

the act or the application of the provision to other persons or circumstances is not affected.

Passed the House March 9, 1982.

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CHAPTER 192

[Substitute House Bill No. 874]

CRIMINAL OFFENDERS—SENTENCING

AN ACT Relating to sentencing; amending section 3, chapter 137, Laws of 1981 and RCW 9.94A.030; amending section 4, chapter 137, Laws of 1981 and RCW 9.94A.040; amending section 5, chapter 137, Laws of 1981 and RCW 9.94A.050; amending section 12, chapter 137, Laws of 1981 and RCW 9.94A.120; amending section 14, chapter 137, Laws of 1981 and RCW 9.94A.140; amending section 15, chapter 137, Laws of 1981 and RCW 9.94A.150; amending section 21, chapter 137, Laws of 1981 and RCW 9.94A.210; amending section 24, chapter 137, Laws of 1981 and RCW 9.95.009; amending section 9A.20.020, chapter 260, Laws of 1975 1st ex. sess. as last amended by section 37, chapter 137, Laws of 1981 and RCW 9A.20.020; reenacting section 4, chapter 14, Laws of 1975 1st ex. sess. as last amended by section 57, chapter 136, Laws of 1981 and by section 36, chapter 137, Laws of 1981 and RCW 9A.44.040; adding a new section to chapter 9A.20 RCW; adding a new section to chapter 9A.44 RCW; and declaring an emergency.

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

Section 1. Section 3, chapter 137, Laws of 1981 and RCW 9.94A.030 are each amended to read as follows:

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

(1) "Commission" means the sentencing guidelines commission.

(2) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(3) "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 RCW 9.94A.120(~~((4))~~) (5).

(~~((3))~~) (4) "Confinement" means total or partial confinement as defined in this section.

(~~((4))~~) (5) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW.

(~~((5))~~) (6) "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))~~ (7)(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))~~ (8) "Department" means the department of ~~((social and health services))~~ corrections.

~~((8))~~ (9) "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))~~ (10) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((10))~~ (11) "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))~~ (12) "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))~~ (13) "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))~~ (14) "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))~~ (15) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((15))~~ (16) "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))~~ (17) "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))~~ (17)(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))~~ (17)(a) or (b) of this section.

Sec. 2. Section 4, chapter 137, Laws of 1981 and RCW 9.94A.040 are each amended to read as follows:

(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, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(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~~) January 10, 1983, 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.

Sec. 3. Section 5, chapter 137, Laws of 1981 and RCW 9.94A.050 are each amended to read as follows:

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, the department of corrections, 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.

Sec. 4. Section 12, chapter 137, Laws of 1981 and RCW 9.94A.120 are each amended to read as follows:

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))~~) (5) 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 perform any one or more of the following:

- (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) Except as provided under section 5(1) of this 1982 act, a court may not impose a sentence providing for a term of confinement or community supervision which exceeds the statutory maximum for the crime as provided in RCW 9A.20.020.

Sec. 5. Section 14, chapter 137, Laws of 1981 and RCW 9.94A.140 are each amended to read as follows:

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within sixty days 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))~~ based on 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. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during the ten-year period, regardless of the expiration of the offender's term of community supervision and regardless of the

statutory maximum for the crime. The offender's compliance with the restitution shall be supervised by the department.

(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.

Sec. 6. Section 15, chapter 137, Laws of 1981 and RCW 9.94A.150 are each amended to read as follows:

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, no more than the final three months of the sentence ~~((shall))~~ may 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, no more than the final six months of the sentence ~~((shall))~~ may be served in such partial confinement;

(5) The governor may pardon any offender; and

(6) The department of (~~social and health services~~) corrections 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 RCW 9.94A.160.

Sec. 7. Section 21, chapter 137, Laws of 1981 and RCW 9.94A.210 are each amended to read as follows:

(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 RCW 9.94A.120(~~(4)~~) (5) 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.

Sec. 8. Section 24, chapter 137, Laws of 1981 and RCW 9.95.009 are each amended 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 RCW 9.94A.040, 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))~~ corrections.

Sec. 9. Section 9A.20.020, chapter 260, Laws of 1975 1st ex. sess. as last amended by section 37, chapter 137, Laws of 1981 and RCW 9A.20.020 are each amended to read as follows:

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

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

(b) For a class B felony, by ~~((confinement))~~ imprisonment 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 twenty thousand dollars, or by both such ~~((confinement))~~ imprisonment and fine;

(c) For a class C felony, by ~~((confinement))~~ imprisonment 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 ten thousand dollars, or by both such ~~((confinement))~~ imprisonment 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 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 one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed prior to July 1, 1984.

NEW SECTION. Sec. 10. There is added to chapter 9A.20 RCW a new section to read as follows:

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

(a) For a class A felony, by confinement in a state correctional institution for a term of life imprisonment, or by a fine in an amount fixed by the court of fifty thousand dollars, or by both such confinement and fine;

(b) For a class B felony, by confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of twenty thousand dollars, or by both such confinement and fine;

(c) For a class C felony, by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of ten thousand dollars, or by both such 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 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 one thousand dollars, or by both such imprisonment and fine.

(4) This section applies to only those crimes committed on or after July 1, 1984.

Sec. 11. Section 4, chapter 14, Laws of 1975 1st ex. sess. as last amended by section 57, chapter 136, Laws of 1981 and by section 36, chapter 137, Laws of 1981 and RCW 9A.44.040 are each reenacted 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.

NEW SECTION. Sec. 12. There is added to chapter 9A.44 RCW a new section to read as follows:

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 good time calculation; nor shall the department of corrections permit the convicted person to participate in any work release program or furlough program during the first three years of confinement. This section applies only to offenses committed prior to July 1, 1984.

NEW SECTION. Sec. 13. 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 immediately.

Passed the House March 9, 1982.

Passed the Senate March 4, 1982.

Approved by the Governor April 1, 1982.

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CHAPTER 193

[House Bill No. 410]

COUNTIES—ALCOHOLISM AND DRUG ABUSE PROGRAMS

AN ACT Relating to social and health services; amending section 2, chapter 155, Laws of 1973 1st ex. sess. and RCW 70.96.160; amending section 1, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.010; amending section 2, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.020; amending section 4, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.040; amending section 5, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.050; amending section 8, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.060; amending section 9, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.070; amending section 10, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.080; amending section 11, chapter 304, Laws of 1971 ex. sess. and RCW 69.54.090; adding new sections to chapter 69.54 RCW; and adding new sections to chapter 70.96 RCW.

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

Section 1. Section 2, chapter 155, Laws of 1973 1st ex. sess. and RCW 70.96.160 are each amended to read as follows:

(1) Any county or combination of counties acting jointly by agreement, hereinafter referred to as "county", may create an alcoholism administrative board. The alcoholism administrative board may also be designated as a board for other related programs.

(2) Such board shall be composed of not less than seven nor more than fifteen members, who shall be representative of the community, shall include at least two recovered alcoholics, and shall include consumer and minority group representation. No more than four elected or appointed city or county officials may serve on such board at the same time. Members of the board shall serve three year terms and until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be (~~paid subsistence rates and~~