95.030 for the crime of aggravated murder in the
4 first degree, sentenced to death, notwithstanding the maximum sentence
5 under any other law. An offender convicted of the crime of murder in
6 the first degree shall be sentenced to a term of total confinement not
7 less than twenty years. An offender convicted of the crime of assault
8 in the first degree or assault of a child in the first degree where the
9 offender used force or means likely to result in death or intended to
10 kill the victim shall be sentenced to a term of total confinement not
11 less than five years. An offender convicted of the crime of rape in
12 the first degree shall be sentenced to a term of total confinement not
13 less than five years. The foregoing minimum terms of total confinement
14 are mandatory and shall not be varied or modified as provided in
15 subsection (2) of this section. In addition, all offenders subject to
16 the provisions of this subsection shall not be eligible for community
17 custody, earned early release time, furlough, home detention, partial
18 confinement, work crew, work release, or any other form of early
19 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
20 or any other form of authorized leave of absence from the correctional
21 facility while not in the direct custody of a corrections officer or
22 officers during such minimum terms of total confinement except in the
23 case of an offender in need of emergency medical treatment or for the
24 purpose of commitment to an inpatient treatment facility in the case of
25 an offender convicted of the crime of rape in the first degree.

26 (~~(+5)~~) (6) In sentencing a first-time offender the court may waive
27 the imposition of a sentence within the sentence range and impose a
28 sentence which may include up to ninety days of confinement in a
29 facility operated or utilized under contract by the county and a
30 requirement that the offender refrain from committing new offenses.
31 The sentence may also include up to two years of community supervision,
32 which, in addition to crime-related prohibitions, may include
33 requirements that the offender perform any one or more of the
34 following:

- 35 (a) Devote time to a specific employment or occupation;
- 36 (b) Undergo available outpatient treatment for up to two years, or
- 37 inpatient treatment not to exceed the standard range of confinement for
- 38 that offense;

1 (c) Pursue a prescribed, secular course of study or vocational
2 training;

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

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

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

10 (~~(+6)~~) (7) If a sentence range has not been established for the
11 defendant's crime, the court shall impose a determinate sentence which
12 may include not more than one year of confinement, community service
13 work, a term of community supervision not to exceed one year, and/or
14 other legal financial obligations. The court may impose a sentence
15 which provides more than one year of confinement if the court finds,
16 considering the purpose of this chapter, that there are substantial and
17 compelling reasons justifying an exceptional sentence.

18 (~~(+7)~~) (8)(a)(i) When an offender is convicted of a sex offense
19 other than a violation of RCW 9A.44.050 or a sex offense that is also
20 a serious violent offense and has no prior convictions for a sex
21 offense or any other felony sex offenses in this or any other state,
22 the sentencing court, on its own motion or the motion of the state or
23 the defendant, may order an examination to determine whether the
24 defendant is amenable to treatment.

25 The report of the examination shall include at a minimum the
26 following: The defendant's version of the facts and the official
27 version of the facts, the defendant's offense history, an assessment of
28 problems in addition to alleged deviant behaviors, the offender's
29 social and employment situation, and other evaluation measures used.
30 The report shall set forth the sources of the evaluator's information.

31 The examiner shall assess and report regarding the defendant's
32 amenability to treatment and relative risk to the community. A
33 proposed treatment plan shall be provided and shall include, at a
34 minimum:

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

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

1 (C) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

34 (v) The court may revoke the suspended sentence at any time during
35 the period of community supervision and order execution of the sentence
36 if: (A) The defendant violates the conditions of the suspended
37 sentence, or (B) the court finds that the defendant is failing to make
38 satisfactory progress in treatment. All confinement time served during

1 the period of community supervision shall be credited to the offender
2 if the suspended sentence is revoked.

3 (vi) Except as provided in (a)(vii) of this subsection, after July
4 1, 1991, examinations and treatment ordered pursuant to this subsection
5 shall only be conducted by sex offender treatment providers certified
6 by the department of health pursuant to chapter 18.155 RCW.

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

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
31 confinement pending an opportunity to be evaluated at the appropriate
32 facility. The court shall review the reports and may order that the
33 term of confinement imposed be served in the sexual offender treatment
34 program at the location determined by the secretary of social and
35 health services or the secretary's designee, only if the report
36 indicates that the offender is amenable to the treatment program
37 provided at these facilities. The offender shall be transferred to the
38 state pending placement in the treatment program. Any offender who has

1 escaped from the treatment program shall be referred back to the
2 sentencing court.

3 If the offender does not comply with the conditions of the
4 treatment program, the secretary of social and health services may
5 refer the matter to the sentencing court. The sentencing court shall
6 commit the offender to the department of corrections to serve the
7 balance of the term of confinement.

8 If the offender successfully completes the treatment program before
9 the expiration of the term of confinement, the court may convert the
10 balance of confinement to community supervision and may place
11 conditions on the offender including crime-related prohibitions and
12 requirements that the offender perform any one or more of the
13 following:

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

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

18 (iii) Report as directed to the court and a community corrections
19 officer;

20 (iv) Undergo available outpatient treatment.

21 If the offender violates any of the terms of community supervision,
22 the court may order the offender to serve out the balance of the
23 community supervision term in confinement in the custody of the
24 department of corrections.

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

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

34 Except for an offender who has been convicted of a violation of RCW
35 9A.44.040 or 9A.44.050, if the offender completes the treatment program
36 before the expiration of his or her term of confinement, the department
37 of corrections may request the court to convert the balance of
38 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the
2 offender perform any one or more of the following:

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

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

7 (iii) Report as directed to the court and a community corrections
8 officer;

9 (iv) Undergo available outpatient treatment.

10 If the offender violates any of the terms of his or her community
11 supervision, the court may order the offender to serve out the balance
12 of his or her community supervision term in confinement in the custody
13 of the department of corrections.

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

18 (d) Offenders convicted and sentenced for a sex offense committed
19 prior to July 1, 1987, may, subject to available funds, request an
20 evaluation by the department of corrections to determine whether they
21 are amenable to treatment. If the offender is determined to be
22 amenable to treatment, the offender may request placement in a
23 treatment program within a correctional facility operated by the
24 department. Placement in such treatment program is subject to
25 available funds.

26 ~~((+8))~~ (9)(a) When a court sentences a person to a term of total
27 confinement to the custody of the department of corrections for an
28 offense categorized as a sex offense or a serious violent offense
29 committed after July 1, 1988, but before July 1, 1990, assault in the
30 second degree, assault of a child in the second degree, any crime
31 against a person where it is determined in accordance with RCW
32 9.94A.125 that the defendant or an accomplice was armed with a deadly
33 weapon at the time of commission, or any felony offense under chapter
34 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
35 in addition to the other terms of the sentence, sentence the offender
36 to a one-year term of community placement beginning either upon
37 completion of the term of confinement or at such time as the offender
38 is transferred to community custody in lieu of earned early release in
39 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an

1 offender under this subsection to the statutory maximum period of
2 confinement then the community placement portion of the sentence shall
3 consist entirely of such community custody to which the offender may
4 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
5 period of community custody actually served shall be credited against
6 the community placement portion of the sentence.

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

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

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

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

32 (iv) An offender in community custody shall not unlawfully possess
33 controlled substances;

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

36 (vi) The residence location and living arrangements are subject to
37 the prior approval of the department of corrections during the period
38 of community placement.

1 (c) The court may also order any of the following special
2 conditions:

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

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

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

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

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

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

15 (~~(9)~~) (10) If the court imposes a sentence requiring confinement
16 of thirty days or less, the court may, in its discretion, specify that
17 the sentence be served on consecutive or intermittent days. A sentence
18 requiring more than thirty days of confinement shall be served on
19 consecutive days. Local jail administrators may schedule court-ordered
20 intermittent sentences as space permits.

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

1 restitution as one of the monetary assessments, the county clerk shall
2 make disbursements to victims named in the order.

3 ~~((11))~~ (12) Except as provided under RCW 9.94A.140(1) and
4 9.94A.142(1), a court may not impose a sentence providing for a term of
5 confinement or community supervision or community placement which
6 exceeds the statutory maximum for the crime as provided in chapter
7 9A.20 RCW.

8 ~~((12))~~ (13) All offenders sentenced to terms involving community
9 supervision, community service, community placement, or legal financial
10 obligation shall be under the supervision of the secretary of the
11 department of corrections or such person as the secretary may designate
12 and shall follow explicitly the instructions of the secretary including
13 reporting as directed to a community corrections officer, remaining
14 within prescribed geographical boundaries, notifying the community
15 corrections officer of any change in the offender's address or
16 employment, and paying the supervision fee assessment. The department
17 may require offenders to pay for special services rendered on or after
18 July 25, 1993, including electronic monitoring, day reporting, and
19 telephone reporting, dependent upon the offender's ability to pay. The
20 department may pay for these services for offenders who are not able to
21 pay.

22 ~~((13))~~ (14) All offenders sentenced to terms involving community
23 supervision, community service, or community placement under the
24 supervision of the department of corrections shall not own, use, or
25 possess firearms or ammunition. Offenders who own, use, or are found
26 to be in actual or constructive possession of firearms or ammunition
27 shall be subject to the appropriate violation process and sanctions.
28 "Constructive possession" as used in this subsection means the power
29 and intent to control the firearm or ammunition. "Firearm" as used in
30 this subsection means a weapon or device from which a projectile may be
31 fired by an explosive such as gunpowder.

32 ~~((14))~~ (15) The sentencing court shall give the offender credit
33 for all confinement time served before the sentencing if that
34 confinement was solely in regard to the offense for which the offender
35 is being sentenced.

36 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)
37 and (2) governing whether sentences are to be served consecutively or
38 concurrently is an exceptional sentence subject to the limitations in

1 subsections (2) and (3) of this section, and may be appealed by the
2 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

3 ~~((16))~~ (17) The court shall order restitution whenever the
4 offender is convicted of a felony that results in injury to any person
5 or damage to or loss of property, whether the offender is sentenced to
6 confinement or placed under community supervision, unless extraordinary
7 circumstances exist that make restitution inappropriate in the court's
8 judgment. The court shall set forth the extraordinary circumstances in
9 the record if it does not order restitution.

10 ~~((17))~~ (18) As a part of any sentence, the court may impose and
11 enforce an order that relates directly to the circumstances of the
12 crime for which the offender has been convicted, prohibiting the
13 offender from having any contact with other specified individuals or a
14 specific class of individuals for a period not to exceed the maximum
15 allowable sentence for the crime, regardless of the expiration of the
16 offender's term of community supervision or community placement.

17 ~~((18))~~ (19) In any sentence of partial confinement, the court may
18 require the defendant to serve the partial confinement in work release,
19 in a program of home detention, on work crew, or in a combined program
20 of work crew and home detention.

21 ~~((19))~~ (20) All court-ordered legal financial obligations
22 collected by the department and remitted to the county clerk shall be
23 credited and paid where restitution is ordered. Restitution shall be
24 paid prior to any other payments of monetary obligations.

25 **Sec. 471.** RCW 9.94A.030 and 1994 c 1 s 3 (Initiative Measure No.
26 593), 1993 c 338 s 2, 1993 c 251 s 4, and 1993 c 164 s 1 are each
27 reenacted and amended to read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

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

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

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

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

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

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

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

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
32 acceptance of a plea of guilty.

33 (10) "Court-ordered legal financial obligation" means a sum of
34 money that is ordered by a superior court of the state of Washington
35 for legal financial obligations which may include restitution to the
36 victim, statutorily imposed crime victims' compensation fees as
37 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
38 drug funds, court-appointed attorneys' fees, and costs of defense,
39 fines, and any other financial obligation that is assessed to the

1 offender as a result of a felony conviction. Upon conviction for
2 vehicular assault while under the influence of intoxicating liquor or
3 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
4 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
5 legal financial obligations may also include payment to a public agency
6 of the expense of an emergency response to the incident resulting in
7 the conviction, subject to the provisions in RCW 38.52.430.

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

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

20 (b) "Criminal history" shall always include juvenile convictions
21 for sex offenses and shall also include a defendant's other prior
22 convictions in juvenile court if: (i) The conviction was for an
23 offense which is a felony or a serious traffic offense and is criminal
24 history as defined in RCW 13.40.020(~~((+6)(a))~~); (ii) the defendant was
25 fifteen years of age or older at the time the offense was committed;
26 and (iii) with respect to prior juvenile class B and C felonies or
27 serious traffic offenses, the defendant was less than twenty-three
28 years of age at the time the offense for which he or she is being
29 sentenced was committed.

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

31 (14) "Determinate sentence" means a sentence that states with
32 exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community service work, or dollars or
35 terms of a legal financial obligation. The fact that an offender
36 through "earned early release" can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 determinate sentence.

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

13 (16) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of
15 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
16 controlled substance (RCW 69.50.403);

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

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

23 (17) "Escape" means:

24 (a) Escape in the first degree (RCW 9A.76.110), escape in the
25 second degree (RCW 9A.76.120), willful failure to return from furlough
26 (RCW 72.66.060), willful failure to return from work release (RCW
27 72.65.070), or willful failure to be available for supervision by the
28 department while in community custody (RCW 72.09.310); or

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

32 (18) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

20 (a) Any felony defined under any law as a class A felony or
21 criminal solicitation of or criminal conspiracy to commit a class A
22 felony;

23 (b) Assault in the second degree;

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

25 (d) Child molestation in the second degree;

26 (e) Controlled substance homicide;

27 (f) Extortion in the first degree;

28 (g) Incest when committed against a child under age fourteen;

29 (h) Indecent liberties;

30 (i) Kidnapping in the second degree;

31 (j) Leading organized crime;

32 (k) Manslaughter in the first degree;

33 (l) Manslaughter in the second degree;

34 (m) Promoting prostitution in the first degree;

35 (n) Rape in the third degree;

36 (o) Robbery in the second degree;

37 (p) Sexual exploitation;

38 (q) Vehicular assault;

1 (r) Vehicular homicide, when proximately caused by the driving of
2 any vehicle by any person while under the influence of intoxicating
3 liquor or any drug as defined by RCW 46.61.502, or by the operation of
4 any vehicle in a reckless manner;

5 (s) Any other class B felony offense with a finding of sexual
6 motivation, as "sexual motivation" is defined under this section;

7 (t) Any other felony with a deadly weapon verdict under RCW
8 9.94A.125;

9 (u) Any felony offense in effect at any time prior to December 2,
10 1993, that is comparable to a most serious offense under this
11 subsection, or any federal or out-of-state conviction for an offense
12 that under the laws of this state would be a felony classified as a
13 most serious offense under this subsection.

14 (22) "Nonviolent offense" means an offense which is not a violent
15 offense.

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

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

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

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

33 (b) Has, before the commission of the offense under (a) of this
34 subsection, been convicted as an offender on at least two separate
35 occasions, whether in this state or elsewhere, of felonies that under
36 the laws of this state would be considered most serious offenses and
37 would be included in the offender score under RCW 9.94A.360; provided
38 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted.

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

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

9 (28) "Serious traffic offense" means:

10 (a) Driving while under the influence of intoxicating liquor or any
11 drug (RCW 46.61.502), actual physical control while under the influence
12 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
13 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
14 or

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

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

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

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

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

30 (31) "Sex offense" means:

31 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
32 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
33 attempt, criminal solicitation, or criminal conspiracy to commit such
34 crimes;

35 (b) A felony with a finding of sexual motivation under RCW
36 9.94A.127; or

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

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

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

8 (34) "Transition training" means written and verbal instructions
9 and assistance provided by the department to the offender during the
10 two weeks prior to the offender's successful completion of the work
11 ethic camp program. The transition training shall include instructions
12 in the offender's requirements and obligations during the offender's
13 period of community custody.

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

17 (36) "Violent offense" means:

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

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

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

36 (37) "Work crew" means a program of partial confinement consisting
37 of civic improvement tasks for the benefit of the community of not less
38 than thirty-five hours per week that complies with RCW 9.94A.135. The
39 civic improvement tasks shall have minimal negative impact on existing

1 private industries or the labor force in the county where the service
2 or labor is performed. The civic improvement tasks shall not affect
3 employment opportunities for people with developmental disabilities
4 contracted through sheltered workshops as defined in RCW 82.04.385.
5 Only those offenders sentenced to a facility operated or utilized under
6 contract by a county or the state are eligible to participate on a work
7 crew. Offenders sentenced for a sex offense as defined in subsection
8 (31) of this section are not eligible for the work crew program.

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

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

20 (40) "Home detention" means a program of partial confinement
21 available to offenders wherein the offender is confined in a private
22 residence subject to electronic surveillance. Home detention may not
23 be imposed for offenders convicted of a violent offense, any sex
24 offense, any drug offense, reckless burning in the first or second
25 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
26 degree as defined in RCW 9A.36.031, assault of a child in the third
27 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
28 harassment as defined in RCW 9A.46.020. Home detention may be imposed
29 for offenders convicted of possession of a controlled substance (RCW
30 69.50.401(d)) or forged prescription for a controlled substance (RCW
31 69.50.403) if the offender fulfills the participation conditions set
32 forth in this subsection and is monitored for drug use by treatment
33 alternatives to street crime (TASC) or a comparable court or agency-
34 referred program.

35 (a) Home detention may be imposed for offenders convicted of
36 burglary in the second degree as defined in RCW 9A.52.030 or
37 residential burglary conditioned upon the offender: (i) Successfully
38 completing twenty-one days in a work release program, (ii) having no
39 convictions for burglary in the second degree or residential burglary

1 during the preceding two years and not more than two prior convictions
2 for burglary or residential burglary, (iii) having no convictions for
3 a violent felony offense during the preceding two years and not more
4 than two prior convictions for a violent felony offense, (iv) having no
5 prior charges of escape, and (v) fulfilling the other conditions of the
6 home detention program.

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

23 **Sec. 472.** RCW 9.94A.123 and 1987 c 402 s 2 are each amended to
24 read as follows:

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

31 At the same time, concerns regarding the lack of adequate security
32 at the existing programs must be satisfactorily addressed. In an
33 effort to promote public safety, it is the intent of the legislature to
34 transfer the responsibility for felony sexual offenders from the
35 department of social and health services to the department of
36 corrections.

37 Therefore, no person committing a felony sexual offense on or after
38 July 1, 1987, may be committed under RCW 9.94A.120(~~(+7)~~)(8)(b) to the

1 department of social and health services at eastern state hospital or
2 western state hospital. Any person committed to the department of
3 social and health services under RCW 9.94A.120(~~(+7)~~)(8)(b) for an
4 offense committed before July 1, 1987, and still in the custody of the
5 department of social and health services on June 30, 1993, shall be
6 transferred to the custody of the department of corrections. Any
7 person eligible for evaluation or treatment under RCW
8 9.94A.120(~~(+7)~~)(8)(b) shall be committed to the department of
9 corrections.

10 **Sec. 473.** RCW 9.94A.130 and 1984 c 209 s 7 are each amended to
11 read as follows:

12 The power to defer or suspend the imposition or execution of
13 sentence is hereby abolished in respect to sentences prescribed for
14 felonies committed after June 30, 1984, except for offenders sentenced
15 under RCW 9.94A.120(~~(+7)~~)(8)(a), the special sexual offender
16 sentencing alternative, whose sentence may be suspended, and except for
17 sentences imposed under section 469 of this act and RCW 9.94A.120.

18 NEW SECTION. **Sec. 474.** A new section is added to chapter 9.94A
19 RCW to read as follows:

20 Suspension of original sentence of a person sentenced under the
21 youthful offender sentence alternative may be revoked if the offender
22 violates or fails to carry out any of the conditions of the youthful
23 offender program. Upon the revocation of the suspension, the court
24 shall impose the sentence previously suspended or any unexecuted
25 portion of the sentence. The court may not impose a sentence greater
26 than the original sentence, with credit given for time served and money
27 paid on fines and costs.

28 Before entering an order acknowledging successful completion of the
29 youthful offender program, the court may revoke or modify its order
30 suspending the imposition or execution of the original sentence. If
31 the ends of justice will be served and if warranted by the reformation
32 of the offender, the court may terminate the period of probation and
33 discharge the person so held.

34 **Sec. 475.** RCW 9.94A.210 and 1989 c 214 s 1 are each amended to
35 read as follows:

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

5 (2) A sentence outside the sentence range for the offense is
6 subject to appeal by the defendant or the state. The appeal shall be
7 to the court of appeals in accordance with rules adopted by the supreme
8 court.

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

12 (4) To reverse a sentence which is outside the sentence range, the
13 reviewing court must find: (a) Either that the reasons supplied by the
14 sentencing judge are not supported by the record which was before the
15 judge or that those reasons do not justify a sentence outside the
16 standard range for that offense; or (b) that the sentence imposed was
17 clearly excessive or clearly too lenient.

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

22 (6) The court of appeals shall issue a written opinion in support
23 of its decision whenever the judgment of the sentencing court is
24 reversed and may issue written opinions in any other case where the
25 court believes that a written opinion would provide guidance to
26 sentencing judges and others in implementing this chapter and in
27 developing a common law of sentencing within the state.

28 (7) The department may petition for a review of a sentence
29 committing an offender to the custody or jurisdiction of the
30 department. The review shall be limited to errors of law. Such
31 petition shall be filed with the court of appeals no later than ninety
32 days after the department has actual knowledge of terms of the
33 sentence. The petition shall include a certification by the department
34 that all reasonable efforts to resolve the dispute at the superior
35 court level have been exhausted.

36 **Sec. 476.** RCW 9.94A.440 and 1992 c 145 s 11 and 1992 c 75 s 5 are
37 each reenacted and amended to read as follows:

38 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

10 (a) Contrary to Legislative Intent - It may be proper to decline to
11 charge where the application of criminal sanctions would be clearly
12 contrary to the intent of the legislature in enacting the particular
13 statute.

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

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

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

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

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

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

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

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

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

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

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

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

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

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

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

11 (f) High Disproportionate Cost of Prosecution - It may be proper to
12 decline to charge where the cost of locating or transporting, or the
13 burden on, prosecution witnesses is highly disproportionate to the
14 importance of prosecuting the offense in question. This reason should
15 be limited to minor cases and should not be relied upon in serious
16 cases.

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

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

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

30 (i) Assault cases where the victim has suffered little or no
31 injury;

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

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

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

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

39 Notification

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

3 (2) Decision to prosecute.

4 STANDARD:

5 Crimes against persons will be filed if sufficient admissible
6 evidence exists, which, when considered with the most plausible,
7 reasonably foreseeable defense that could be raised under the evidence,
8 would justify conviction by a reasonable and objective fact-finder.
9 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
10 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
11 9A.64.020 the prosecutor should avoid prefiling agreements or
12 diversions intended to place the accused in a program of treatment or
13 counseling, so that treatment, if determined to be beneficial, can be
14 provided pursuant to RCW 9.94A.120(~~(7)~~)(8).

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

20 See table below for the crimes within these categories.

21 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

22 CRIMES AGAINST PERSONS

23 Aggravated Murder

24 1st Degree Murder

25 2nd Degree Murder

26 1st Degree Kidnaping

27 1st Degree Assault

28 1st Degree Assault of a Child

29 1st Degree Rape

30 1st Degree Robbery

31 1st Degree Rape of a Child

32 1st Degree Arson

33 2nd Degree Kidnaping

34 2nd Degree Assault

35 2nd Degree Assault of a Child

36 2nd Degree Rape

37 2nd Degree Robbery

38 1st Degree Burglary

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

26 CRIMES AGAINST PROPERTY/OTHER CRIMES
27 2nd Degree Arson
28 1st Degree Escape
29 2nd Degree Burglary
30 1st Degree Theft
31 1st Degree Perjury
32 1st Degree Introducing Contraband
33 1st Degree Possession of Stolen Property
34 Bribery
35 Bribing a Witness
36 Bribe received by a Witness
37 Bomb Threat (if against property)
38 1st Degree Malicious Mischief
39 2nd Degree Theft

1 2nd Degree Escape
2 2nd Degree Introducing Contraband
3 2nd Degree Possession of Stolen Property
4 2nd Degree Malicious Mischief
5 1st Degree Reckless Burning
6 Taking a Motor Vehicle without Authorization
7 Forgery
8 2nd Degree Perjury
9 2nd Degree Promoting Prostitution
10 Tampering with a Witness
11 Trading in Public Office
12 Trading in Special Influence
13 Receiving/Granting Unlawful Compensation
14 Bigamy
15 Eluding a Pursuing Police Vehicle
16 Willful Failure to Return from Furlough
17 Escape from Community Custody
18 Riot (if against property)
19 Thefts of Livestock

20 ALL OTHER UNCLASSIFIED FELONIES

21 Selection of Charges/Degree of Charge

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

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

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

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

29 Overcharging includes:

30 (a) Charging a higher degree;

31 (b) Charging additional counts.

32 This standard is intended to direct prosecutors to charge those
33 crimes which demonstrate the nature and seriousness of a defendant's
34 criminal conduct, but to decline to charge crimes which are not
35 necessary to such an indication. Crimes which do not merge as a matter
36 of law, but which arise from the same course of conduct, do not all
37 have to be charged.

1 GUIDELINES/COMMENTARY:

2 Police Investigation

3 A prosecuting attorney is dependent upon law enforcement agencies
4 to conduct the necessary factual investigation which must precede the
5 decision to prosecute. The prosecuting attorney shall ensure that a
6 thorough factual investigation has been conducted before a decision to
7 prosecute is made. In ordinary circumstances the investigation should
8 include the following:

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

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

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

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

17 Exceptions

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

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

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

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

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

30 Investigation Techniques

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

33 (1) Polygraph testing;

34 (2) Hypnosis;

35 (3) Electronic surveillance;

36 (4) Use of informants.

37 Pre-Filing Discussions with Defendant

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

4 **Sec. 477.** RCW 18.155.010 and 1990 c 3 s 801 are each amended to
5 read as follows:

6 The legislature finds that sex offender therapists who examine and
7 treat sex offenders pursuant to the special sexual offender sentencing
8 alternative under RCW 9.94A.120(~~((+7))~~)(8)(a) and who may treat juvenile
9 sex offenders pursuant to RCW 13.40.160, play a vital role in
10 protecting the public from sex offenders who remain in the community
11 following conviction. The legislature finds that the qualifications,
12 practices, techniques, and effectiveness of sex offender treatment
13 providers vary widely and that the court's ability to effectively
14 determine the appropriateness of granting the sentencing alternative
15 and monitoring the offender to ensure continued protection of the
16 community is undermined by a lack of regulated practices. The
17 legislature recognizes the right of sex offender therapists to
18 practice, consistent with the paramount requirements of public safety.
19 Public safety is best served by regulating sex offender therapists
20 whose clients are being evaluated and being treated pursuant to RCW
21 9.94A.120(~~((+7))~~)(8)(a) and 13.40.160. This chapter shall be construed
22 to require only those sex offender therapists who examine and treat sex
23 offenders pursuant to RCW 9.94A.120(~~((+7))~~)(8)(a) and 13.40.160 to
24 obtain a sexual offender treatment certification as provided in this
25 chapter.

26 **Sec. 478.** RCW 18.155.020 and 1990 c 3 s 802 are each amended to
27 read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter:

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

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

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

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

4 **Sec. 479.** RCW 18.155.030 and 1990 c 3 s 803 are each amended to
5 read as follows:

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

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

11 (a) Evaluations conducted for the purposes of and pursuant to RCW
12 9.94A.120(~~((7))~~)(8)(a) and 13.40.160;

13 (b) Treatment of convicted sex offenders who are sentenced and
14 ordered into treatment pursuant to RCW 9.94A.120(~~((7))~~)(8)(a) and
15 adjudicated juvenile sex offenders who are ordered into treatment
16 pursuant to RCW 13.40.160.

17 **Sec. 480.** RCW 46.61.524 and 1991 c 348 s 2 are each amended to
18 read as follows:

19 (1) A person convicted under RCW 46.61.520(1)(a) or 46.61.522(1)(b)
20 shall, as a condition of community supervision imposed under RCW
21 9.94A.383 or community placement imposed under RCW 9.94A.120(~~((8))~~)(9),
22 complete a diagnostic evaluation by an alcohol or drug dependency
23 agency approved by the department of social and health services or a
24 qualified probation department, as defined under RCW 46.61.516 that has
25 been approved by the department of social and health services. This
26 report shall be forwarded to the department of licensing. If the
27 person is found to have an alcohol or drug problem that requires
28 treatment, the person shall complete treatment in a program approved by
29 the department of social and health services under chapter 70.96A RCW.
30 If the person is found not to have an alcohol or drug problem that
31 requires treatment, he or she shall complete a course in an information
32 school approved by the department of social and health services under
33 chapter 70.96A RCW. The convicted person shall pay all costs for any
34 evaluation, education, or treatment required by this section, unless
35 the person is eligible for an existing program offered or approved by
36 the department of social and health services. Nothing in (~~this act~~)
37 chapter 348, Laws of 1991 requires the addition of new treatment or

1 assessment facilities nor affects the department of social and health
2 services use of existing programs and facilities authorized by law.

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

13 Renumber the remaining sections consecutively and correct internal
14 references accordingly.

15 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94)
16 By Senators Nelson, Roach, Amondson, L. Smith, Anderson, McDonald
17 and Schow

18

19 On page 159, line 28 of the title amendment, after "10.99.030,"
20 insert "9.94A.123, 9.94A.130, 9.94A.210, 18.155.010, 18.155.020,
21 18.155.030, 46.61.524,"

22 On page 159, line 33 of the title amendment, after "26.50.060,"
23 insert "9.94A.120, 9.94A.030, 9.94A.440,"

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