

provided by the legislature to the department of corrections for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

Passed the House March 7, 1988.

Passed the Senate March 4, 1988.

Approved by the Governor March 21, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 21, 1988.

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

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 1429 entitled:

"AN ACT Relating to home detention under the sentencing reform act."

Section 1 of this bill contains legislative findings regarding population overcrowding in local jails. Reasons for these conditions have not been fully determined but are attributable to myriad causes and it is inappropriate to codify what appear to be only conclusions.

I support the use of home detention as an alternative, due to pressure of jail overcrowding. This bill contains reasonable provisions preventing the use of home detention for persons who committed violent crimes and other offenses where the court feels the public or victims would be at risk. I view this as an experiment worth trying.

With the exception of section 1, Substitute House Bill No. 1429 is approved."

CHAPTER 155

[Substitute House Bill No. 1279]

SENTENCE VIOLATION—CONVERSION OF OBLIGATIONS—PARTIAL CONFINEMENT—COMMERCIALIZATION BY CONVICT, ESCROW ACCOUNT DISPOSITION

AN ACT Relating to financial and legal obligations for victims of crime; amending RCW 9.94A.200, 9.94A.380, and 7.68.240; and reenacting and amending RCW 9.94A.120.

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

***Sec. 1. Section 1, chapter 402, Laws of 1987 and section 2, chapter 456, Laws of 1987 and RCW 9.94A.120 are each reenacted and 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), (5), and (7) 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 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 community corrections officer of any change in the offender's address or employment;

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

(f) Pay a fine 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, 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, 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 a sex offense other than a violation of RCW 9A.44.040 or RCW 9A.44.050 and has no prior convictions for a sex offense 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, 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 committed before July 1, 1987, 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 social and health services for evaluation and report to the court on the offender's amenability to treatment at these facilities. If the secretary 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 program at the location determined by the secretary of social and health services or the secretary's designee, only if the report indicates that the offender is amenable to the treatment program provided at these facilities. The offender shall be transferred to the state pending placement in the treatment program. Any offender who has escaped from the treatment program shall be referred back to the sentencing court.

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

If the offender successfully completes the treatment program before the expiration of the 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 community supervision, the court may order the offender to serve out the balance of the community supervision term in confinement in the custody of the department of corrections.

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

(c) When an offender commits any felony sexual offense on or after July 1, 1987, 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, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program

before the expiration of his term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to 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.

Nothing in (c) of this subsection shall confer eligibility for such programs for offenders convicted and sentenced for a sexual offense committed prior to July 1, 1987.

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

(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. Restitution to victims shall be paid prior to any other payments of monetary obligations. 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.))~~ The offender's compliance with payment of monetary obligations shall be supervised by the department. The rate of payment shall be determined by the court or, in the absence of a rate determined by the court, the rate shall be set by the department. All monetary payments shall be ordered paid by no later than ten years since the most recent of either the last date of release from confinement pursuant to a felony conviction or the day the judgment and sentence was entered. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these financial obligations.

If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order. The restitution to victims named in the order shall be paid prior to any payment for other penalties or monetary assessments.

(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 chapter 9A.20 RCW.

(11) All offenders sentenced to terms involving community supervision, community service, ~~((restitution, or fines))~~ or court-imposed monetary obligations shall be under the supervision of the secretary of the department of corrections or such person as the secretary may designate and shall follow ~~((implicitly))~~ explicitly the instructions of the secretary ~~((including))~~ related to reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, ~~((and))~~ or 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).

(14) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

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

(16) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release.

*Sec. 1 was vetoed, see message at end of chapter.

Sec. 2. Section 20, chapter 137, Laws of 1981 as amended by section 12, chapter 209, Laws of 1984 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 court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If 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 offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, or (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service. Any time served in confinement awaiting a hearing on non-compliance 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 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. 3. Section 9, chapter 115, Laws of 1983 as amended by section 21, chapter 209, Laws of 1984 and RCW 9.94A.380 are each amended to read as follows:

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

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. Community service hours must be completed within the period of community supervision or a time period specified by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department.

Sec. 4. Section 16, chapter 219, Laws of 1979 ex. sess. and RCW 7.68.240 are each amended to read as follows:

Upon a showing by any convicted person or the state that five years have elapsed from the establishment of such escrow account and further

that no actions are pending against such convicted person pursuant to ((this act)) RCW 7.68.200 through 7.68.280, the department shall immediately pay over fifty percent of any moneys in the escrow account to such person or his legal representatives and fifty percent of any moneys in the escrow account to the fund under RCW 7.68.035(4).

Passed the House March 5, 1988.

Passed the Senate February 29, 1988.

Approved by the Governor March 21, 1988, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State March 21, 1988.

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

"I am returning herewith, without my approval as to section 1, Substitute House Bill No. 1279 entitled:

"AN ACT Relating to financial and legal obligations for victims of crime."

Section 1 of this bill amends a subsection of RCW 9.94A.120 relating to payment schedules for monetary obligations of offenders. Similar language is contained in Engrossed Substitute House Bill No. 1424, section 2. In order to avoid confusion, I am vetoing section 1 of this measure.

With the exception of section 1, Substitute House Bill No. 1279 is approved."

CHAPTER 156

[Substitute Senate Bill No. 6498]

COUNSEL FOR INDIGENT PERSONS—STUDY

AN ACT Relating to counsel for indigent persons; and creating new sections.

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

NEW SECTION. Sec. 1. (1) A committee is created to study the current system in Washington state for providing representation to persons who could not otherwise afford counsel.

(2) The committee shall consist of the following members:

(a) One member appointed by the governor;

(b) One member appointed by the office of financial management;

(c) One member appointed by the department of community development;

(d) One member appointed by the chief justice of the state supreme court;

(e) Two members appointed by the Washington State Bar Association, at least one of whom currently provides indigent criminal defense representation;

(f) One member appointed by the association of counties;

(g) One member appointed by the speaker of the house of representatives;

(h) One member appointed by the president of the senate.