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AUG 23 2010

King County Prosecutor
Appellate Unit

NO. 65166-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DARYL S. HART,

Appellant.

2010 AUG 23 11:59:37
FILED
CLERK OF COURT
JANET M. HARRIS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Carol A. Shapira, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court sentenced the appellant based on an erroneous calculation of his offender score.

2. The trial court imposed a 24-month term of community placement for a crime committed when there was no such thing as "community placement."

3. The trial court's application of sentencing statutes that did not exist when the appellant committed the murder in 1984 violated the appellant's constitutional right to be free of ex post facto laws.

4. Trial counsel deprived the appellant of his constitutional right to effective assistance by failing to object to the trial court's misapplication of sentencing statutes.

Issues Pertaining to Assignments of Error

1. The appellant was convicted of second degree robbery, a class B felony, in 1981. He committed first degree murder in 1984 and pleaded guilty to that crime in 2010. His criminal history includes no other felony convictions. Did the trial court exceed its statutory sentencing authority by using the 1981 conviction to calculate the appellant's offender score as 2 for purposes of sentencing for the murder conviction?

2. Did the trial court exceed its statutory sentencing authority by imposing a 24-month term of community placement for a crime committed in 1984 when "community placement" did not exist until 1988?

3. Did the trial court's application of sentencing provisions that did not exist when the appellant committed the 1984 murder violate the ex post facto doctrine?

4. Was trial counsel ineffective for failing to object to the trial court's misapplication of sentencing statutes that resulted in a more severe sentence for his client?

B. STATEMENT OF THE CASE

On August 25, 2009, after finding his DNA left at the scene of a 1984 homicide, the state charged Daryl S. Hart with premeditated first degree murder. In the information, the state also alleged Hart knew or should have known the deceased was particularly vulnerable or incapable of resistance. CP 1.

After two failed attempts to have new counsel appointed, Hart pleaded guilty January 5, 2010, as part of a plea agreement in which the state removed the "particular vulnerability" aggravating factor. CP 5-15, 25; 3RP 3-10.¹

¹ The four-volume verbatim report of proceedings is referred to as

At sentencing, Hart's trial counsel told the judge the parties had researched the law and concluded Hart's 1981 second degree robbery counted as 2 points in his offender score. 4RP 18-20. Based on that conviction, which was Hart's only other felony, the trial court concluded that Hart's offender score was 2 and that his corresponding standard range was 261 months to 347 months. The court sentenced Hart to 280 months of incarceration followed by 24 months of community placement. CP 26-34; 4RP 33-37.

C. ARGUMENT

1. THE TRIAL COURT EXCEEDED ITS STATUTORY SENTENCING AUTHORITY BY IMPOSING A STANDARD RANGE SENTENCE BASED ON AN INCORRECT OFFENDER SCORE.

a. Summary of argument

The trial court calculated Hart's offender score as 2 based on a 1981 second degree robbery. CP 32.² But the robbery conviction "washed out" by the time Hart pleaded guilty to first degree murder. The

follows: 1RP – 11/30/2009; 2RP – 12/16/2009; 3RP – 1/25/2010; 4RP – 3/12/2009.

² Since 1984, second degree robbery has been classified as a "violent" offense, and violent offenses have counted as 2 points in an offender score for first degree murder. Former RCW 9.94A.360(2), (5) (1984).

court therefore sentenced Hart based on a miscalculated offender score. A sentencing court acts without statutory authority when it imposes a sentence based on a miscalculated offender score. In re Personal Restraint of Johnson, 131 Wn.2d 558, 568, 933 P.2d 1019 (1997); State v. Malone, 138 Wn. App. 587, 593, 157 P.3d 909 (2007). This Court should vacate the sentence and remand for resentencing based on the correct offender score of 0.

b. The standard range was incorrect because the 1981 conviction "washed out."

Hart pleaded guilty on January 10, 2010, to a first degree murder committed in August 1984. CP 5-24. An offender score is calculated in accordance with the law in effect at the time the offense was committed. RCW 9.94A.345; State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004). At the time Hart committed the crime, the Sentencing Reform Act (SRA) "wash-out" statute read as follows:

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.

In re Personal Restraint of Williams, 111 Wn.2d 353, 360, 759 P.2d 436 (1988) (citing former RCW 9.94A.360(12); Laws of 1984, ch. 209, § 19(12), p. 1071) (emphasis added).

Second degree robbery is a class B felony, RCW 9A.56.210, which means the 10-year wash-out period applies. Even if we assume Hart served the 10-year statutory maximum behind bars, he would have been released in 1991 and the conviction would have washed out in 2001.³

Under the 1984 version of the SRA, the end of the wash-out period occurs on the date of the conviction for the new crime. State v. Thomas, 57 Wn. App. 403, 409, 788 P.2d 24, review denied 115 Wn.2d 1003 (1990) (overruled on other grounds by State v. Parker, 132 Wn.2d 182, 189-90, 937 P.2d 575 (1997)). A guilty plea is a "conviction." Williams, 111 Wn.2d at 357. This means Hart was not "convicted" of first degree murder until January 2010, when he pleaded guilty.

Between Hart's hypothetical maximum release date of 1991 and his conviction for the current murder, Hart committed no felony offenses. 4RP 6-7. In other words, he spent more than 18 years without a felony conviction. Under the applicable 1984 wash-out statute, Hart's 1981

³ The state did not offer the 1981 judgment and sentence and the record does not otherwise mention what sentence Hart received for the 1981 robbery.

robbery conviction washed. The trial court thus erred by relying on the robbery to find Hart's offender score was 2.

There is another reason for this result. At trial the state maintained the robbery did not wash because RCW 9.94A.525(2)⁴ provides the defendant must "spend 10 years crime-free before *committing* another crime for the prior crime to wash." Supp. CP __ (sub. no. 26, State's Sentencing Memorandum, at 1 n.1, filed 3/9/2010). In this regard, the state relies on the following 1995 amendment to the SRA:

Class B prior felony convictions other than sex offenses 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~~ **committing any crime that subsequently results in a conviction.**

Laws 1995, ch. 316, § 1.

Application of a 1995 change in the law to Hart's 1984 crime would violate his constitutional right to be free from ex post facto

⁴ RCW 9.94A.525(2)(b) provides:

Class B prior felony convictions other than sex offenses 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 committing any crime that subsequently results in a conviction.

legislation. U.S. Const. art. 1, § 10; Const. art. 1, § 23; Lynce v. Mathis, 519 U.S. 433, 441-42, 117 S. Ct. 891, 137 L. Ed. 2d 63 (1997); In re Personal Restraint of Powell, 117 Wn.2d 175, 184-85, 814 P.2d 635 (1991).

c. Hart has not waived this argument.

Hart anticipates the state will claim he waived the issue because at sentencing trial counsel agreed the prior robbery conviction counted as two points in his offender score. 4RP 19-20. This claim would be wrong. An unlawful sentence may be challenged for the first time on appeal. State v. Bahl, 164 Wn.2d 739, 744, 193 P.3d 678 (2008) (citing State v. Ford, 137 Wn.2d 472, 477, 973 P.2d 452 (1999)). A sentence based on an incorrect offender score is unlawful because it exceeds a court's statutory authority. Malone, 138 Wn. App. at 593. Where legal error leads to an excessive sentence, waiver does not apply. In re Personal Restraint of Goodwin, 146 Wn.2d 861, 874, 50 P.3d 618 (2002).

d. The remedy is resentencing.

The court's offender score resulted from legal error. Where an accused pleads guilty with an understanding of an incorrect standard range, the remedy is a remand for resentencing using the correct offender score. Goodwin, 146 Wn.2d at 876-77; see State v. Reanier, ___ Wn. App.

__, __ P.2d __, 2010 WL 3001431, ¶ 53 (No. 63717-7-I, 2010) (alternative "remedy" of specific performance was "no remedy at all" because agreement was for more time than statute authorized); cf., State v. Walsh, 143 Wn.2d 1, 8-9, 17 P.3d 591 (2001) (proper remedy for plea agreement based on misunderstanding that agreed range *lower* than correct range can be withdrawal of plea).

Hart entered his plea believing his offender score was 2 and his corresponding standard range was 261 months to 347 months in prison. CP 6.⁵ Based on a correct zero offender score, however, Hart's standard range drops to 240 months to 320 months. Former RCW 9.94A.310 (1984). This court should remand for resentencing.

e. Alternatively, trial counsel was ineffective.

Even if this Court concludes Hart waived his challenge to the sentencing error, he may nevertheless raise the error because his trial counsel was ineffective for failing to argue the 1981 prior conviction washed out and should not have counted in the offender score calculation. State v. Gerdts, 136 Wn. App. 720, 726, 150 P.3d 627 (2007).

The federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. A

⁵ So did defense counsel. 4RP 18-19.

defendant is denied this right when his or her attorney's conduct "(1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct." State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289 (citing Strickland v. Washington, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984)), cert. denied, 510 U.S. 944 (1993). Hart meets both requirements here.

Reasonable attorney conduct includes an obligation to investigate pertinent law. State v. Woods, 138 Wn. App. 191, 197-98, 156 P.3d 309 (2007). Had counsel researched the pertinent provisions of the SRA, he would have understood Hart's offender score was 0. Trial counsel's failure to do that is deficient performance.

Prejudice is established where it is reasonably probable that, but for counsel's deficient performance, the result of the proceedings would have been different. State v. West, 139 Wn.2d 37, 42, 983 P.2d 617 (1999). It is reasonably likely the reduction of the offender score from 2 to 0, and corresponding decrease in the standard range, would have resulted in a reduced sentence. Counsel's deficient performance prejudiced Hart. This Court should remand his case for resentencing based on an offender score of 0.

2. THE TRIAL COURT EXCEEDED ITS STATUTORY SENTENCING AUTHORITY BY IMPOSING 24 MONTHS OF COMMUNITY PLACEMENT.

Section 6 of the guilty plea statement Hart signed lists the consequences of a guilty plea to the 1984 murder. CP 7-8. Among them is subsection (f), which includes a handwritten interlineation notifying Hart that in addition to confinement, the trial judge would impose 24 months community custody. CP 8.

During her colloquy with Hart at the plea hearing, the prosecutor asked Hart:

I want to make sure you understand that because your crime was committed in 1984 the Community Placement or Community Custody is only 24 months for you, do you understand that?

3RP 6. Hart answered, "Yes, I do."

At sentencing, in response to Hart's motion to withdraw his plea based on, among other things, ineffective assistance of counsel, trial counsel said:

The Sentencing Reform Act has gone through many, many, many changes since 1984.⁶ When this, when this crime occurred, this

⁶ As long ago as 2003, a Court of Appeals panel expressed its frustration with the maddeningly labyrinthine development of the SRA:

Since 1981, the SRA has been amended by 175 session laws, an average of almost eight per year! It has become so astoundingly and needlessly complex that it cannot possibly be used both quickly and accurately. It is extremely difficult to identify what

occurred 30 days after the SRA had gone into effect at that point. What has changed is the amount – the amount of time that's being credited against Class A cases, such as murder, but the Victim Penalty Assessment was much different back in those days. The Community, although they didn't call it Community Custody, but the post conviction probationary period was – was much less than what it is now. That's set at 24 months.

4RP 18.

Consistent with these representations, the trial court imposed a 24-month term of community placement. CP 30.⁷

The trial court and parties apparently misunderstood the applicable law. "Community placement," "community custody," and "postrelease supervision," were not part of the SRA when Hart committed the murder

statute applies to a given crime, much less to coordinate that statute with others that may be related. The situation was recognized but not remedied-it may even have been exacerbated-by wholesale recodifications in 2001. The SRA screams for thoughtful simplification.

State v. Jones, 118 Wn. App. 199, 210-12, 76 P.3d 258 (2003).

⁷ Subsection 4.7(c) of the judgment and sentence reads as follows:

[x] COMMUNITY ~~CUSTODY~~ PLACEMENT – for qualifying crimes committed after 6-30-2000 is ordered for the following established range or term

...

[x] Serious Violent Offense, RCW 9.94A.030 – ~~36 months~~
24 months – crime committed in 1984 so law 24 mos.
community placement.

CP 30.

in 1984. Those three concepts did not come into being until 1988, when the Legislature amended the SRA. Laws of 1988, ch. 153, § 1 (defining terms). Under this law, a trial court was to impose a "one-year term of community placement" for "serious violent" and certain other types of felony offenses committed "on or after July 1, 1988." Laws of 1988, ch. 153 § 2.⁸ First degree murder was a "serious violent offense." Former RCW 9.94A.030(21) (1984).

The trial court thus acted without statutory sentencing authority by imposing any community placement term. For the reasons stated in argument (1)(c), Hart has not waived this argument. This Court should vacate the sentence and remand for resentencing to omit all reference to community placement. See State v. Barnett, 139 Wn.2d 462, 471, 987 P.2d 626, 631 (1999) (affirming Court of Appeals remand for resentencing where trial court imposed community placement term for offense that did not qualify). And as with the first argument, a contrary result would violate Hart's constitutional right to be protected against ex post facto laws.

⁸ A copy of the provision is attached as an appendix.

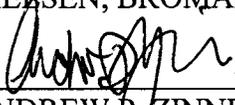
D. CONCLUSION

The trial court exceeded its statutory sentencing authority by sentencing Hart based on a miscalculated offender score and ordering 24 months community placement. This Court should vacate the sentence and remand for imposition of sentence based on an offender score of 0 and without a term of community placement or any other form of postrelease supervision.

DATED this 27 day of August, 2010.

Respectfully submitted,

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APPENDIX

CHAPTER 152

[Substitute House Bill No. 1419]

CRIMINAL JUSTICE INFORMATION—OFFICE OF FINANCIAL MANAGEMENT
MAY LET CONTRACT FOR COLLECTION AND TRANSMITTAL

AN ACT Relating to criminal justice information; amending RCW 10.98.130; and declaring an emergency.

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

Sec. 1. Section 13, chapter 17, Laws of 1984 as amended by section 3, chapter 462, Laws of 1987 and RCW 10.98.130 are each amended to read as follows:

Local jails shall report to the office of financial management and that office shall transmit to the department the information on all persons convicted of felonies or incarcerated for noncompliance with a felony sentence who are admitted or released from the jails and shall promptly respond to requests of the department for such data. Information transmitted shall include but not be limited to the state identification number, whether the reason for admission to jail was a felony conviction or noncompliance with a felony sentence, and the dates of the admission and release.

The office of financial management may contract with a state or local governmental agency, or combination thereof, or a private organization for the information collection and transmittal under this section.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 15, 1988.

Passed the Senate March 5, 1988.

Approved by the Governor March 21, 1988.

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

CHAPTER 153

[Engrossed Substitute House Bill No. 1424]

COMMUNITY PLACEMENT

AN ACT Relating to community placement; amending RCW 9.94A.150, 72.09.020, 9.94A.170, 9.94A.200, 9.94A.360, and 9.94A.330; reenacting and amending RCW 9.94A.030 and 9.94A.120; adding new sections to chapter 9.94A RCW; adding new sections to chapter 72.09 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

Sec. 1. Section 3, chapter 137, Laws of 1981 as last amended by section 3, chapter 187, Laws of 1987, by 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 custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(4) "Community placement" means a one-year period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

~~((4))~~ (6) "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))~~ (7) "Confinement" means total or partial confinement as defined in this section.

~~((6))~~ (8) "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))~~ (9) "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))~~ (10) (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 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, 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))~~ (11) "Department" means the department of corrections.

~~((10))~~ (12) "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))~~ (13) "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))~~ (14) "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 wilful failure to comply with any limitations on the inmate's movements while in community custody (section 6 of this 1988 act); 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))~~ (15) "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))~~ (16) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

~~((15))~~ (17) (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))~~ (18) "Nonviolent offense" means an offense which is not a violent offense.

~~((17))~~ (19) "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))~~ (20) "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.

(21) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((19))~~ (22) "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))~~ (23) "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))~~ (24) "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))~~ (25) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((23))~~ (26) "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))~~ (27) "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))~~ (28) "Victim" means any person who has sustained physical or financial injury to person or property as a direct result of the crime charged.

~~((26))~~ (29) "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 (a) of this 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 (a) or (b) of this subsection ~~((26)(a) or (b) of this section)~~.

~~((27))~~ (30) "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 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) (a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense, a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW

9.94A.150(1). When the court sentences an offender under this section to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150(1). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense, a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 1988, unless a condition is waived by the court, the sentence shall include, in addition to the other terms of the sentence, a one-year term of community placement on the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) An offender in community custody shall not unlawfully possess controlled substances; and

(v) The offender shall pay community placement fees as determined by the department of corrections.

(c) The court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The residence location and living arrangements of a sex offender shall be subject to the prior approval of the department of corrections; or

(vi) The offender shall comply with any crime-related prohibitions.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(9) 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))~~ (10) 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 ordered shall be paid no later than ten years after the most recent of either the last date of release from confinement pursuant to a felony conviction or the date the 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))~~ (11) 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 or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

~~((11))~~ (12) All offenders sentenced to terms involving community supervision, community service, restitution, or fines 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 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))~~ (13) 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))~~ (14) 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))~~ (15) 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))~~ (16) 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))~~ (17) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release.

Sec. 3. Section 15, chapter 137, Laws of 1981 as last amended by section 8, chapter 209, Laws of 1984 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) Except for persons convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, 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. Persons convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW may become eligible for community custody in lieu of earned early release time in accordance with the program developed by the department;

(2) When a person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW is eligible for transfer to community custody status in lieu of earned early release time pursuant to subsection (1) of this section, as computed by the department of corrections, the offender shall be transferred to community custody.

(3) 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))~~ (4) 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))~~ (5) If the sentence of confinement is in excess of 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))~~ (6) The governor may pardon any offender;

~~((6))~~ (7) The department of corrections may release an offender from confinement any time within ten days before a release date calculated under this section; and

~~((7))~~ (8) 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. 4. A new section is added to chapter 9.94A RCW to read as follows:

If an inmate violates any condition or requirement of community custody, the department may transfer the inmate to a more restrictive confinement status to serve the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation. If an inmate is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as inmate disciplinary proceedings and shall not be subject to chapter 34.04 RCW. The department shall develop hearing procedures and sanctions.

NEW SECTION. Sec. 5. A new section is added to chapter 9.94A RCW to read as follows:

(1) The secretary may issue warrants for the arrest of any offender who violates a condition of community placement. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation. The department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. A community corrections officer, if he or she has reasonable cause to believe an offender in community placement has violated a condition of community placement, may suspend the person's community placement status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement status. A violation of a condition of community placement shall be deemed a violation of the sentence for purposes of RCW 9.94A.195. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.195.

(2) Inmates, as defined in RCW 72.09.020, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections. The community custody inmate shall be removed from the local correctional facility not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution. However, if good cause is shown, the department may negotiate with local correctional authorities for an additional period of detention.

NEW SECTION. Sec. 6. A new section is added to chapter 72.09 RCW to read as follows:

An inmate in community custody who wilfully fails to comply with any one or more of the controls placed on the inmate's movements by the department of corrections shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW.

Sec. 7. Section 7, chapter 136, Laws of 1981 and RCW 72.09.020 are each amended to read as follows:

For purposes of this chapter, "inmate" means any person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough ~~((or))~~, work release, or community custody.

NEW SECTION. Sec. 8. A new section is added to chapter 9.94A RCW to read as follows:

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94A.200. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

Sec. 9. Section 17, chapter 137, Laws of 1981 and RCW 9.94A.170 are each amended to read as follows:

(1) A term of confinement, including community custody, ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented him or herself from ((supervision)) confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) A term of supervision, including postrelease supervision ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of supervision shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to section 5 of this 1988 act or RCW 9.94A.195 and is later found not to have violated a condition or requirement of supervision, time spent in confinement due to such detention shall not toll to period of supervision.

(4) For confinement sentences, the date for the tolling of the sentence shall be established by the entity responsible for the confinement. For sentences involving supervision, the date for the tolling of the sentence shall be established by the court, based on reports from the entity responsible for the supervision.

NEW SECTION. Sec. 10. A new section is added to chapter 72.09 RCW to read as follows:

The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035.

Sec. 11. 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) The state has the burden of showing noncompliance by a preponderance of the evidence. 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 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 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. 12. 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) 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. Out-of-state convictions for offenses shall be classified according to the comparable offense definitions and sentences provided by Washington law.

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

(5) 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) 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) If the present conviction is for a nonviolent offense and not covered by subsection (11) or (12) 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) If the present conviction is for a violent offense and not covered in subsection (9), (10), (11), or (12) 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) If the present conviction is for Murder 1 or 2, Assault 1, Kidnaping 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.

(10) If the present conviction is for Burglary 1, count prior convictions as in subsection (8) 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) If the present conviction is for a felony traffic offense count two points for each adult or juvenile prior conviction for Vehicular Homicide; 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) 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) of this section if the current drug offense is violent, or as in subsection (7) of this section if the current drug offense is nonviolent.

(13) 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) 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) If the present conviction is for Burglary 2, count priors as in subsection (7) 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.

(16) If the present conviction is for an offense committed while the offender was under community placement, add one point.

*Sec. 13. Section 4, chapter 115, Laws of 1983 as last amended by section 24, chapter 257, Laws of 1986 and RCW 9.94A.330 are each amended to read as follows:

**TABLE 3
OFFENDER SCORE MATRIX**

Prior Adult Convictions

(Score prior convictions for felony anticipatory crimes (attempts, criminal solicitations, and criminal conspiracies) the same as for the completed crime.)

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Assault/Homicide	Escape
Serious Violent	3	2	2	2	1
Burglary 1	2	2	2	2	1
Other Violent	2	2	2	2	1
Felony Traffic	1	1	1	2	1
Escape	0	0	0	0	1
Burglary 2	1	2	1	1	1
Other Non-Violent	1	1	1	1	1
Drug	1	1	1	1	1

Current Offenses	Burglary 2	Other Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1	1	0	1	1
Burglary 1	2	1	0	1	1
Other Violent	1	1	0	1	1
Felony Traffic	1	1	1	1	1
Escape	0	0	0	0	0
Burglary 2	2	1	0	1	1
Other Non-Violent	1	1	0	1	1
Drug	1	1	0	1	2

Prior Juvenile Convictions

(Score prior convictions for felony anticipatory crimes (attempts, criminal solicitations, and criminal conspiracies) the same as for the completed crime.)

Current Offenses	Serious Violent	Burglary 1	Other Violent	Vehicular Assault/Homicide	Escape
Serious Violent	3	2	2	2	1/2
Burglary 1	2	2	2	2	1/2
Other Violent	2	2	2	2	1/2
Felony Traffic	1/2	1/2	1/2	2	1/2
Escape	0	0	0	0	1/2
Burglary 2	1/2	2	1/2	1/2	1/2
Other Non-Violent	1/2	1/2	1/2	1/2	1/2
Drug	1/2	1/2	1/2	1/2	1/2

Current Offenses	Burglary 2	Other Felony Traffic	Serious Traffic	Other Non-Violent	Drug
Serious Violent	1/2	1/2	0	1/2	1/2
Burglary 1	1	1/2	0	1/2	1/2
Other Violent	1/2	1/2	0	1/2	1/2
Felony Traffic	1/2	1/2	1/2	1/2	1/2
Escape	0	0	0	0	0
Burglary 2	1	1/2	0	1/2	1/2
Other Non-Violent	1/2	1/2	0	1/2	1/2
Drug	1/2	1/2	0	1/2	1

Status at Time of Current Offense

On community placement	1
Not on community placement	0

*Sec. 13 was vetoed, see message at end of chapter.

NEW SECTION. Sec. 14. The department of corrections shall report to the legislature on its plans for implementation of this act prior to January 10, 1989. The report shall address: (1) The classification system used to determine the supervision level; and (2) the contact standards for monitoring offenders. This section shall expire February 1, 1989.

NEW SECTION. Sec. 15. Increased sanctions authorized by this act are applicable only to those persons committing offenses after the effective date of this act.

NEW SECTION. Sec. 16. This act shall take effect July 1, 1988.

Passed the House March 9, 1988.

Passed the Senate March 6, 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 13, Engrossed Substitute House Bill No. 1424 entitled:

"AN ACT Relating to community placement."

Section 13 amends RCW 9.94A.330, the offender score matrix, to include an additional one point sentencing enhancement for offenders who commit crimes while on community placement. This same provision is amended by section 12 into RCW 9.94A.360 which establishes offender scoring procedures.

Substitute Senate Bill No. 6462, section 6, repeals RCW 9.94A.330. This measure is intended to clarify statutes relating to sentencing, and repeals the offender score matrix on the grounds that it is redundant and potentially confusing. I agree that this statute should be repealed for clarification purposes. Because the sentencing enhancement will be included in RCW 9.94A.360, there will be no effect on the substance of Engrossed Substitute House Bill No. 1424.

With the exception of section 13, Engrossed Substitute House Bill No. 1424 is approved."

CHAPTER 154

[Substitute House Bill No. 1429]

HOME DETENTION

AN ACT Relating to home detention under the sentencing reform act; amending RCW 9.94A.180 and 9.94A.190; reenacting and amending RCW 9.94A.030 and 9.94A.120; and creating a new section.

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

***NEW SECTION. Sec. 1. The legislature finds that:**

(1) There is a critical shortage of space in many county jails, which is likely to become even more acute during the next several years due to (a) increases in apprehensions for crimes involving violence and controlled substances, (b) increases in the length of confinement for repeat offenders of property crimes under the sentencing reform act, and (c) repeat offenders under laws prohibiting driving while intoxicated.

(2) Neither time nor financial resources are available to construct additional jail facilities. The present excess bed capacity in the state prison system is projected to disappear within the next two years.

(3) Public safety requires innovative approaches to incarceration alternatives. These alternatives must minimize risks to public safety through the use of supervision and monitoring techniques.

(4) Partial confinement for appropriate offenders, with realistic monitoring, appears to offer an alternative incarceration option for local jurisdictions that have determined that the option is an appropriate response to local needs.

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

Sec. 2. 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.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 65166-8-1
)	
DARYL HART,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 23RD DAY OF AUGUST, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] DARYL HART
DOC NO. 276452
WASHINGTON STATE PENITENTIARY
1313 N. 13TH AVENUE
WALLA WALLA, WA 99362

SIGNED IN SEATTLE WASHINGTON, THIS 23RD DAY OF AUGUST, 2010.

x *Patrick Mayovsky*