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SENATE BILL 5267

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State of Washington                      53rd Legislature                      1993 Regular Session

By Senators Niemi, A. Smith, Pelz and McAuliffe

Read first time 01/20/93. Referred to Committee on Law & Justice.

1            AN ACT Relating to sentencing options for offenders convicted of  
2 nonviolent crimes with a presumptive sentence less than twelve months;  
3 reenacting and amending RCW 9.94A.030 and 9.94A.120; adding new  
4 sections to chapter 9.94A RCW; adding a new section to chapter 2.56  
5 RCW; creating a new section; repealing RCW 9.94A.380; prescribing  
6 penalties; and providing an effective date.

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

8            NEW SECTION.    **Sec. 1.** (1) It is the intent of the legislature that  
9 the sentencing component of the criminal justice system meet the goals  
10 identified in chapter 9.94A RCW. The legislature intends, by the  
11 repeal of RCW 9.94A.380 and the enactment of this act, to clarify that  
12 the judiciary shall consider all options available for sentencing  
13 nonviolent offenders whose presumptive sentence is less than one year.

14            (2) It is the finding of the legislature that two goals of this  
15 chapter stated in RCW 9.94A.010 are not yet met: (a) A limited group  
16 of nonviolent offenders have not been offered full opportunities to  
17 achieve self-improvement; and (b) the frugal use of state resources has  
18 not been realized. The legislature finds that the sentencing of  
19 offenders whose presumptive sentence is less than one year has not

1 consistently taken into account the ability of the judiciary to  
2 exercise the discretion granted it by chapter 9.94A RCW. The  
3 legislature also finds that chapter 9.94A RCW grants the judiciary the  
4 authority to create a sentence for an offender whose presumptive  
5 sentence is less than one year which is reflective of all purposes of  
6 this act and the legislature intends such sentences to be utilized.  
7 Such sentences are not exceptional sentences but reflect the full range  
8 of options available under this chapter. It is the finding of the  
9 legislature that sentencing options imposed pursuant to this act can be  
10 utilized in a manner that is consistent with the purposes of this act  
11 and can improve public safety, deter future criminal conduct, and  
12 enhance the capacity of offenders to acquire appropriate social and  
13 work skills.

14 **Sec. 2.** RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are  
15 each reenacted and amended to read as follows:

16 Unless the context clearly requires otherwise, the definitions in  
17 this section apply throughout this chapter.

18 (1) "Approved adult education" means a formal program of adult  
19 education that has state certification.

20 (2) "Approved vocational-technical training" means coursework  
21 and/or on-the-job training in a vocational-technical training program  
22 certified by the state.

23 (3) "Collect," or any derivative thereof, "collect and remit," or  
24 "collect and deliver," when used with reference to the department of  
25 corrections, means that the department is responsible for monitoring  
26 and enforcing the offender's sentence with regard to the legal  
27 financial obligation, receiving payment thereof from the offender, and,  
28 consistent with current law, delivering daily the entire payment to the  
29 superior court clerk without depositing it in a departmental account.

30 ~~((+2))~~ (4) "Commission" means the sentencing guidelines  
31 commission.

32 ~~((+3))~~ (5) "Community corrections officer" means an employee of  
33 the department who is responsible for carrying out specific duties in  
34 supervision of sentenced offenders and monitoring of sentence  
35 conditions.

36 ~~((+4))~~ (6) "Community custody" means that portion of an inmate's  
37 sentence of confinement in lieu of earned early release time served in

1 the community subject to controls placed on the inmate's movement and  
2 activities by the department of corrections.

3 ~~((+5+))~~ (7) "Community placement" means that period during which  
4 the offender is subject to the conditions of community custody and/or  
5 postrelease supervision, which begins either upon completion of the  
6 term of confinement (postrelease supervision) or at such time as the  
7 offender is transferred to community custody in lieu of earned early  
8 release. Community placement may consist of entirely community  
9 custody, entirely postrelease supervision, or a combination of the two.

10 ~~((+6+))~~ (8) "Community rehabilitation center" means a nonsecure  
11 residential facility for offenders. "Nonsecure" means that the  
12 facility lacks physical restraints designed to prevent offenders from  
13 departing without permission, such as bars on the windows.

14 (9) "Community service" means compulsory service, without compensa-  
15 tion, performed for the benefit of the community by the offender.

16 ~~((+7+))~~ (10) "Community supervision" means a period of time during  
17 which a convicted offender is subject to crime-related prohibitions and  
18 other sentence conditions imposed by a court pursuant to this chapter  
19 or RCW 46.61.524. For first-time offenders, the supervision may  
20 include crime-related prohibitions and other conditions imposed  
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact  
22 for out-of-state supervision of parolees and probationers, RCW  
23 9.95.270, community supervision is the functional equivalent of  
24 probation and should be considered the same as probation by other  
25 states.

26 ~~((+8+))~~ (11) "Confinement" means total or partial confinement as  
27 defined in this section.

28 ~~((+9+))~~ (12) "Conviction" means an adjudication of guilt pursuant  
29 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
30 guilty, and acceptance of a plea of guilty.

31 ~~((+10+))~~ (13) "Court-ordered legal financial obligation" means a  
32 sum of money that is ordered by a superior court of the state of  
33 Washington for legal financial obligations which may include  
34 restitution to the victim, statutorily imposed crime victims'  
35 compensation fees as assessed pursuant to RCW 7.68.035, court costs,  
36 county or interlocal drug funds, court-appointed attorneys' fees, and  
37 costs of defense, fines, and any other financial obligation that is  
38 assessed to the offender as a result of a felony conviction.

1       (~~(11)~~) (14) "Crime-related prohibition" means an order of a court  
2 prohibiting conduct that directly relates to the circumstances of the  
3 crime for which the offender has been convicted, and shall not be  
4 construed to mean orders directing an offender affirmatively to  
5 participate in rehabilitative programs or to otherwise perform  
6 affirmative conduct.

7       (~~(12)~~) (15)(a) "Criminal history" means the list of a defendant's  
8 prior convictions, whether in this state, in federal court, or  
9 elsewhere. The history shall include, where known, for each conviction  
10 (i) whether the defendant has been placed on probation and the length  
11 and terms thereof; and (ii) whether the defendant has been incarcerated  
12 and the length of incarceration.

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

23       (~~(13)~~) (16) "Day fine" means a fine imposed by the sentencing  
24 judge that equals the difference between the offender's net daily  
25 income and the reasonable obligations that the offender has for the  
26 support of the offender and any dependents.

27       (17) "Day reporting" means a program of enhanced supervision  
28 designed to monitor the defendant's daily activities and compliance  
29 with sentence conditions, and in which the defendant is required to  
30 report daily to a specific location designated by the department or the  
31 sentencing judge.

32       (18) "Department" means the department of corrections.

33       (~~(14)~~) (19) "Determinate sentence" means a sentence that states  
34 with exactitude the number of actual years, months, or days of total  
35 confinement, of partial confinement, of community supervision, the  
36 number of actual hours or days of community service work, or dollars or  
37 terms of a legal financial obligation. The fact that an offender  
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a  
2 determinate sentence.

3 ~~((15))~~ (20) "Disposable earnings" means that part of the earnings  
4 of an individual remaining after the deduction from those earnings of  
5 any amount required by law to be withheld. For the purposes of this  
6 definition, "earnings" means compensation paid or payable for personal  
7 services, whether denominated as wages, salary, commission, bonuses, or  
8 otherwise, and, notwithstanding any other provision of law making the  
9 payments exempt from garnishment, attachment, or other process to  
10 satisfy a court-ordered legal financial obligation, specifically  
11 includes periodic payments pursuant to pension or retirement programs,  
12 or insurance policies of any type, but does not include payments made  
13 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
14 or Title 74 RCW.

15 ~~((16))~~ (21) "Drug offense" means:

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

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

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

25 ~~((17))~~ (22) "Drug or alcohol monitoring" means the obligation to  
26 remain free of any nonprescribed controlled substance of any alcoholic  
27 beverage and to submit to periodic testing to monitor that status.

28 (23) "Escape" means:

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

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

37 ~~((18))~~ (24) "Felony traffic offense" means:

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

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

7 (~~((19))~~) (25) "Fines" means the requirement that the offender pay  
8 a specific sum of money over a specific period of time to the court.

9 (~~((20))~~) (26)(a) "First-time offender" means any person who is  
10 convicted of a felony (i) not classified as a violent offense or a sex  
11 offense under this chapter, or (ii) that is not the manufacture,  
12 delivery, or possession with intent to manufacture or deliver a  
13 controlled substance classified in schedule I or II that is a narcotic  
14 drug or the selling for profit (~~{of}~~) of any controlled substance or  
15 counterfeit substance classified in schedule I, RCW 69.50.204, except  
16 leaves and flowering tops of marijuana, and except as provided in (b)  
17 of this subsection, who previously has never been convicted of a felony  
18 in this state, federal court, or another state, and who has never  
19 participated in a program of deferred prosecution for a felony offense.

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

23 (~~((21))~~) (27) "Home detention" means a program of partial  
24 confinement available to offenders wherein the offender is confined in  
25 a private residence subject to electronic surveillance.

26 (28) "Inpatient treatment" means an alcohol or drug treatment  
27 program certified by the state which requires the offender to be in  
28 residence at the treatment facility.

29 (29) "Intensive supervision" means a supervision program  
30 implemented by the department which involves closer monitoring of the  
31 defendant's compliance with sentence conditions and more frequent  
32 contacts with the community corrections officer than would occur under  
33 standard community supervision.

34 (30) "Nonviolent offense" means an offense which is not a violent  
35 offense.

36 (~~((22))~~) (31) "Offender" means a person who has committed a felony  
37 established by state law and is eighteen years of age or older or is  
38 less than eighteen years of age but whose case has been transferred by  
39 the appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and  
2 "defendant" are used interchangeably.

3 ~~((23))~~ (32) "Outpatient treatment" means a treatment program  
4 certified by the state or recommended by the department that does not  
5 require that the offender be in residence at the treatment facility.

6 (33) "Partial confinement" means confinement for no more than one  
7 year in a facility or institution operated or utilized under contract  
8 by the state or any other unit of government, or, if home detention or  
9 work crew has been ordered by the court, in an approved residence, for  
10 a substantial portion of each day with the balance of the day spent in  
11 the community. Partial confinement includes work release, home  
12 detention, work crew, and a combination of work crew and home detention  
13 as defined in this section.

14 ~~((24))~~ (34) "Postrelease supervision" is that portion of an  
15 offender's community placement that is not community custody.

16 ~~((25))~~ (35) "Restitution" means the requirement that the offender  
17 pay a specific sum of money over a specific period of time to the court  
18 as payment of damages. The sum may include both public and private  
19 costs. The imposition of a restitution order does not preclude civil  
20 redress.

21 ~~((26))~~ (36) "Serious traffic offense" means:

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

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

30 ~~((27))~~ (37) "Serious violent offense" is a subcategory of violent  
31 offense and means:

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

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

1       (~~(28)~~) (38) "Sentence range" means the sentencing court's  
2 discretionary range in imposing a nonappealable sentence.

3       (~~(29)~~) (39) "Sex offense" means:

4       (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
5 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal  
6 attempt, criminal solicitation, or criminal conspiracy to commit such  
7 crimes;

8       (b) A felony with a finding of sexual motivation under RCW  
9 9.94A.127; or

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

13       (~~(30)~~) (40) "Sexual motivation" means that one of the purposes  
14 for which the defendant committed the crime was for the purpose of his  
15 or her sexual gratification.

16       (~~(31)~~) (41) "Total confinement" means confinement inside the  
17 physical boundaries of a facility or institution operated or utilized  
18 under contract by the state or any other unit of government for twenty-  
19 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20       (~~(32)~~) (42) "Victim" means any person who has sustained  
21 emotional, psychological, physical, or financial injury to person or  
22 property as a direct result of the crime charged.

23       (~~(33)~~) (43) "Violent offense" means:

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

36       (b) Any conviction for a felony offense in effect at any time prior  
37 to July 1, 1976, that is comparable to a felony classified as a violent  
38 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))~~) (44) "Work crew" means a program of partial confinement  
5 consisting of civic improvement tasks for the benefit of the community  
6 of not less than thirty-five hours per week that complies with RCW  
7 9.94A.135. The civic improvement tasks shall be performed on public  
8 property or on private property owned or operated by nonprofit  
9 entities, except that, for emergency purposes only, work crews may  
10 perform snow removal on any private property. The civic improvement  
11 tasks shall have minimal negative impact on existing private industries  
12 or the labor force in the county where the service or labor is  
13 performed. The civic improvement tasks shall not affect employment  
14 opportunities for people with developmental disabilities contracted  
15 through sheltered workshops as defined in RCW 82.04.385. Only those  
16 offenders sentenced to a facility operated or utilized under contract  
17 by a county are eligible to participate on a work crew. Offenders  
18 sentenced for a sex offense as defined in subsection (~~((29))~~) (39) of  
19 this section are not eligible for the work crew program.

20 (~~((35))~~) (45) "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~~  
31 ~~degree as defined in RCW 9A.36.031, assault of a child in the third~~  
32 ~~degree, unlawful imprisonment as defined in RCW 9A.40.040, or~~  
33 ~~harassment as defined in RCW 9A.46.020. Home detention may be imposed~~  
34 ~~for offenders convicted of possession of a controlled substance (RCW~~  
35 ~~69.50.401(d)) or forged prescription for a controlled substance (RCW~~  
36 ~~69.50.403) if the offender fulfills the participation conditions set~~  
37 ~~forth in this subsection and is monitored for drug use by treatment~~  
38 ~~alternatives to street crime (TASC) or a comparable court or agency-~~  
39 ~~referred program.~~

1       ~~(a) Home detention may be imposed for offenders convicted of~~  
2 ~~burglary in the second degree as defined in RCW 9A.52.030 or~~  
3 ~~residential burglary conditioned upon the offender: (i) Successfully~~  
4 ~~completing twenty one days in a work release program, (ii) having no~~  
5 ~~convictions for burglary in the second degree or residential burglary~~  
6 ~~during the preceding two years and not more than two prior convictions~~  
7 ~~for burglary or residential burglary, (iii) having no convictions for~~  
8 ~~a violent felony offense during the preceding two years and not more~~  
9 ~~than two prior convictions for a violent felony offense, (iv) having no~~  
10 ~~prior charges of escape, and (v) fulfilling the other conditions of the~~  
11 ~~home detention program.~~

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

28       NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW  
29 to read as follows:

30       Home detention may not be imposed for offenders convicted of a  
31 violent offense, any sex offense, any drug offense, reckless burning in  
32 the first or second degree as defined in RCW 9A.48.040 or 9A.48.050,  
33 assault in the third degree as defined in RCW 9A.36.031, assault of a  
34 child in the third degree, unlawful imprisonment as defined in RCW  
35 9A.40.040, or harassment as defined in RCW 9A.46.020. Home detention  
36 may be imposed for offenders convicted of possession of a controlled  
37 substance (RCW 69.50.401(d)) or forged prescription for a controlled  
38 substance (RCW 69.50.403) if the offender fulfills the participation

1 conditions set forth in this subsection and is monitored for drug use  
2 by treatment alternatives to street crime (TASC) or a comparable court  
3 or agency-referred program.

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

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

31 **Sec. 4.** RCW 9.94A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992  
32 c 45 s 5 are each reenacted and amended to read as follows:

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

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

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

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

9 (4) An offender convicted of the crime of murder in the first  
10 degree shall be sentenced to a term of total confinement not less than  
11 twenty years. An offender convicted of the crime of assault in the  
12 first degree or assault of a child in the first degree where the  
13 offender used force or means likely to result in death or intended to  
14 kill the victim shall be sentenced to a term of total confinement not  
15 less than five years. An offender convicted of the crime of rape in  
16 the first degree shall be sentenced to a term of total confinement not  
17 less than five years, and shall not be eligible for furlough, work  
18 release or other authorized leave of absence from the correctional  
19 facility during such minimum five-year term except for the purpose of  
20 commitment to an inpatient treatment facility. The foregoing minimum  
21 terms of total confinement are mandatory and shall not be varied or  
22 modified as provided in subsection (2) of this section.

23 (5) In sentencing a first-time offender the court may waive the  
24 imposition of a sentence within the sentence range and impose a  
25 sentence which may include up to ninety days of confinement in a  
26 facility operated or utilized under contract by the county (~~and a~~  
27 ~~requirement that the offender refrain from committing new offenses~~).  
28 The sentence shall be imposed in accordance with the provisions of  
29 subsection (6) of this section. The sentence may also include up to  
30 ~~((two))~~ one year~~((s))~~ of community supervision, which, in addition to  
31 crime-related prohibitions, may include ~~((requirements))~~ conditions  
32 that the offender ~~((perform any one or more of the following))~~:

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

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

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

39 (d)) Refrain from committing new offenses;

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

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

6       ~~((f))~~ (e) Pay all court-ordered legal financial obligations as  
7 provided in RCW ~~((9.94A.030 and/or perform community service work))~~  
8 9.94A.145.

9       (6)(a) When sentencing an offender who is not a violent offender or  
10 a sex offender and whose presumptive sentence is less than twelve  
11 months, the court shall first determine if it is appropriate that such  
12 sentence be served primarily or exclusively under one or more of the  
13 sentencing options set forth in (c) of this subsection. If the court  
14 determines that a period of total confinement is appropriate in order  
15 to adequately punish the offender and to serve the best interest of  
16 society, the court shall order total confinement for the minimum time  
17 necessary to carry out the goals of this chapter.

18       (b) To impose a sentence consisting of sentencing options, the  
19 court shall determine the standard range for the offender and then  
20 convert that amount of total confinement as is necessary into the  
21 sentencing options the court finds appropriate for the offender.  
22 Sentencing options that are imposed under this section may be used in  
23 any combination and may also be combined with total confinement.  
24 Conversions of total confinement to sentencing options shall be clearly  
25 indicated on the judgment and sentence.

26       (c) Sentencing options available to a court include:

27       (i) Approved adult education;

28       (ii) Approved vocational-technical training;

29       (iii) Community rehabilitation center;

30       (iv) Community service;

31       (v) Day fines;

32       (vi) Day reporting;

33       (vii) Drug or alcohol monitoring;

34       (viii) Home detention;

35       (ix) Inpatient treatment;

36       (x) Intensive supervision;

37       (xi) Outpatient treatment;

38       (xii) Partial confinement;

39       (xiii) Work crews;

1        (xiv) Work release; and  
2        (xv) Any other nonincarcerative option that is consistent with the  
3 purposes of this chapter.

4        (d) An offender may also be placed on a term of community  
5 supervision not to exceed one year. At any time after the successful  
6 completion of sentencing options and other conditions imposed, the  
7 offender or the department may petition the court to terminate  
8 community supervision.

9        (7) If a sentence range has not been established for the  
10 defendant's crime, the court shall impose a determinate sentence which  
11 may include not more than one year of confinement, (~~community service~~  
12 work~~7~~), a term of community supervision not to exceed one year, and/or  
13 (~~other~~) legal financial obligations. The court shall consider  
14 conversion of any total confinement to sentencing options in accordance  
15 with subsection (6) of this section. At any time after the successful  
16 completion of sentencing options and other conditions imposed, the  
17 offender or the department may petition the court to terminate  
18 community supervision. The court may impose a sentence which provides  
19 more than one year of confinement if the court finds, considering the  
20 purpose of this chapter, that there are substantial and compelling  
21 reasons justifying an exceptional sentence.

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

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

35        The examiner shall assess and report regarding the defendant's  
36 amenability to treatment and relative risk to the community. A  
37 proposed treatment plan shall be provided and shall include, at a  
38 minimum:

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

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

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

6 (D) Anticipated length of treatment; and

7 (E) Recommended crime-related prohibitions.

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

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

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

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

1 crime-related prohibitions, and requirements that the offender perform  
2 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) Pay all court-ordered legal financial obligations as provided  
10 in RCW 9.94A.030, perform community service work, or any combination  
11 thereof; or

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

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

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

37 (v) The court may revoke the suspended sentence at any time during  
38 the period of community supervision and order execution of the sentence  
39 if: (A) The defendant violates the conditions of the suspended

1 sentence, or (B) the court finds that the defendant is failing to make  
2 satisfactory progress in treatment. All confinement time served during  
3 the period of community supervision shall be credited to the offender  
4 if the suspended sentence is revoked.

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

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

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  
31 treatment at these facilities. If the secretary of social and health  
32 services cannot begin the evaluation within thirty days of the court's  
33 order of commitment, the offender shall be transferred to the state for  
34 confinement pending an opportunity to be evaluated at the appropriate  
35 facility. The court shall review the reports and may order that the  
36 term of confinement imposed be served in the sexual offender treatment  
37 program at the location determined by the secretary of social and  
38 health services or the secretary's designee, only if the report  
39 indicates that the offender is amenable to the treatment program

1 provided at these facilities. The offender shall be transferred to the  
2 state pending placement in the treatment program. Any offender who has  
3 escaped from the treatment program shall be referred back to the  
4 sentencing court.

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

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

- 16 (i) Devote time to a specific employment or occupation;
- 17 (ii) Remain within prescribed geographical boundaries and notify  
18 the court or the community corrections officer prior to any change in  
19 the offender's address or employment;
- 20 (iii) Report as directed to the court and a community corrections  
21 officer;
- 22 (iv) Undergo available outpatient treatment.

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

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

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

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

1 confinement to community supervision and to place conditions on the  
2 offender including crime-related prohibitions and requirements that the  
3 offender perform 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) Undergo available outpatient treatment.

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

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

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

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

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

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

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

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

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

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

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

37 (vi) The residence location and living arrangements are subject to  
38 the prior approval of the department of corrections during the period  
39 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.

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

27 ~~((14))~~ (15) The sentencing court shall give the offender credit  
28 for all confinement time served before the sentencing if that  
29 confinement was solely in regard to the offense for which the offender  
30 is being sentenced.

31 ~~((15))~~ (16) A departure from the standards in RCW 9.94A.400 (1)  
32 and (2) governing whether sentences are to be served consecutively or  
33 concurrently is an exceptional sentence subject to the limitations in  
34 subsections (2) and (3) of this section, and may be appealed by the  
35 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

36 ~~((16))~~ (17) The court shall order restitution whenever the  
37 offender is convicted of a felony that results in injury to any person  
38 or damage to or loss of property, whether the offender is sentenced to  
39 confinement or placed under community supervision, unless extraordinary

1 circumstances exist that make restitution inappropriate in the court's  
2 judgment. The court shall set forth the extraordinary circumstances in  
3 the record if it does not order restitution.

4 (~~(17)~~) (18) As a part of any sentence, the court may impose and  
5 enforce an order that relates directly to the circumstances of the  
6 crime for which the offender has been convicted, prohibiting the  
7 offender from having any contact with other specified individuals or a  
8 specific class of individuals for a period not to exceed the maximum  
9 allowable sentence for the crime, regardless of the expiration of the  
10 offender's term of community supervision or community placement.

11 (~~(18)~~) (19) In any sentence of partial confinement, the court may  
12 require the defendant to serve the partial confinement in work release,  
13 in a program of home detention, on work crew, or in a combined program  
14 of work crew and home detention.

15 (~~(19)~~) (20) All court-ordered legal financial obligations  
16 collected by the department and remitted to the county clerk shall be  
17 credited and paid where restitution is ordered. Restitution shall be  
18 paid prior to any other payments of monetary obligations.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 9.94A RCW  
20 to read as follows:

21 The administrator for the courts and the commission shall develop  
22 a chart for courts to use in determining the amount of incarceration  
23 equivalent represented by each of the options set forth in RCW  
24 9.94A.120(6). The chart shall be advisory and not mandatory. The  
25 chart shall be completed not later than September 30, 1993.  
26 Notwithstanding the effective date of this act, the administrator and  
27 commission shall begin work immediately to develop the chart.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 2.56 RCW  
29 to read as follows:

30 The administrator for the courts shall provide as part of its  
31 education and training programs for judges a curriculum that emphasizes  
32 the availability, effectiveness, and role nonincarcerative sentencing  
33 options have in a sound correctional policy for the state. The  
34 curriculum shall include information from other states on the advances  
35 and innovations other courts have determined to be effective as  
36 punishment, as well as encouraging rehabilitation and discouraging  
37 repeat criminal offenses. The curriculum shall include awareness

1 training on implementing alternative sentencing to promote impartiality  
2 and equity and avoid racial, ethnic, or sexual discrimination.

3 NEW SECTION. **Sec. 7.** RCW 9.94A.380 and 1988 c 157 s 4, 1988 c 155  
4 s 3, 1984 c 209 s 21, & 1983 c 115 s 9 are each repealed.

5 NEW SECTION. **Sec. 8.** (1) This act shall take effect January 1,  
6 1994.

7 (2) This act shall apply only to crimes committed on or after  
8 January 1, 1994.

--- END ---