

(4) In adopting this program, the board shall consider the public safety, the detrimental effect of overcrowding upon inmate rehabilitation, and the best allocation of limited correctional facility resources.

(5) The rules adopted according to the provisions of RCW 9.95.390 shall not be implemented until the rules are submitted to the senate (~~((social and health services))~~) institutions and the house (~~((institutions committee[s]))~~) judiciary committees for their consideration and review.

(6) This section does not require the board to reduce the inmate population to or below any certain number.

(7) In addition to the sentence reduction guidelines adopted pursuant to this section, the board may adopt guidelines for the initial setting of sentences of persons committed to the custody of the department of corrections that reflect the need to prevent overcrowding. The additional guidelines shall apply only to those persons eligible for sentence reduction under this section.

Passed the House March 30, 1983.

Passed the Senate April 21, 1983.

Approved by the Governor May 11, 1983.

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CHAPTER 163

[Engrossed Senate Bill No. 3416]

VIOLENT OFFENSE CATEGORY EXPANDED—EXCEPTIONAL SENTENCES FOR CERTAIN FELONIES—DEADLY WEAPON SPECIAL VERDICT— SENTENCING GUIDELINES—REPORT ON SENTENCING REFORM ACT

AN ACT Relating to crimes and punishments; amending section 3, chapter 137, Laws of 1981 as amended by section 1, chapter 192, Laws of 1982 and RCW 9.94A.030; amending section 12, chapter 137, Laws of 1981 as amended by section 4, chapter 192, Laws of 1982 and RCW 9.94A.120; amending section 16, chapter 137, Laws of 1981 and RCW 9.94A.160; adding new sections to chapter 9.94A RCW; and providing an effective date.

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

Sec. 1. Section 3, chapter 137, Laws of 1981 as amended by section 1, chapter 192, Laws of 1982 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(5).

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

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

(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.

(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.

(8) "Department" means the department of corrections.

(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.

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

(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.

(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.

(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.

(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.

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

(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.

(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, and negligent homicide;

(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 (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 (17)(a) or (b) of this section.

Sec. 2. Section 12, chapter 137, Laws of 1981 as amended by section 4, chapter 192, Laws of 1982 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 (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, considering the purpose of this chapter, 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))~~ there are substantial and compelling reasons justifying an exceptional sentence.

(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 RCW 9.94A.140(1), 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.

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

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

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas.

Sec. 4. Section 16, chapter 137, Laws of 1981 and RCW 9.94A.160 are each amended to read as follows:

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))~~ the standard ranges and other standards. The commission may adopt any revision or amendment to ~~((its))~~ the 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, RCW 9.94A.070 does not apply to such revision or amendments))~~ The legislature shall approve or

modify the commission's revision or amendment at the next legislative session after the revision or amendment takes effect. Failure of the legislature to act shall be deemed as approval of the revision or amendment;

(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. 5. There is added to chapter 9.94A RCW a new section to read as follows:

The commission shall conduct an analysis of the anticipated effects of the guidelines adopted in chapter ... (SB 3414), Laws of 1983, on a representative sample of counties. This analysis shall include, but not be limited to, an estimate of the impact on jail population and availability of alternatives in the community. The analysis required by this section shall be filed at the beginning of the 1984 legislative session.

NEW SECTION. Sec. 6. The legislative budget committee shall prepare a report to be filed at the beginning of the 1987 session of the legislature. The report shall include a complete assessment of the impact of the Sentencing Reform Act of 1981. Such report shall include the effectiveness of the guidelines and impact on prison and jail populations and community correction programs.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act shall take effect on July 1, 1984.

Passed the Senate April 23, 1983.

Passed the House April 11, 1983.

Approved by the Governor May 11, 1983.

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CHAPTER 164

[Engrossed Senate Bill No. 3106]

DRUNK DRIVING—VEHICULAR HOMICIDE—VEHICULAR ASSAULT

AN ACT Relating to driving while intoxicated; amending section 3, chapter 137, Laws of 1981, as last amended by section 1, chapter ___ (ESB 3416), Laws of 1983 and RCW 9.94A.030; amending section 24, chapter 121, Laws of 1965 ex. sess. and RCW 46.20.285; amending section 1, chapter 5, Laws of 1973 as amended by section 13, chapter 61, Laws of 1979 and RCW 46.20.391; amending section 1, chapter 120, Laws of 1963 and RCW 46.21.010; amending section 46.56.040, chapter 12, Laws of 1961 as last amended by section 3, chapter 287, Laws of 1975 1st ex. sess. and RCW 46.61.520; amending section 12, chapter 10, Laws of 1982 and RCW 46.63.020; amending section 4, chapter 284, Laws of 1971 ex. sess. as last amended by section 1, chapter 188, Laws of 1981 and RCW