

NEW SECTION. Sec. 23. This act shall take effect July 1, 1984.

Passed the House February 29, 1984.

Passed the Senate February 22, 1984.

Approved by the Governor March 27, 1984.

Filed in Office of Secretary of State March 27, 1984.

## CHAPTER 209

[Substitute House Bill No. 1247]

### CRIMINAL SENTENCING

AN ACT Relating to criminal sentencing; amending section 1, chapter 99, Laws of 1937 as amended by section 1, chapter 276, Laws of 1983 and RCW 9.92.150; amending section 31, chapter 137, Laws of 1981 and RCW 9.92.90C; amending section 3, chapter 137, Laws of 1981 as last amended by section 9, chapter 164, Laws of 1983 and RCW 9.94A.030; amending section 9, chapter 137, Laws of 1981 and RCW 9.94A.090; amending section 11, chapter 137, Laws of 1981 and RCW 9.94A.110; amending section 12, chapter 137, Laws of 1981 as last amended by section 2, chapter 163, Laws of 1983 and RCW 9.94A.120; amending section 13, chapter 137, Laws of 1981 and RCW 9.94A.130; amending section 15, chapter 137, Laws of 1981 as amended by section 6, chapter 192, Laws of 1982 and RCW 9.94A.150; amending section 19, chapter 137, Laws of 1981 and RCW 9.94A.190; amending section 20, chapter 137, Laws of 1981 and RCW 9.94A.200; amending section 21, chapter 137, Laws of 1981 as amended by section 7, chapter 192, Laws of 1982 and RCW 9.94A.210; amending section 22, chapter 137, Laws of 1981 and RCW 9.94A.220; amending section 2, chapter 207, Laws of 1982 and RCW 9.94A.270; amending section 2, chapter 115, Laws of 1983 and RCW 9.94A.310; amending section 3, chapter 115, Laws of 1983 and RCW 9.94A.320; amending section 4, chapter 115, Laws of 1983 and RCW 9.94A.330; amending section 7, chapter 115, Laws of 1983 and RCW 9.94A.360; amending section 8, chapter 115, Laws of 1983 and RCW 9.94A.370; amending section 9, chapter 115, Laws of 1983 and RCW 9.94A.380; amending section 10, chapter 115, Laws of 1983 and RCW 9.94A.390; amending section 11, chapter 115, Laws of 1983 and RCW 9.94A.400; amending section 12, chapter 115, Laws of 1983 and RCW 9.94A.410; amending section 2, chapter 17, Laws of 1967 as last amended by section 1, chapter 160, Laws of 1979 ex. sess. and RCW 72.65.020; amending section 3, chapter 17, Laws of 1967 as amended by section 276, chapter 141, Laws of 1979 and RCW 72.65.030; amending section 4, chapter 17, Laws of 1967 as amended by section 277, chapter 141, Laws of 1979 and RCW 72.65.040; amending section 38, chapter 138, Laws of 1981 (uncodified); adding new sections to chapter 9.94A RCW; adding a new section to chapter 71.06 RCW; repealing section 27, chapter 137, Laws of 1981 and RCW 9.94A.900; prescribing penalties; and providing effective dates.

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

Sec. 1. Section 1, chapter 99, Laws of 1937 as amended by section 1, chapter 276, Laws of 1983 and RCW 9.92.150 are each amended to read as follows:

The sentencing judge of the superior court and the sentencing judge of courts of limited jurisdictions shall have authority and jurisdiction whereby the sentence of a prisoner, sentenced to imprisonment in their respective county jail, may be reduced by up to ~~((ten days for each month of confinement therein;))~~ one-third for good behavior.

Sec. 2. Section 31, chapter 137, Laws of 1981 and RCW 9.92.900 are each amended 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, and 9.92.090(~~and 9.92.150~~).

Sec. 3. Section 3, chapter 137, Laws of 1981 as last amended by section 9, chapter 164, Laws of 1983 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 corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

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

~~((3))~~ (4) "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))~~ (5) "Confinement" means total or partial confinement as defined in this section.

~~((5))~~ (6) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW.

~~((6))~~ (7) "Crime-related prohibition" means an order of a court prohibiting conduct (~~which~~) that 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))~~ (8)(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~~) had not reached his or her twenty-third birthday at the time the offense for which he or she is being sentenced was committed.

~~((8))~~ (9) "Department" means the department of corrections.

~~((9))~~ (10) "Determinate sentence" means a sentence (~~(which)~~) that 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))~~ (11) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((11))~~ (12) "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))~~ (13) "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))~~ (14) "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))~~ (15) "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))~~ (16) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((16))~~ (17) "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))~~ (18) "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, robbery in the second degree, and vehicular homicide;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, ~~((which))~~ that is comparable to a felony classified as a violent offense in subsection ~~((+7))~~ (18)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense ~~((comparable to))~~ that under the laws of this state would be a felony classified as a violent offense under subsection ~~((+7))~~ (18)(a) or (b) of this section.

Sec. 4. Section 9, chapter 137, Laws of 1981 and RCW 9.94A.090 are each amended to read as follows:

(1) If a plea agreement has been reached by the prosecutor and the defendant pursuant to RCW 9.94A.080, 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)),~~ on the record, inform the defendant and the prosecutor that they are not 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.

Sec. 5. Section 11, chapter 137, Laws of 1981 and RCW 9.94A.110 are each amended to read as follows:

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, if any, 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. Copies of all presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department.

Sec. 6. Section 12, chapter 137, Laws of 1981 as last amended by section 2, chapter 163, Laws of 1983 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 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, other than a person convicted of a violation of chapter 9A.44 RCW or RCW 9A.64.020, 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 for up to two years, 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)) community corrections officer of any change in the offender's address or employment;

(e) Report as directed to the court and a ((probation)) community corrections 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)), considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(7) (a) When an offender is convicted of any violation of chapter 9A.44 RCW or RCW 9A.64.020 except RCW 9A.44.040 or RCW 9A.44.050 and has no prior convictions of chapter 9A.44 RCW, RCW 9A.64.020, or any other felony sexual offenses in this or any other state, the sentencing court on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

After receipt of the reports, the court shall then determine whether the offender and the community will benefit from use of this special sexual offender sentencing alternative. If the court determines that both the offender and the community will benefit from use of this provision, the court shall then impose a sentence within the sentence range and, if this sentence is less than six years of confinement, the court may suspend the execution of the sentence and place the offender on community supervision for up to two years. As a condition of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

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

(ii) Undergo available outpatient sex offender treatment for up to two years, or inpatient sex offender treatment not to exceed the standard range of confinement for that offense. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment;

(iii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer of any change in the offender's address or employment;

(iv) Report as directed to the court and a community corrections officer;

(v) Pay a fine, make restitution, accomplish some community service work, or any combination thereof; or

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

If the offender violates these sentence conditions the court may revoke the suspension and order execution of the sentence. All confinement time served during the period of community supervision shall be credited to the offender if the suspended sentence is revoked.

(b) When an offender is convicted of any felony sexual offense and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, order the offender committed for up to thirty days to the custody of the secretary of the department of social and health services at the Eastern State Hospital or the Western State Hospital for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary of the department of social and health services cannot begin the evaluation within thirty days of the court's order of commitment, the offender shall be transferred to the state for confinement pending an opportunity to be evaluated at the appropriate facility. The court shall review the reports and may order that the term of confinement imposed be served in the sexual offender treatment programs at Western State Hospital or Eastern State Hospital, as determined by the secretary of the department of social and health services. The offender shall be transferred to the state pending placement in the treatment program.

If the offender does not comply with the conditions of the treatment program, the secretary of the department of social and health services may refer the matter to the sentencing court for determination as to whether the offender shall be transferred to the department of corrections to serve the balance of his term of confinement.

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

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

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

(8) If the court imposes a sentence requiring confinement of ~~((sixty))~~ thirty 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))~~ thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

~~((8))~~ (9) 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.))~~ In any sentence under this chapter the court may also require the offender to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (a) to pay court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required, (b) to make recoupment of the cost of defense attorney's fees if counsel is provided at public expense, (c) to contribute to a county or interlocal drug fund, and (d) to make such other payments as provided by law. All monetary payments shall be ordered paid by no later than ten years after the date of the judgment of conviction.

~~((9))~~ (10) 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))~~ (11) All offenders sentenced to terms involving community supervision, community service, restitution, or fines shall be under the supervision of the secretary of the department or such person as the secretary may designate and shall follow implicitly the instructions of the secretary including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer of any change in the offender's address or employment.

(12) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(13) A departure from the standards in RCW 9.94A.400(1) and (2) 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).

Sec. 7. Section 13, chapter 137, Laws of 1981 and RCW 9.94A.130 are each amended to read as follows:

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, except for offenders sentenced under RCW



9.94A.120(7)(a), the special sexual offender sentencing alternative, whose sentence may be suspended.

Sec. 8. Section 15, chapter 137, Laws of 1981 as amended by section 6, chapter 192, Laws of 1982 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))~~ twelve months but not in excess of three years, no more than the final three months of the sentence 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 may be served in such partial confinement;

(5) The governor may pardon any offender; ~~((and))~~

(6) The department of corrections may release an offender from ~~((to-  
tal))~~ confinement any time within ten days before a release date calculated under this section~~((:));~~ and

(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.

NEW SECTION. Sec. 9. There is added to chapter 9.94A RCW a new section to read as follows:

If the governor finds that an emergency exists in that the populations of county jails exceed their reasonable, maximum capacity in a significant manner as a result of increases in the sentenced felon population due to implementation of chapter 9.94A RCW, 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 the standard ranges and other standards. The commission may adopt any revision or amendment to 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 and shall take effect on the date prescribed by the commission. 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. The commission shall also analyze how alternatives to total confinement are being provided and used and may recommend other emergency measures that may relieve the overcrowding.

(2) 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.

Sec. 10. Section 19, chapter 137, Laws of 1981 and RCW 9.94A.190 are each amended to read as follows:

A sentence ((which)) that 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, licensed, or utilized under contract, by the county.

NEW SECTION. Sec. 11. There is added to chapter 9.94A RCW a new section to read as follows:

If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, an offender may be required to submit to a search and seizure of the offender's person, residence, automobile, or other personal property. A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court, pursuant to a written order.

Sec. 12. Section 20, chapter 137, Laws of 1981 and RCW 9.94A.200 are each amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, ~~the ((offender may receive))~~ court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If ~~((a defendant))~~ an offender 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))~~ offender to show cause why the ~~((defendant))~~ offender should not be ~~((confined))~~ punished for the noncompliance. The court may issue a summons or a warrant of arrest for the ~~((defendant's))~~ offender'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 willful refusal.))~~ If the court finds that the violation ((was willful)) has occurred, it ((shall)) may order the ((defendant)) offender to be confined for a period not to exceed sixty days for each violation, and may convert a term of partial confinement to total confinement. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; and

(c) If the court finds that the violation was not willful, 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))~~ modify its previous order regarding payment of fines or other monetary payments and regarding community service obligations.

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

Sec. 13. Section 21, chapter 137, Laws of 1981 as amended by section 7, chapter 192, Laws of 1982 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(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))~~ is subject to appeal by the defendant or the state. The appeal shall be to 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 and decision shall be ~~((heard within thirty days following the date of sentencing and a decision shall be rendered within fifteen days following the oral argument))~~ made in an expedited manner according to rules adopted by the supreme court.

(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. 14. Section 22, chapter 137, Laws of 1981 and RCW 9.94A.220 are each amended to read as follows:

When an offender has completed the requirements of the ~~((offender's))~~ sentence, the secretary of the department or his designee shall notify the sentencing court, which 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.

Sec. 15. Section 2, chapter 207, Laws of 1982 and RCW 9.94A.270 are each amended to read as follows:

(1) Whenever a punishment imposed under this chapter requires ~~((probation))~~ community supervision services to be provided, the sentencing court shall require~~((, as a condition of probation,))~~ that the offender pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the probation and which shall be considered as payment or part payment of the cost of providing probation supervision to the probationer. The court may exempt a person from the payment of all ~~((of [or]))~~ or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment ((which)) that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the court.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the court.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments ((which)) that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment ((which)) that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the state general fund.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

Sec. 16. Section 2, chapter 115, Laws of 1983 and RCW 9.94A.310 are each amended to read as follows:

TABLE 1

Sentencing Grid

SERIOUSNESS SCORE	OFFENDER SCORE									
	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y4m 240- 320	24y4m 250- 333	25y4m 261- 347	26y4m 271- 361	27y4m 281- 374	28y4m 291- 388	30y4m 312- 416	32y10m 338- 450	36y 370- 493	40y 411- 548
XII	12y 123- 164	13y 134- 178	14y 144- 192	15y 154- 205	16y 165- 219	17y 175- 233	19y 195- 260	21y 216- 288	25y 257- 342	29y 298- 397

SERIOUSNESS  
SCORE

OFFENDER SCORE

	9									
	0	1	2	3	4	5	6	7	8	or more
XI	6y 62- 82	6y9m 69- 92	7y6m 77- 102	8y3m 85- 113	9y 93- 123	9y9m 100- 133	12y6m 129- 171	13y6m 139- 185	15y6m 159- 212	17y6m 180- 240
X	5y 51- 68	5y6m 57- 75	6y 62- 82	6y6m 67- 89	7y 72- 96	7y6m 77- 102	9y6m 98- 130	10y6m 108- 144	12y6m 129- 171	14y6m 149- 198
IX	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	5y 51- 68	5y6m 57- 75	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144	12y6m 129- 171
VIII	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	4y6m 46- 61	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116	10y6m 108- 144
VII	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y 41- 54	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102	8y6m 87- 116
VI	13m 12+- 14	18m 15- 20	2y 21- 27	2y6m 26- 34	3y 31- 41	3y6m 36- 48	4y6m 46- 61	5y6m 57- 75	6y6m 67- 89	7y6m 77- 102
V	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y 41- 54	5y 51- 68	6y 62- 82	7y 72- 96
IV	6m 3- 9	9m 6- 12	13m 12+- 14	15m 13- 17	18m 15- 20	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y2m 53- 70	6y2m 63- 84
III	2m 1- 3	5m 3- 8	8m 4- 12	11m 9- 12	14m 12+- 16	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57	5y 51- 68
II	0-90 Days	4m 2- 6	6m 3- 9	8m 4- 12	13m 12+- 14	16m 14- 18	20m 17- 22	2y2m 22- 29	3y2m 33- 43	4y2m 43- 57

SERIOUSNESS  
SCORE

## OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years(y) and months(m). Numbers in the second and third rows represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

Additional time added to the presumptive sentence if the offender or an accomplice was armed with a deadly weapon as defined in this chapter:

24 months (Rape 1, Robbery 1, Kidnaping 1)

18 months (Burglary 1)

12 months (Assault 2, Escape 1, Kidnaping 2, Burglary 2 of a building other than a dwelling, Delivery or Possession of a controlled substance with intent to deliver)

Sec. 17. Section 3, chapter 115, Laws of 1983 and RCW 9.94A.320 are each amended to read as follows:

TABLE 2

## CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XIV	Aggravated Murder 1 (RCW 10.95.020)
XIII	Murder 1 (RCW 9A.32.030)
XII	Murder 2 (RCW 9A.32.050)
XI	Assault 1 (RCW 9A.36.010)
X	Kidnapping 1 (RCW 9A.40.020)
	Rape 1 (RCW 9A.44.040)
	<u>Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))</u>
	<u>Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406)</u>
IX	Robbery 1 (RCW 9A.56.200)
	Manslaughter 1 (RCW 9A.32.060)
	Statutory Rape 1 (RCW 9A.44.070)
	<u>Employing, using, or permitting minor to engage in sexually explicit conduct for commercial use (RCW 9.68A.020)</u>

- Explosive devices prohibited (RCW 70.74.180)  
Endangering life and property by explosives with threat to human being (RCW 70.74.270)  
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
- VIII Arson 1 (RCW 9A.48.020)  
 Rape 2 (RCW 9A.44.050)  
 Promoting Prostitution 1 (RCW 9A.88.070)  
Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)  
 ((Negligent)) Vehicular Homicide (RCW 46.61.520)  
 Introducing Contraband 1 (RCW 9A.76.140)  
 Statutory Rape 2 (RCW 9A.44.080)  
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))  
Sending, bringing into the state, possessing, publishing, printing, etc., obscene matter involving minor engaged in sexually explicit conduct (RCW 9.68A.030)
- VI Bribery (RCW 9A.68.010)  
 Manslaughter 2 (RCW 9A.32.070)  
 Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)  
Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))  
Endangering life and property by explosives with no threat to human being (RCW 70.74.270)  
Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))  
Incest 1 (RCW 9A.64.020(1))  
Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)  
Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))
- V ((Statutory Rape 2 (RCW 9A.44.080)))  
Rape 3 (RCW 9A.44.060)  
 Kidnapping 2 (RCW 9A.40.030)  
 Extortion 1 (RCW 9A.56.120)  
 ((Indecent Liberties (RCW 9A.44.100)))  
Incest 2 (RCW 9A.64.020(2))  
Perjury 1 (RCW 9A.72.020)  
Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV Robbery 2 (RCW 9A.56.210)



- Assault 2 (RCW 9A.36.020)
- Escape 1 (RCW 9A.76.110)
- Arson 2 (RCW 9A.48.030)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72-.090, 9A.72.100)
- Malicious Harassment (RCW 9A.36.080)
- Wilful Failure to Return from Furlough (RCW 72.66.060)
- ~~((Incest 1 (RCW 9A.64.020(1))))~~
- Hit and Run — Injury Accident (RCW 46.52.020(4))
- Ve! icular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
- III ~~((Rape 3 (RCW 9A.44.060)))~~
- Statutory Rape 3 (RCW 9A.44.090)
- ~~((Incest 2 (RCW 9A.64.020(2))))~~
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.030)
- Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communicating with a Minor for Immoral Purposes (RCW 9A.44.110)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(ii))
- II Malicious Mischief I (RCW 9A.48.070)
- Possession of Stolen Property I (RCW 9A.56.150)
- Theft I (RCW 9A.56.030)
- Theft of Livestock (RCW 9A.56.080)
- Welfare Fraud (RCW ~~((74.08.055))~~ 74.08.331)
- Burglary 2 (RCW 9A.52.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- I Theft 2 (RCW 9A.56.040)

- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Auto Theft (Taking and Riding) (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)
- Eluding a Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Bank Checks (RCW 9A.56.060)
- False Verification for Welfare (RCW 74.08.055)
- Forged prescription (RCW 69.41.020)
- Possess controlled substance that is a narcotic from Schedule III, IV, or V or non-narcotic from Schedule I-V (RCW 69.50.401(d))

Sec. 18. Section 4, chapter 115, Laws of 1983 and RCW 9.94A.330 are each amended to read as follows:

TABLE 3  
OFFENDER SCORE MATRIX

Current Offenses	Prior Adult Convictions				
	Serious Violent	Burglary 1	Other Violent	<del>((Negligent))</del> <u>Vehicular</u> Homicide	Escape
Serious Violent	3	2	2	<del>((+))</del> <u>2</u>	1
Burglary 1	2	2	2	<del>((+))</del> <u>2</u>	1
Other Violent <del>((Negligent))</del>	2	2	2	<del>((+))</del> <u>2</u>	1
<u>Vehicular</u> Homicide	0	0	0	<del>((+))</del> <u>2</u>	0
Escape	0	0	0	0	1
Burglary 2	1	2	1	1	1
Other Non-Violent	1	1	1	1	1
<u>Drug</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
Current Offenses	Burglary 2	Felony <del>((Hit-and-Run))</del> <u>Traffic</u>	Serious Traffic	Other Non-Violent	<u>Drug</u>
Serious Violent	1	1	0	1	<u>1</u>
Burglary 1	2	1	0	1	<u>1</u>
Other Violent <del>((Negligent))</del>	1	1	0	1	<u>1</u>
<u>Vehicular</u>					

Current Offenses	Burglary 2	Felony ((Hit-and-Run)) Traffic	Serious Traffic	Other Non-Violent	Drug
Homicide	0	1	1	0	<u>0</u>
Escape	0	0	0	0	<u>0</u>
Burglary 2	2	1	0	1	<u>1</u>
Other Non-Violent	1	1	0	1	<u>1</u>
<u>Drug</u>	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>	<u>2</u>

Prior Juvenile Convictions

Current Offenses	Serious Violent	Burglary 1	Other Violent	((Negligent)) Vehicular Homicide	Escape
Serious Violent	3	2	2	((+/2)) <u>2</u>	1/2
Burglary 1	2	2	2	((+/2)) <u>2</u>	1/2
Other Violent ((Negligent)) Vehicular	2	2	2	((+/2)) <u>2</u>	1/2
Homicide	0	0	0	((+)) <u>2</u>	0
Escape	0	0	0	0	1/2
Burglary 2	((+)) <u>1/2</u>	2	((+)) <u>1/2</u>	1/2	1/2
Other Non-Violent	((+)) <u>1/2</u>	((+)) <u>1/2</u>	((+)) <u>1/2</u>	1/2	1/2
<u>Drug</u>	<u>1/2</u>	<u>1/2</u>	<u>1/2</u>	<u>1/2</u>	<u>1/2</u>

Current Offenses	Burglary 2	Felony ((Hit-and-Run)) Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1/2	1/2	0	1/2	<u>1/2</u>
Burglary 1	1	1/2	0	1/2	<u>1/2</u>
Other Violent ((Negligent)) Vehicular	1/2	1/2	0	1/2	<u>1/2</u>
Homicide	0	1/2	1/2	0	<u>0</u>
Escape	0	0	0	0	<u>0</u>
Burglary 2	1	1/2	0	1/2	<u>1/2</u>
Other Non-Violent	1/2	1/2	0	1/2	<u>1/2</u>
<u>Drug</u>	<u>1/2</u>	<u>1/2</u>	<u>0</u>	<u>1/2</u>	<u>1</u>

Definitions: Serious Violent: Murder 1, Murder 2, Assault 1, Kidnapping 1, Rape 1  
 Escape: Escape 1, Escape 2, Willful Failure to Return From Work Release or Furlough  
 Serious Traffic: Driving While Intoxicated, Actual Physical Control, Reckless Driving, Hit-and-Run  
Felony Traffic: Felony Hit-and-Run, Vehicular Assault, Attempting to Elude a Police Officer  
Drug: All felony violations of chapter 69.50 RCW except possession of a controlled substance

Sec. 19. Section 7, chapter 115, Laws of 1983 and RCW 9.94A.360 are each amended to read as follows:

The offender score is measured on the horizontal axis of the sentencing grid. The offender score rules are summarized in Table 3, RCW 9.94A.330.

The offender score is computed in the following way:

(1) Include juvenile felony convictions if the offender was 15 or older at the time the offense was committed and the offender was less than 23 ((or less)) at the time the offense for which he or she is being sentenced was committed.

(2) If the present conviction is for Murder 1 or 2, Assault 1, Kidnapping 1, or Rape 1, count three points for prior adult and juvenile convictions for crimes in these categories, two points for each prior adult and juvenile violent conviction (not already counted), one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.

~~(3) ((If the present conviction is for a violent offense (as defined in RCW 9.94A.110) and not covered in subsection (2) of this section, count two points for each prior adult and juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony conviction (rounding down for uneven scores):~~

~~(4) If the present conviction is for Burglary (1 or 2), count two points for each prior adult Burglary conviction. Count two points for each prior juvenile Burglary 1, and one point for each prior juvenile Burglary 2 conviction:~~

~~(5) If the present conviction is for a nonviolent offense (as defined in \*RCW 9.94A.110), count one point for each prior adult felony conviction and one point for each prior juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony (rounding down for uneven scores):~~

~~(6) If the present conviction is for escape, count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point (rounding down for uneven scores):~~

~~(7) If the present conviction is for Negligent Homicide, only count the following crimes as part of the offender score: Negligent Homicide, Felony~~

~~Hit and Run (RCW 46.52.020(4)), Hit and Run (RCW 46.52.020(5)), Driving While Intoxicated (RCW 46.61.502), Actual Physical Control (RCW 46.61.504), Reckless Driving (RCW 46.61.500). Count each adult prior conviction as one point and each juvenile prior conviction as 1/2 point (rounding down for uneven scores):~~

~~(8) In the case of multiple prior convictions for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. The conviction for the most serious offense, using the seriousness levels to define most serious, is scored:~~

~~(9)) If the present conviction is for Burglary 1, count priors as in subsection (5) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 conviction.~~

~~(4) If the present conviction is for Vehicular Homicide, only count the following crimes as part of the offender score: Vehicular Homicide, Vehicular Assault, Felony Hit and Run (RCW 46.52.020(4)), Hit and Run (RCW 46.52.020(5)), Driving While Intoxicated (RCW 46.61.502), Actual Physical Control (RCW 46.61.504), Reckless Driving (RCW 46.61.500), Attempting to Elude a Police Officer (RCW 46.61.500). Count two points for each adult or juvenile Vehicular Homicide conviction, one point for each other adult felony traffic or serious traffic conviction, and 1/2 point for each other juvenile felony traffic or serious traffic conviction.~~

~~(5) If the present conviction is for a violent offense and not covered in subsections (2), (3), (4), or (8) of this section, count two points for each prior adult and juvenile violent felony conviction, one point for each prior adult nonviolent felony conviction, and 1/2 point for each prior juvenile nonviolent felony conviction.~~

~~(6) If the present conviction is for escape (Escape 1, RCW 9A.76.110; Escape 2, RCW 9A.76.120; Willful Failure to Return from Furlough, RCW 72.66.060; and Willful Failure to Return from Work Release, RCW 72.65.070), count only prior escape convictions in the offender score. Count adult prior escape convictions as one point and juvenile prior escape convictions as 1/2 point.~~

~~(7) If the present conviction is for Burglary 2, count priors as in subsection (9) of this section; however count two points for each adult and juvenile prior Burglary 1 conviction, two points for each adult prior Burglary 2 conviction, and one point for each juvenile prior Burglary 2 conviction.~~

~~(8) If the present conviction is for a violation of chapter 69.50 RCW, except for possession of a controlled substance (RCW 69.50.401(d)), count two points for each adult prior felony drug conviction (chapter 69.50 RCW, except RCW 69.50.401(d)), and one point for each juvenile drug conviction. All other adult and juvenile felonies are scored as in subsection (5) of this~~

section if the current drug conviction is violent, or as in subsection (9) of this section if the current drug conviction is nonviolent.

(9) If the present conviction is for a nonviolent offense and not covered by subsection (6), (7), or (8) of this section, count one point for each prior adult felony conviction and one point for each prior juvenile violent felony conviction and 1/2 point for each prior juvenile nonviolent felony.

(10) For all offender scores, the fractional totals shall be rounded down to the nearest whole number.

(11) In the case of multiple prior convictions for the purpose of computing the offender score, count all adult convictions served concurrently as one offense, and count all juvenile convictions entered on the same date as one offense. The conviction for the offense that yields the highest offender score is used.

(12) Class A prior felony convictions are always included in the offender score. Class B prior felony convictions are not included if the offender has spent ten years in the community and has not been convicted of any felonies since the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment), if any, or entry of judgment and sentence. Class C prior felony convictions and serious traffic convictions as defined in RCW 9.94A.330 are not included if the offender has spent five years in the community and has not been convicted of any felonies since the last date of release from confinement pursuant to a felony conviction (including full-time residential treatment), if any, or entry of judgment and sentence. This subsection applies to both adult and juvenile prior convictions.

The designation of out-of-state convictions shall be covered by the offense definitions and sentences provided by Washington law.

The offender score is the sum of points accrued under subsections (1) through ~~((9))~~ (12) of this section.

Sec. 20. Section 8, chapter 115, Laws of 1983 and RCW 9.94A.370 are each amended to read as follows:

The intersection of the column defined by the offender score and the row defined by the offense seriousness score determines the presumptive sentencing range (see RCW 9.94A.310, (Table 1)). ~~((The judge may sentence anywhere within this range. Except in decisions concerning first-time, nonviolent offenders, any sentence imposed by a sentencing judge which is outside the presumptive range is a departure from the guidelines, requires written reasons from the judge, and is reviewable on appeal.))~~ The additional time for deadly weapon findings shall be added to the entire presumptive sentence range. The court may impose any sentence within the range that it deems appropriate. All presumptive sentence ranges are expressed in terms of total confinement.

In determining any sentence, the trial ((judge)) court may use no more information than is admitted by the plea agreement, and admitted to or acknowledged at the time of sentencing. Acknowledgement includes not objecting to information stated in the presentence reports. Where the defendant disputes material facts, the ((judge)) court must either not consider the fact or grant an evidentiary hearing on the point. The real facts shall be deemed proven at the evidentiary hearing by a preponderance of the evidence. Real facts ((which)) that establish elements of a higher crime, a more serious crime, or additional crimes cannot be used to go outside the ((guidelines)) presumptive sentence range except upon stipulation.

Sec. 21. Section 9, chapter 115, Laws of 1983 and RCW 9.94A.380 are each amended to read as follows:

For sentences of nonviolent offenders for ((less than)) one year or less, the court shall consider and give priority to available alternatives to total confinement and shall ((justify)) state its reasons if they are not used.

~~((With the exception of the first-time offender, the judge shall establish the sentence in terms of total confinement. This sentence can be converted as follows: One day of partial confinement or eight hours of community service can replace one day of total confinement. The community service conversion is limited to 240 hours or 30 working days. In addition, the judge can impose up to one year of community supervision to ensure that the terms of the alternative sentence are met. Fines can be assessed according to the following formula:~~

<del>_____</del>	<del>Class A felonies</del>	<del>_____</del>	<del>\$0 = 50,000</del>
<del>_____</del>	<del>Class B felonies</del>	<del>_____</del>	<del>\$0 = 20,000</del>
<del>_____</del>	<del>Class C felonies</del>	<del>_____</del>	<del>\$0 = 10,000))</del>

These alternatives include the following sentence conditions that the court may order as substitutes for total confinement: (1) One day of partial confinement or eight hours of community service may be substituted for one day of total confinement; (2) the community service conversion is limited to two hundred forty hours or thirty days. The conversion of total confinement to partial confinement may be applied to all sentences of one year or less, including those for violent offenses.

NEW SECTION. Sec. 22. There is added to chapter 9.94A RCW a new section to read as follows:

On all sentences of confinement for one year or less the court may impose up to one year of community supervision. For confinement sentences, unless otherwise ordered by the court, the period of community supervision begins at the date of release from confinement. For nonconfinement sentences, the period of community supervision begins at the date of entry of the judgment and sentence.

NEW SECTION. Sec. 23. There is added to chapter 9.94A RCW a new section to read as follows:

On all sentences under this chapter the court may impose fines according to the following ranges:

Class A felonies	\$0 - 50,000
Class B felonies	\$0 - 20,000
Class C felonies	\$0 - 10,000

Sec. 24. Section 10, chapter 115, Laws of 1983 and RCW 9.94A.390 are each amended to read as follows:

~~((The presumptive sentence shall be the midpoint of the standard range as established by the crime of conviction and any applicable enhancements. The sentencing court shall impose the presumptive sentence or other sentence within the indicated standard range that it determines to be appropriate.))~~ If the sentencing court finds that an exceptional sentence outside the standard range should be imposed in accordance with RCW 9.94A.120(2), the ~~((court may impose any))~~ sentence ~~((it deems appropriate within the statutory term. If the court sentences outside the standard range, it shall set forth its justification for doing so in written findings and conclusions, and any sentence outside the standard range shall be))~~ is subject to review only as provided for in RCW 9.94A.210(4).

The following are illustrative factors which the court may consider in the exercise of its discretion to impose an exceptional sentence:

#### Mitigating Circumstances

(1) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(2) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(3) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(4) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(5) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law, was significantly impaired (voluntary use of drugs or alcohol is excluded).

(6) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(7) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

#### Aggravating Circumstances

(1) The defendant's conduct during the commission of the offense manifested deliberate cruelty to the victim.



(2) The defendant knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

(3) The offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(a) The offense involved multiple victims or multiple incidents per victim;

(b) The offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(c) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(d) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the offense.

(4) The offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify an offense as a major VUCSA:

(a) The offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so; or

(b) The offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use; or

(c) The offense involved the manufacture of controlled substances for use by other parties; or

(d) The offender possessed a firearm during the commission of the offense; or

(e) The circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy; or

(f) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement; or

(g) The offender used his or her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional); or

(h) The operation of the multiple offense policy of RCW 9.94A.400 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.400.

The above considerations are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

Sec. 25. Section 11, chapter 115, Laws of 1983 and RCW 9.94A.400 are each amended to read as follows:

(1) (a) Except as provided in (b) of this subsection, whenever a person is convicted of two or more offenses, ((at least one of which is a violent offense, and the offenses arise out of separate and distinct criminal transactions, the sentences imposed shall run consecutively, provided that under this section, the presumptive sentence only for the most serious offense shall be determined by using the offender's actual criminal history score whereas the presumptive sentences for all other offenses shall be determined by using a criminal history score of zero)) the sentence range for each offense shall be determined by using all other current and prior convictions as criminal history. All sentences so determined shall be served concurrently. Separate crimes encompassing the same criminal conduct shall be counted as one crime in determining criminal history.

(b) Whenever a person is convicted of three or more serious violent offenses, as defined in RCW 9.94A.330, arising from separate and distinct criminal conduct, the sentence range for the offense with the highest seriousness level under RCW 9.94A.320 shall be determined using the offender's prior convictions as criminal history and the sentence range for other serious violent offenses shall be determined by using a criminal history score of zero. The sentence range for any remaining offenses shall be determined according to (a) of this subsection. All sentences imposed under (b) of this subsection shall be served consecutively to each other and concurrently with sentences imposed under (a) of this subsection.

(2) Whenever a person while under sentence of felony commits another felony and is sentenced to another term of imprisonment, the latter term shall not begin until expiration of all prior terms.

~~(3) ((Whenever a person is convicted of two or more offenses, and either: (a) All of the offenses are nonviolent and they arise out of separate and distinct criminal transactions; or (b) at least one of the offenses is a violent offense but they all arise out of the same criminal transaction, the sentences imposed shall run concurrently, provided that the presumptive sentence for the most serious offense shall be enhanced by counting all other current offenses as prior offenses for purposes of calculating the criminal history score:~~

(4) Whenever a person is convicted of two or more nonviolent offenses which all arise out of the same criminal transaction, the sentences imposed shall run concurrently)) Subject to subsections (1) and (2) of this section, whenever a person is sentenced for a felony that was committed while the person was not under sentence of a felony, the sentence shall run consecutively with felony sentences previously imposed by any court in this or another state or by a federal court, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(4) Whenever any person granted probation under RCW 9.95.210 or 9.92.060, or both, has the probationary sentence revoked and a prison sentence imposed, this sentence shall run consecutively to any sentence imposed

pursuant to this chapter, unless the court pronouncing the subsequent sentence expressly orders that they be served concurrently.

(5) However, in the case of consecutive sentences, all periods of total confinement shall be served before any partial confinement, community service, community supervision, or any other requirement or conditions of any of the sentences.

Sec. 26. Section 12, chapter 115, Laws of 1983 and RCW 9.94A.410 are each amended to read as follows:

For persons convicted of (~~attempted offenses or conspiracies to commit an offense~~) the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the presumptive sentence is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the (~~conviction~~) crime, and multiplying the range by 75 percent.

NEW SECTION. Sec. 27. There is added to chapter 71.06 RCW a new section to read as follows:

With respect to sexual psychopaths, this chapter applies only to crimes or offenses committed before July 1, 1984.

Sec. 28. Section 2, chapter 17, Laws of 1967 as last amended by section 1, chapter 160, Laws of 1979 ex. sess. and RCW 72.65.020 are each amended to read as follows:

(1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(a) Work at paid employment.

(b) Participate in a vocational training program: PROVIDED, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: PROVIDED FURTHER, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to RCW (~~72.01.420~~) 70.48.050, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

~~(2) ((The secretary may lease or permit the use of a portion of any correctional facility, including necessary buildings, for a term not to exceed twenty years, to a private business organization for the purpose of establishing and operating a commercial enterprise deemed by the secretary to be consistent with the appropriate training and rehabilitation of prisoners.~~

~~Any business organization operating a commercial enterprise under this section may employ any inmates of the institution upon whose grounds it operates after such inmates have been authorized by the secretary to participate in the program. For the purposes of Washington law, the inmates participating in the program are deemed work releasees and are subject to all of the provisions of chapter 72.65 RCW.~~

~~Participants in the program are deemed to be parolees within the purview of 49 U.S.C. Sec. 60, and, except as prohibited by applicable provisions of the United States Code, prisoner participants in the program may be employed in the manufacture and processing of goods, wares, and merchandise for introduction into interstate commerce.~~

~~Any business organization established or participating in the program authorized under this section shall be deemed a private enterprise and subject to all the laws, rules, and regulations of this state governing the operation of similar business enterprises elsewhere in the state, and shall in no event pay prisoner participants in the program less than sixty percent of the prevailing wages for work of a similar nature performed by employees with similar skills in the locality in which the work is being performed. PROVIDED, That the provisions of this subsection (2) shall expire and be of no further force and effect after January 1, 1984)) This section applies only to persons sentenced for crimes that were committed before July 1, 1984.~~

Sec. 29. Section 3, chapter 17, Laws of 1967 as amended by section 276, chapter 141, Laws of 1979 and RCW 72.65.030 are each amended to read as follows:

(1) Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984.

Sec. 30. Section 4, chapter 17, Laws of 1967 as amended by section 277, chapter 141, Laws of 1979 and RCW 72.65.040 are each amended to read as follows:

(1) The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the secretary or his designee, according to the individual circumstances in each case.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984.

Sec. 31. Section 38, chapter 138, Laws of 1981 (uncodified) is amended to read as follows:

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. 32. Section 27, chapter 137, Laws of 1981 and RCW 9.94A.900 are each repealed.

NEW SECTION. Sec. 33. Sections 1 through 26 of this act shall take effect on July 1, 1984, and sections 27 through 32 of this act shall take effect June 30, 1984.

Passed the House March 1, 1984.

Passed the Senate February 23, 1984.

Approved by the Governor March 27, 1984.

Filed in Office of Secretary of State March 27, 1984.

## CHAPTER 210

[Substitute House Bill No. 1279]

### STATE CONVENTION AND TRADE CENTER—CIVIL SERVICE, STATE EMPLOYEES INSURANCE AND HEALTH CARE, PUBLIC EMPLOYEES' RETIREMENT SYSTEM, VACATIONS—EXEMPT

AN ACT Relating to the state trade and convention center; amending section 2, chapter 34, Laws of 1982 as amended by section 2, chapter 1, Laws of 1983 2nd ex. sess. and RCW 67.40.020; amending section 1, chapter 11, Laws of 1972 ex. sess. as last amended by section 21, chapter 15, Laws of 1983 and RCW 41.06.070; adding a new section to chapter 41.04 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 41.40 RCW; adding a new section to chapter 43.01 RCW; creating new sections; and declaring an emergency.

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

Sec. 1. Section 2, chapter 34, Laws of 1982 as amended by section 2, chapter 1, Laws of 1983 2nd ex. sess. and RCW 67.40.020 are each amended to read as follows:

The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. The directors may provide for the payment of their expenses. The corporation may cause a state convention and trade center with an overall size of approximately three hundred thousand square feet to be designed and constructed on a site in the city of Seattle. In acquiring, designing, and constructing the state convention and trade center, the corporation shall consider the recommendations