

FTE staff years, the exact amount to be determined by the secretary of social and health services and the secretary of corrections subject to the approval of the director of the office of financial management.

The appropriation contained in this section is to provide for implementation of this act. The appropriation contained in this section should not be construed to approve the staffing patterns and levels specified in the fiscal note. It should be understood that the appropriation does not authorize any increases in top management salaries or positions as requested in the fiscal note.

*Sec. 123. was partially vetoed, see message at end of chapter.

NEW SECTION. Sec. 124. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981.

Passed the House April 23, 1981.

Passed the Senate April 26, 1981.

Approved by the Governor May 14, 1981, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 14, 1981.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith without my approval as to lines 22 through 28, Section 123, Second Substitute House Bill No. 235 entitled:

"AN ACT Relating to corrections."

The above-referenced paragraph of Section 123 frustrates the directive of the bill — to create a separate, well managed Department of Corrections. Inherent in the legislation is the assumption that several improvements in management may be required. I have, therefore, vetoed lines 22 through 28 in Section 123.

With the exception of lines 22 through 28 of Section 123, which I have vetoed, the remainder of Second Substitute House Bill No. 235 is approved."

CHAPTER 137

[Second Substitute House Bill No. 440]

SENTENCING REFORM ACT OF 1981

AN ACT Relating to sentencing; amending section 9A.20.020, chapter 260, Laws of 1975 1st ex. sess. as amended by section 2, chapter 38, Laws of 1975-'76 2nd ex. sess. and RCW 9A.20.020; amending section 4, chapter 14, Laws of 1975 as last amended by section 1, chapter 244, Laws of 1979 and RCW 9A.44.040; adding a new chapter to Title 9 RCW; adding a new section to chapter 9.92 RCW; adding new sections to chapter 9.95 RCW; adding a new section to chapter 9.95A RCW; adding a new section to chapter 72.04A RCW; adding a new section to chapter 72.65 RCW; creating a new section; repealing section 1, chapter 175, Laws of 1969 ex. sess. and RCW 9.41.025; repealing section 2, chapter 17, Laws of 1967, section 275, chapter 141, Laws of 1979, section 1, chapter 160, Laws of 1979 ex. sess. and RCW 72.65.020; repealing section 3, chapter 17, Laws of 1967, section 275, chapter 141, Laws of 1979 and RCW 72.65.030; repealing section 4, chapter 17, Laws of 1967, section 277, chapter 141, Laws of 1979 and RCW 72.65.040; repealing section 1, chapter 47, Laws of 1947, section 1, chapter 114, Laws of 1935 and RCW 9.95.001; repealing section 9, chapter 340, Laws of 1955, section 1, chapter 32,

Laws of 1952, section 9, chapter 98, Laws of 1969, section 8, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.003; repealing section 10, chapter 340, Laws of 1955, section 2, chapter 32, Laws of 1959 and RCW 9.95.005; repealing section 3, chapter 32, Laws of 1959, section 1, chapter 63, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.007; prescribing penalties; making an appropriation; and providing effective dates.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to add a new chapter to Title 9 RCW designed to:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources.

NEW SECTION. Sec. 2. This chapter may be known and cited as the sentencing reform act of 1981.

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

- (1) "Commission" means the sentencing guidelines commission.
- (2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed pursuant to this chapter by a court. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to section 12(4) of this act.
- (3) "Confinement" means total or partial confinement as defined in this section.
- (4) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW.
- (5) "Crime-related prohibition" means an order of a court prohibiting conduct which directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct.
- (6)(a) "Criminal history" means the list of a defendant's prior convictions, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) "Criminal history" includes a defendant's convictions or pleas of guilty in juvenile court if: (i) The guilty plea or conviction was for an offense which is a felony and is criminal history as defined in RCW 13.40.020(6)(a); and (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) the defendant was twenty-three years of age or less at the time the offense for which he or she is being sentenced was committed.

(7) "Department" means the department of social and health services.

(8) "Determinate sentence" means a sentence which states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community service work, or dollars or terms of a fine or restitution. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

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

(10) "First-time offender" means any person convicted of a felony not classified as a violent offense under this chapter, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

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

(12) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community.

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

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

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

(16) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to

commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, which is comparable to a felony classified as a violent offense in subsection (16)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a violent offense under subsection (16)(a) or (b) of this section.

NEW SECTION. Sec. 4. (1) A sentencing guidelines commission is established as an agency of state government.

(2) The commission shall, following a public hearing or hearings:

(a) Devise a series of recommended standard sentence ranges for all felony offenses and a system for determining which range of punishment applies to each offender based on the extent and nature of the offender's criminal history, if any;

(b) Devise recommended prosecuting standards in respect to charging of offenses and plea agreements; and

(c) Devise recommended standards to govern whether sentences are to be served consecutively or concurrently.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community service, and a fine.

(4) In devising the standard sentence ranges of total and partial confinement under this section, the commission is subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.020.

(5) In carrying out its duties under subsection (2) of this section, the commission shall give consideration to the existing guidelines adopted by the association of superior court judges and the Washington association of prosecuting attorneys and the experience gained through use of those guidelines. The commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender.

(6) This commission shall conduct a study to determine the capacity of correctional facilities and programs which are or will be available. While the commission need not consider such capacity in arriving at its recommendations, the commission shall project whether the implementation of its recommendations would result in exceeding such capacity. If the commission finds that this result would probably occur, then the commission shall prepare an additional list of standard sentences which shall be consistent with such capacity.

(7) By September 1, 1982, the commission shall recommend its standard sentence ranges and standards to the legislature by providing the recommendations to the chief clerk of the house of representatives and secretary of the senate. If the commission has prepared an additional list of standard sentence ranges, as provided under subsection (6) of this section, then the commission shall include such list along with its recommendations.

(8) Every two years, the commission may recommend to the legislature revisions or modifications to the standard sentence ranges and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity.

(9) The commission shall study the existing criminal code and from time to time make recommendations to the legislature for modification.

(10) The commission shall exercise its duties under this section in conformity with chapter 34.04 RCW, as now existing or hereafter amended.

NEW SECTION. Sec. 5. The commission shall appoint a research staff of sufficient size and with sufficient resources to accomplish its duties. The commission may request from the office of financial management, the board of prison terms and paroles, administrator for the courts, and the department of social and health services such data, information, and data processing assistance as it may need to accomplish its duties, and such services shall be provided without cost to the commission. The commission shall adopt its own bylaws.

The salary for a full-time executive officer, if any, shall be fixed by the governor pursuant to RCW 43.03.040.

NEW SECTION. Sec. 6. (1) The commission consists of fifteen voting members, one of whom the governor shall designate as chairperson. With the exception of ex officio voting members, the voting members of the commission shall be appointed by the governor, subject to confirmation by the senate.

(2) The voting membership consists of the following:

- (a) The head of the state agency having general responsibility for adult correction programs, as an ex officio member;
- (b) The director of financial management, as an ex officio member;

(c) Until July 1, 1988, the chairman of the board of prison terms and paroles, as an ex officio member, and thereafter the chairman of the clemency and pardons board, as an ex officio member;

(d) Two prosecuting attorneys;

(e) Two attorneys with particular expertise in defense work;

(f) Four persons who are superior court judges;

(g) One person who is the chief law enforcement officer of a county or city;

(h) Three members of the public who are not and have never been prosecutors, attorneys, judges, or law enforcement officers.

In making the appointments, the governor shall seek the recommendations of Washington prosecutors in respect to the prosecuting attorney members, of the Washington state bar association in respect to the attorney members, of the association of superior court judges in respect to the members who are judges, and of the Washington association of sheriffs and police chiefs in respect to the member who is a law enforcement officer.

(3) All voting members of the commission, except ex officio voting members, shall serve terms of three years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing four of the initial members for terms of one year, four for terms of two years, and four for terms of three years.

(4) The speaker of the house of representatives and the president of the senate may each appoint two nonvoting members to the commission, one from each of the two largest caucuses in each house. The members so appointed shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first.

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended.

NEW SECTION. Sec. 7. (1) At its regular session convening in 1983, the legislature shall enact laws approving or modifying either the standards recommended by the commission, or the additional list of standard sentence ranges consistent with prison capacity in the event an additional list has been submitted pursuant to section 4(6) of this act. The standards so adopted shall take effect on July 1, 1984.

(2) Revisions or modifications of standard sentence ranges or other standards, together with any additional list of standard sentence ranges, shall be submitted to the legislature every two years and shall become effective as provided under subsection (1) of this section on July first of the year in which they are submitted.

NEW SECTION. Sec. 8. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions

with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (1) Move for dismissal of other charges or counts;
- (2) Recommend a particular sentence within the sentence range applicable to the offense or offenses to which the offender pled guilty;
- (3) Recommend a particular sentence outside of the sentence range;
- (4) Agree to file a particular charge or count;
- (5) Agree not to file other charges or counts; or
- (6) Make any other promise to the defendant, except that in no instance may the prosecutor agree not to allege prior convictions.

The court shall not participate in any discussions under this section.

NEW SECTION. Sec. 9. (1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to section 8 of this act, they shall at the time of the defendant's plea state to the court, on the record, the nature of the agreement and the reasons for the agreement. The court, at the time of the plea, shall determine if the agreement is consistent with the interests of justice and with the prosecuting standards. If the court determines it is not consistent with the interests of justice and with the prosecuting standards, the court shall order that neither the defendant nor the prosecutor is bound by the agreement and that the defendant may withdraw the defendant's plea of guilty if one has been made and enter a plea of not guilty.

(2) The sentencing judge is not bound by any recommendations contained in an allowed plea agreement and the defendant shall be so informed at the time of plea.

NEW SECTION. Sec. 10. The prosecuting attorney and the defendant shall each provide the court with their understanding of what the defendant's criminal history is prior to a plea of guilty pursuant to a plea agreement. All disputed issues as to criminal history shall be decided at the sentencing hearing.

NEW SECTION. Sec. 11. Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing. The court shall consider the presentence reports and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim or a representative of the victim, and an investigative law enforcement officer as to the sentence to be imposed. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. All presentence reports presented to the sentencing court and

all written findings of facts and conclusions of law entered by the court shall accompany the offender if the offender is committed to the custody of the department.

NEW SECTION. Sec. 12. When a person is convicted of a felony, the court shall impose punishment as provided in this section.

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

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds that imposition of a sentence within the standard range would impose an excessive punishment on the defendant or would pose an unacceptable threat to community safety.

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

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

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

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the probation officer of any change in the offender's address or employment;
- (e) Report as directed to the court and a probation officer; or
- (f) Pay a fine, make restitution, and/or accomplish some community service work.

(6) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, restitution, a term of community supervision not to exceed one year, and/or a fine. The court may impose a sentence which provides more than one year of confinement if the court finds that the sentence otherwise authorized by this subsection would pose an unacceptable threat to community safety.

(7) If the court imposes a sentence requiring confinement of sixty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than sixty days of confinement shall be served on consecutive days.

(8) If a sentence imposed includes a fine or restitution, the sentence shall specify a reasonable manner and time in which the fine or restitution shall be paid. No such period of time may exceed ten years subsequent to the entering of the judgment of conviction.

(9) A court may not impose a sentence which exceeds the statutory maximum for the crime as provided in RCW 9A.20.020.

NEW SECTION. Sec. 13. The power to defer or suspend the imposition or execution of sentence is hereby abolished in respect to sentences prescribed for felonies committed after June 30, 1984.

NEW SECTION. Sec. 14. (1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing and may set the terms and conditions under which the defendant shall make restitution. Restitution ordered by a court pursuant to a criminal conviction shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, and lost wages resulting from physical injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime. For the purposes of this section, the offender shall remain under the court's jurisdiction for a maximum term of ten years subsequent to the imposition of sentence.

(2) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(3) In addition to any sentence that may be imposed, a defendant who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the

class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(4) This section does not limit civil remedies or defenses available to the victim or defendant.

NEW SECTION. Sec. 15. No person serving a sentence imposed pursuant to this chapter shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) The terms of the sentence may be reduced by earned early release time in accordance with procedures developed and promulgated by the department. The earned early release time shall be for good behavior and good performance, as determined by the department. In no case shall the aggregate earned early release time exceed one-third of the sentence;

(2) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(3) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(4) If the sentence of confinement is in excess of eighteen months but not in excess of three years, the final three months of the sentence shall be served in partial confinement designed to aid the offender in finding work and reestablishing him or herself in the community. If the sentence of confinement is in excess of three years, the final six months of the sentence shall be served in such partial confinement;

(5) The governor may pardon any offender; and

(6) The department of social and health services may release an offender from total confinement any time within ten days before a release date calculated under this section.

(7) An offender may leave a correctional facility prior to completion of his sentence if the sentence has been reduced as provided in section 16 of this act.

NEW SECTION. Sec. 16. If the governor finds that an emergency exists in that the population of a state residential correctional facility exceeds its reasonable, maximum capacity, then the governor may do any one or more of the following:

(1) Call the sentencing guidelines commission into an emergency meeting for the purpose of evaluating its standard ranges and other standards. The commission may adopt any revision or amendment to its standard ranges or other standards that it believes appropriate to deal with the emergency situation. The revision or amendment shall be adopted in conformity with chapter 34.04 RCW, as now existing or hereafter amended,

and shall take effect on the date prescribed by the commission. Unless the commission provides to the contrary, section 7 of this act does not apply to such revision or amendments;

(2) If the emergency occurs prior to July 1, 1988, call the board of prison terms and paroles into an emergency meeting for the purpose of evaluating its guidelines and procedures for release of prisoners. The board may take any action authorized by law to modify the terms of prisoners under its jurisdiction;

(3) Call the clemency and pardons board into an emergency meeting for the purpose of recommending whether the governor's commutation or pardon power should be exercised to meet the present emergency.

NEW SECTION. Sec. 17. A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from supervision without the prior approval of the entity in whose custody the offender has been placed.

NEW SECTION. Sec. 18. An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day. The offender shall be required as a condition of partial confinement to report to the facility at designated times. An offender may be required to comply with crime-related prohibitions during the period of partial confinement.

NEW SECTION. Sec. 19. A sentence which includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. A sentence of not more than one year of confinement shall be served in a facility operated, or utilized under contract, by the county.

NEW SECTION. Sec. 20. (1) If an offender violates any condition or requirement of a sentence, the offender may receive further punishment in accordance with this section.

(2) If a defendant fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the defendant to show cause why the defendant should not be confined for the noncompliance. The court may issue a summons or a warrant of arrest for the defendant's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence. The defendant has the burden of showing by a preponderance of the evidence that the noncompliance was not a wilful refusal. If the court finds that the violation was wilful, it shall order the defendant confined for a period not to exceed sixty days for each violation; and

(c) If the court finds that the violation was not wilful, the court may reduce or extend the payment period or eliminate the fine or reduce or relieve

the defendant of the obligation of community service work or of making restitution.

(3) Nothing in this section prohibits the filing of escape charges if appropriate.

NEW SECTION. Sec. 21. (1) A sentence within the standard range for the offense shall not be appealed. For purposes of this section, a sentence imposed on a first offender under section 12(4) of this act shall also be deemed to be within the standard range for the offense and shall not be appealed.

(2) If a sentence is outside of the sentence range for the offense, the defendant or prosecutor may seek review of the sentence before the court of appeals in accordance with rules adopted by the supreme court.

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

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

(5) A review under this section shall be made solely upon the record that was before the sentencing court. Written briefs shall not be required and the review shall be heard within thirty days following the date of sentencing and a decision shall be rendered within fifteen days following the oral argument.

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

NEW SECTION. Sec. 22. When an offender has completed the requirements of the offender's sentence, the sentencing court shall discharge the offender and provide the offender with a certificate of discharge. The discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody.

NEW SECTION. Sec. 23. (1) Every offender who has been discharged under section 22 of this act may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in section 3 of this act; (c) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under section 22 of this act; (d) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under section 22 of this act; and (e) the offense was a class C felony and less than five years have passed since the date the applicant was discharged under section 22 of this act.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

NEW SECTION. Sec. 24. There is added to chapter 9.95 RCW a new section to read as follows:

(1) On July 1, 1988, the board of prison terms and paroles shall cease to exist. Prior to that time, the board's membership shall be reduced as follows: (a) On July 1, 1985, the board shall be reduced to five members. This reduction shall take place by the expiration, on that date, of the two terms having the least time left to serve. (b) On July 1, 1986, the board shall be reduced to three members. This reduction shall take place by the expiration, on that date, of the two terms having the least time left to serve.

(2) Prior to its expiration and after July 1, 1984, the board shall continue its functions with respect to persons incarcerated for crimes committed prior to July 1, 1984. The board shall consider the standard ranges and

standards adopted pursuant to section 4 of this act, and shall attempt to make decisions reasonably consistent with those ranges and standards.

(3) On July 1, 1988, all documents, records, files, equipment, and other tangible property of the board of prison terms and paroles shall be delivered to the custody of the department of social and health services.

NEW SECTION. Sec. 25. (1) The clemency and pardons board is established as a board within the office of the governor. The board consists of five members appointed by the governor, subject to confirmation by the senate.

(2) Members of the board shall serve terms of four years and until their successors are appointed and confirmed. However, the governor shall stagger the terms by appointing one of the initial members for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years.

(3) The board shall elect a chairman from among its members and shall adopt bylaws governing the operation of the board.

(4) Members of the board shall receive no compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(5) The attorney general shall provide a staff as needed for the operation of the board.

NEW SECTION. Sec. 26. The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

NEW SECTION. Sec. 27. Nothing in this chapter shall be construed to alter, change, or otherwise modify the provisions of chapter 71.06 RCW.

NEW SECTION. Sec. 28. Sections 8 through 13, sections 15 through 23, and sections 25 and 26 of this act shall take effect on July 1, 1984. The sentences required under this chapter shall be prescribed in each sentence which occurs for a felony committed after June 30, 1984.

NEW SECTION. Sec. 29. The sentencing guidelines commission is classified as a class three citizen group under chapter 42.04 RCW for purposes of compensation of its members.

NEW SECTION. Sec. 30. Section 29 of this act shall not become effective unless Substitute House Bill No. 177 is enacted into law during the 1981 regular session of the legislature.

NEW SECTION. Sec. 31. There is added to chapter 9.92 RCW a new section to read as follows:

The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.92.050, 9.92.060, 9.92.062, 9.92.064, 9.92.066, 9.92.070, 9.92.080, 9.92.090, and 9.92.150.

NEW SECTION. Sec. 32. There is added to chapter 9.95 RCW a new section to read as follows:

The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.010, 9.95.015, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.040, 9.95.052, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.190, 9.95.200, 9.95.210, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.350, and 9.95.360.

NEW SECTION. Sec. 33. There is added to chapter 9.95A RCW a new section to read as follows:

The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95A.010, 9.95A.020, 9.95A.030, 9.95A.040, 9.95A.050, 9.95A.060, 9.95A.070, 9.95A.080, 9.95A.090, 9.95A.900, and 9.96.050.

NEW SECTION. Sec. 34. There is added to chapter 72.04A RCW a new section to read as follows:

The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 72.04A.050, 72.04A.070, 72.04A.080, and 72.04A.090.

NEW SECTION. Sec. 35. There is added to chapter 72.65 RCW a new section to read as follows:

The secretary may permit a prisoner to participate in any work release plan or program but only if the participation is authorized pursuant to the prisoner's sentence or pursuant to section 15 of this 1981 act. This section shall become effective July 1, 1984.

Sec. 36. Section 4, chapter 14, Laws of 1975 as last amended by section 1, chapter 244, Laws of 1979 and RCW 9A.44.040 are each amended to read as follows:

(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person not married to the perpetrator by forcible compulsion where the perpetrator or an accessory:

- (a) Uses or threatens to use a deadly weapon; or
- (b) Kidnaps the victim; or
- (c) Inflicts serious physical injury; or
- (d) Feloniously enters into the building or vehicle where the victim is situated.

(2) Rape in the first degree is a class A felony. ~~((No person convicted of rape in the first degree shall be granted a deferred or suspended sentence except for the purpose of commitment to an inpatient treatment facility:~~

~~PROVIDED, That every person convicted of rape in the first degree shall be confined for a minimum of three years. PROVIDED FURTHER, That the board of prison terms and paroles shall have authority to set a period of confinement greater than three years but shall never reduce the minimum three-year period of confinement nor shall the board release the convicted person during the first three years of confinement as a result of any type of automatic good time calculation nor shall the department of social and health services permit the convicted person to participate in any work release program or furlough program during the first three years of confinement.))~~

Sec. 37. Section 9A.20.020, chapter 260, Laws of 1975 1st ex. sess. as amended by section 2, chapter 38, Laws of 1975-'76 2nd ex. sess. and RCW 9A.20.020 are each amended to read as follows:

(1) Felony. ~~((Every))~~ No person convicted of a classified felony shall be punished ((as follows)) by confinement or fine exceeding the following:

(a) For a class A felony, by ~~((imprisonment))~~ confinement in a state correctional institution for a ~~((maximum))~~ term ~~((fixed by the court of not less than twenty years))~~ of life imprisonment, or by a fine in an amount fixed by the court of ~~((not more than ten))~~ fifty thousand dollars, or by both such ~~((imprisonment))~~ confinement and fine;

(b) For a class B felony, by ~~((imprisonment))~~ confinement in a state correctional institution for a ~~((maximum))~~ term of ~~((not more than))~~ ten years, or by a fine in an amount fixed by the court of ~~((not more than ten))~~ twenty thousand dollars, or by both such ~~((imprisonment))~~ confinement and fine;

(c) For a class C felony, by ~~((imprisonment))~~ confinement in a state correctional institution for ~~((a maximum term of not more than))~~ five years, or by a fine in an amount fixed by the court of ~~((not more than five))~~ ten thousand dollars, or by both such ~~((imprisonment))~~ confinement and fine.

(2) Gross Misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than one year, or by a fine in an amount fixed by the court of not more than ~~((one))~~ five thousand dollars, or by both such imprisonment and fine.

(3) Misdemeanor. Every person convicted of a misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than ~~((five hundred))~~ one thousand dollars, or by both such imprisonment and fine.

NEW SECTION. Sec. 38. The following acts or parts of acts are hereby repealed, effective July 1, 1984:

- (1) Section 1, chapter 175, Laws of 1969 ex. sess. and RCW 9.41.025;
- (2) Section 2, chapter 17, Laws of 1967, section 275, chapter 141, Laws of 1979, section 1, chapter 160, Laws of 1979 ex. sess. and RCW 72.65.020;

(3) Section 3, chapter 17, Laws of 1967, section 275, chapter 141, Laws of 1979 and RCW 72.65.030; and

(4) Section 4, chapter 17, Laws of 1967, section 277, chapter 141, Laws of 1979 and RCW 72.65.040.

NEW SECTION. Sec. 39. The following acts or parts of acts are each repealed, effective July 1, 1988:

(1) Section 1, chapter 47, Laws of 1947, section 1, chapter 114, Laws of 1935 and RCW 9.95.001;

(2) Section 9, chapter 340, Laws of 1955, section 1, chapter 32, Laws of 1952, section 9, chapter 98, Laws of 1969, section 8, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.003;

(3) Section 10, chapter 340, Laws of 1955, section 2, chapter 32, Laws of 1959 and RCW 9.95.005; and

(4) Section 3, chapter 32, Laws of 1959, section 1, chapter 63, Laws of 1975-'76 2nd ex. sess. and RCW 9.95.007.

NEW SECTION. Sec. 40. Sections 1 through 23 and 25 through 29 of this act shall constitute a new chapter in Title 9 RCW.

NEW SECTION. Sec. 41. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 42. There is appropriated from the state general fund to the sentencing guidelines commission for the biennium ending June 30, 1983, the sum of six hundred eighty-five thousand dollars, or so much thereof as may be necessary, to carry out the purposes of this act.

Passed the House April 23, 1981.

Passed the Senate April 20, 1981.

Approved by the Governor May 14, 1981.

Filed in Office of Secretary of State May 14, 1981.

CHAPTER 138

[Substitute House Bill No. 76]

MURDER, SENTENCING

AN ACT Relating to capital punishment; amending section 9A.32.040, chapter 260, Laws of 1975 1st ex. sess. as amended by section 3, chapter 206, Laws of 1977 ex. sess. and RCW 9A.32.040; adding a new chapter to Title 10 RCW; repealing section 1, chapter 9, Laws of 1975-'76 2nd ex. sess., section 4, chapter 206, Laws of 1977 ex. sess. and RCW 9A.32.045; repealing section 2, chapter 9, Laws of 1975-'76 2nd ex. sess., section 5, chapter 206, Laws of 1977 ex. sess. and RCW 9A.32.046; repealing section 3, chapter 9, Laws of 1975-'76 2nd ex. sess., section 6, chapter 206, Laws of 1977 ex. sess. and RCW 9A.32.047; repealing section 87, page 115, Laws of 1854, section 223, page 231, Laws of 1873, section 1062, Code of 1881 and RCW 10.49.010; repealing section 8, chapter 9, Laws of 1901 ex. sess. and RCW 10.70.040; repealing section 152, page 125, Laws of 1854, section 291, page 152, Laws of 1860, section 288, page 244, Laws of 1873, section 1130, Code of 1881, section 1, chapter 9, Laws of 1901 ex. sess. and RCW 10.70.050; repealing section