

(3) A full-time staff position shall be created within the administrator for the courts to administer the work of the committee and prepare a report to the legislature. The committee and the staff position shall expire on February 1, 1989.

NEW SECTION. Sec. 2. The committee shall review the current systems for providing appellate and trial representation to indigent persons in all cases where right to counsel attaches. On or before January 1, 1989, the committee shall report to the judiciary committee of the house of representatives, the law and justice committee of the senate, and the governor on improving the delivery of indigent defense services at the appellate and trial levels. The report shall:

- (1) Summarize the current methods of providing indigent services in the state, their costs, and caseloads;
- (2) Recommend standards and guidelines for determining appropriate levels of experience and caseload for attorneys under the program;
- (3) Establish guidelines to determine who should be eligible to receive legal services;
- (4) Recommend alternatives to the current methods of providing and financing appellate and trial services;
- (5) Recommend levels of training and supervision of attorneys providing appellate and trial services;
- (6) Recommend appropriate levels of compensation and support staff;
- (7) Recommend standards for determining indigency.

Passed the Senate February 13, 1988.

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CHAPTER 157

[Substitute Senate Bill No. 6462]

SENTENCING OF ADULT FELONS—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections in the procedures for sentencing adult felons; amending RCW 9.94A.060, 9.94A.360, 9.94A.380, and 9.94A.400; reenacting and amending RCW 9.94A.030; creating a new section; and repealing RCW 9.94A.330.

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

Sec. 1. Section 3, chapter 137, Laws of 1981 as last amended by section 3, chapter 187, Laws of 1987, section 1, chapter 456, Laws of 1987 and by section 1, chapter 458, Laws of 1987 and RCW 9.94A.030 are each reenacted and 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.

(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). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(6) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(7) "Crime-related prohibition" means an order of a court prohibiting conduct 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.

(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 prior convictions in juvenile court if: (i) The conviction was for an offense which is a felony or a serious traffic offense and is criminal history as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years of age or older at the time the offense was committed; and (iii) with respect to prior juvenile class B and C felonies or serious traffic offenses, the defendant was less than twenty-three years of age at the time the offense for which he or she is being sentenced was committed.

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

(10) "Determinate sentence" means a sentence 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.

(11) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(12) "Escape" means:

(a) Escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), wilful failure to return from furlough (RCW 72.66.060), or wilful failure to return from work release (RCW 72.65.070); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(13) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

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

(15)(a) "First-time offender" means any person who is convicted of a felony (i) not classified as a violent offense or a sex offense under this chapter, or (ii) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in schedule I or II that is a narcotic drug, and except as provided in (b) of this subsection, 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.

(b) For purposes of (a) of this subsection, a juvenile adjudication for an offense committed before the age of fifteen years is not a previous felony conviction.

(16) "Nonviolent offense" means an offense which is not a violent offense.

(17) "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.

(18) "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. Partial confinement includes work release as defined in this section.

(19) "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.

(20) "Serious traffic offense" means:

(a) Driving while intoxicated (RCW 46.61.502), actual physical control while intoxicated (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(21) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, or an attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

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

(23) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(24) "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.

(25) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

(26) "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, vehicular assault, and vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in subsection (26)(a) of this section; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under subsection (26) (a) or (b) of this section.

(27) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

Sec. 2. Section 6, chapter 137, Laws of 1981 as amended by section 10, chapter 287, Laws of 1984 and RCW 9.94A.060 are each amended to read as follows:

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

(2) The voting membership consists of the following:

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

(b) The director of financial management, as an ex officio member;

(c) Until July 1, ~~((1988, the chairman))~~ 1992, the chair of the indeterminate sentencing review board ~~((of prison terms and paroles))~~, as an ex officio member, and thereafter the ~~((chairman))~~ chair of the clemency and pardons board, as an ex officio member;

(d) Two prosecuting attorneys;

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

(f) Four persons who are superior court judges;

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

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

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

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

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

(5) The members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members shall be reimbursed by their respective houses as provided under RCW 44.04.120, as now existing or hereafter amended. Members shall be compensated in accordance with RCW 43.03.250.

Sec. 3. Section 7, chapter 115, Laws of 1983 as last amended by section 4, chapter 456, Laws of 1987 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(~~(, partially summarized in Table 3, RCW 9.94A.330,)~~) are as follows:

The offender score is the sum of points accrued under this section rounded down to the nearest whole number.

(1) A prior conviction is a conviction which exists before the date of sentencing for the offense for which the offender score is being computed. Convictions entered or sentenced on the same date as the conviction for which the offender score is being computed shall be deemed "other current offenses" within the meaning of RCW 9.94A.400.

(2) Except as provided in subsection ~~((3))~~ (4) of this section, class A prior felony convictions shall always be included in the offender score. Class B prior felony convictions shall not be included in the offender score, if since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent ten consecutive years in the community

without being convicted of any felonies. Class C prior felony convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without being convicted of any felonies. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without being convicted of any serious traffic or felony traffic offenses. This subsection applies to both adult and juvenile prior convictions.

(3) Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

~~((3))~~ (4) Include class A juvenile felonies only if the offender was 15 or older at the time the juvenile offense was committed. Include class B and C juvenile felony convictions only if the offender was 15 or older at the time the juvenile offense was committed and the offender was less than 23 at the time the offense for which he or she is being sentenced was committed.

~~((4))~~ (5) Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

~~((5))~~ (6) In the case of multiple prior convictions, for the purpose of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used;

(b) Juvenile prior convictions entered or sentenced on the same date shall count as one offense, the offense that yields the highest offender score; and

(c) In the case of multiple prior convictions for offenses committed before July 1, 1986, 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. Use the conviction for the offense that yields the highest offender score.

~~((6))~~ (7) If the present conviction is one of the anticipatory offenses of criminal attempt, solicitation, or conspiracy, count each prior conviction as if the present conviction were for a completed offense.

~~((7))~~ (8) If the present conviction is for a nonviolent offense and not covered by subsection ~~((11) or)~~ (12) or (13) of this section, count one point for each adult prior felony conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

~~((8))~~ (9) If the present conviction is for a violent offense and not covered in subsection ~~((9),)~~ (10), (11), ~~((or))~~ (12), or (13) 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.

~~((9))~~ (10) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 1, Homicide by Abuse, 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.

~~((10))~~ (11) If the present conviction is for Burglary 1, count prior convictions as in subsection ~~((8))~~ (9) of this section; however count two points for each prior adult Burglary 2 conviction, and one point for each prior juvenile Burglary 2 conviction.

~~((11))~~ (12) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide or Vehicular Assault; for each felony offense or serious traffic offense, count one point for each adult~~(;)~~ and 1/2 point for each juvenile~~(;)~~ prior conviction ~~((for each other felony offense or serious traffic offense))~~.

~~((12))~~ (13) If the present conviction is for a drug offense count two points for each adult prior felony drug offense conviction and one point for each juvenile drug offense. All other adult and juvenile felonies are scored as in subsection ~~((8))~~ (9) of this section if the current drug offense is violent, or as in subsection ~~((7))~~ (8) of this section if the current drug offense is nonviolent.

~~((13))~~ (14) If the present conviction is for Willful Failure to Return from Furlough, RCW 72.66.060, or 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.

~~((14))~~ (15) If the present conviction is for Escape 1, RCW 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as one point and juvenile prior convictions as 1/2 point.

~~((15))~~ (16) If the present conviction is for Burglary 2, count priors as in subsection ~~((7))~~ (8) 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.

Sec. 4. 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.))~~

Alternatives to total confinement are available for offenders with sentences of one year or less. 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)) in addition, for offenders convicted of nonviolent offenses only, eight hours of community service ((conversion is limited to)) may be substituted for one day of total confinement, with a maximum conversion limit of 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.))

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 in writing on the judgment and sentence form if the alternatives are not used.

Sec. 5. Section 11, chapter 115, Laws of 1983 as last amended by section 5, chapter 456, Laws of 1987 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 to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(e) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle. However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.

(b) Whenever a person is convicted of three or more serious violent offenses, as defined in RCW ((9.94A.330)) 9.94A.030, 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 ((criminal history)) prior convictions and other current convictions that are not serious violent offenses in the offender score and the sentence range for other serious violent offenses shall be determined by using an offender score of zero. The sentence range for any offenses that are not serious violent 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)) confinement, the latter term shall not begin until expiration of all prior terms.

(3) 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 concurrently with any felony sentence which has been imposed by any court in this or another state or by a federal court subsequent to the commission of the crime being sentenced unless the court pronouncing the current sentence expressly orders that they be served consecutively.

(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, that 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.

NEW SECTION. Sec. 6. Section 4, chapter 115, Laws of 1983, section 18, chapter 209, Laws of 1984, section 24, chapter 257, Laws of 1986 and RCW 9.94A.330 are each repealed.

NEW SECTION. Sec. 7. This act applies to crimes committed after July 1, 1988.

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