

2 **SSB 6274** - H COMM AMD **ADOPTED 3-1-96**
3 By Committee on Appropriations

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that improving the
8 supervision of convicted sex offenders in the community upon release
9 from incarceration is a substantial public policy goal, in that
10 effective supervision accomplishes many purposes including protecting
11 the community, supporting crime victims, assisting offenders to change,
12 and providing important information to decision makers.

13 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
14 as follows:

15 When a person is convicted of a felony, the court shall impose
16 punishment as provided in this section.

17 (1) Except as authorized in subsections (2), (4), (5), (6), and (8)
18 of this section, the court shall impose a sentence within the sentence
19 range for the offense.

20 (2) The court may impose a sentence outside the standard sentence
21 range for that offense if it finds, considering the purpose of this
22 chapter, that there are substantial and compelling reasons justifying
23 an exceptional sentence.

24 (3) Whenever a sentence outside the standard range is imposed, the
25 court shall set forth the reasons for its decision in written findings
26 of fact and conclusions of law. A sentence outside the standard range
27 shall be a determinate sentence.

28 (4) A persistent offender shall be sentenced to a term of total
29 confinement for life without the possibility of parole or, when
30 authorized by RCW 10.95.030 for the crime of aggravated murder in the
31 first degree, sentenced to death, notwithstanding the maximum sentence
32 under any other law. An offender convicted of the crime of murder in
33 the first degree shall be sentenced to a term of total confinement not
34 less than twenty years. An offender convicted of the crime of assault
35 in the first degree or assault of a child in the first degree where the

1 offender used force or means likely to result in death or intended to
2 kill the victim shall be sentenced to a term of total confinement not
3 less than five years. An offender convicted of the crime of rape in
4 the first degree shall be sentenced to a term of total confinement not
5 less than five years. The foregoing minimum terms of total confinement
6 are mandatory and shall not be varied or modified as provided in
7 subsection (2) of this section. In addition, all offenders subject to
8 the provisions of this subsection shall not be eligible for community
9 custody, earned early release time, furlough, home detention, partial
10 confinement, work crew, work release, or any other form of early
11 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
12 or any other form of authorized leave of absence from the correctional
13 facility while not in the direct custody of a corrections officer or
14 officers during such minimum terms of total confinement except in the
15 case of an offender in need of emergency medical treatment or for the
16 purpose of commitment to an inpatient treatment facility in the case of
17 an offender convicted of the crime of rape in the first degree.

18 (5) In sentencing a first-time offender the court may waive the
19 imposition of a sentence within the sentence range and impose a
20 sentence which may include up to ninety days of confinement in a
21 facility operated or utilized under contract by the county and a
22 requirement that the offender refrain from committing new offenses.
23 The sentence may also include up to two years of community supervision,
24 which, in addition to crime-related prohibitions, may include
25 requirements that the offender perform any one or more of the
26 following:

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

28 (b) Undergo available outpatient treatment for up to two years, or
29 inpatient treatment not to exceed the standard range of confinement for
30 that offense;

31 (c) Pursue a prescribed, secular course of study or vocational
32 training;

33 (d) Remain within prescribed geographical boundaries and notify the
34 court or the community corrections officer prior to any change in the
35 offender's address or employment;

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

38 (f) Pay all court-ordered legal financial obligations as provided
39 in RCW 9.94A.030 and/or perform community service work.

1 (6)(a) An offender is eligible for the special drug offender
2 sentencing alternative if:

3 (i) The offender is convicted of the manufacture, delivery, or
4 possession with intent to manufacture or deliver a controlled substance
5 classified in Schedule I or II that is a narcotic drug or a felony that
6 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
7 criminal solicitation, or criminal conspiracy to commit such crimes,
8 and the violation does not involve a sentence enhancement under RCW
9 9.94A.310(3) or (4);

10 (ii) The offender has no prior convictions for a felony in this
11 state, another state, or the United States; and

12 (iii) The offense involved only a small quantity of the particular
13 controlled substance as determined by the judge upon consideration of
14 such factors as the weight, purity, packaging, sale price, and street
15 value of the controlled substance.

16 (b) If the midpoint of the standard range is greater than one year
17 and the sentencing judge determines that the offender is eligible for
18 this option and that the offender and the community will benefit from
19 the use of the special drug offender sentencing alternative, the judge
20 may waive imposition of a sentence within the standard range and impose
21 a sentence that must include a period of total confinement in a state
22 facility for one-half of the midpoint of the standard range. During
23 incarceration in the state facility, offenders sentenced under this
24 subsection shall undergo a comprehensive substance abuse assessment and
25 receive, within available resources, treatment services appropriate for
26 the offender. The treatment services shall be designed by the division
27 of alcohol and substance abuse of the department of social and health
28 services, in cooperation with the department of corrections. If the
29 midpoint of the standard range is twenty-four months or less, no more
30 than three months of the sentence may be served in a work release
31 status. The court shall also impose one year of concurrent community
32 custody and community supervision that must include appropriate
33 outpatient substance abuse treatment, crime-related prohibitions
34 including a condition not to use illegal controlled substances, and a
35 requirement to submit to urinalysis or other testing to monitor that
36 status. The court may require that the monitoring for controlled
37 substances be conducted by the department or by a treatment
38 ~~((alternative[s]))~~ alternatives to street crime program or a comparable
39 court or agency-referred program. The offender may be required to pay

1 thirty dollars per month while on community custody to offset the cost
2 of monitoring. In addition, the court shall impose three or more of
3 the following conditions:

4 (i) Devote time to a specific employment or training;

5 (ii) Remain within prescribed geographical boundaries and notify
6 the court or the community corrections officer before any change in the
7 offender's address or employment;

8 (iii) Report as directed to a community corrections officer;

9 (iv) Pay all court-ordered legal financial obligations;

10 (v) Perform community service work;

11 (vi) Stay out of areas designated by the sentencing judge.

12 (c) If the offender violates any of the sentence conditions in (b)
13 of this subsection, the department shall impose sanctions
14 administratively, with notice to the prosecuting attorney and the
15 sentencing court. Upon motion of the court or the prosecuting
16 attorney, a violation hearing shall be held by the court. If the court
17 finds that conditions have been willfully violated, the court may
18 impose confinement consisting of up to the remaining one-half of the
19 midpoint of the standard range. All total confinement served during
20 the period of community custody shall be credited to the offender,
21 regardless of whether the total confinement is served as a result of
22 the original sentence, as a result of a sanction imposed by the
23 department, or as a result of a violation found by the court. The term
24 of community supervision shall be tolled by any period of time served
25 in total confinement as a result of a violation found by the court.

26 (d) The department shall determine the rules for calculating the
27 value of a day fine based on the offender's income and reasonable
28 obligations which the offender has for the support of the offender and
29 any dependents. These rules shall be developed in consultation with
30 the administrator for the courts, the office of financial management,
31 and the commission.

32 (7) If a sentence range has not been established for the
33 defendant's crime, the court shall impose a determinate sentence which
34 may include not more than one year of confinement, community service
35 work, a term of community supervision not to exceed one year, and/or
36 other legal financial obligations. The court may impose a sentence
37 which provides more than one year of confinement if the court finds,
38 considering the purpose of this chapter, that there are substantial and
39 compelling reasons justifying an exceptional sentence.

1 (8)(a)(i) When an offender is convicted of a sex offense other than
2 a violation of RCW 9A.44.050 or a sex offense that is also a serious
3 violent offense and has no prior convictions for a sex offense or any
4 other felony sex offenses in this or any other state, the sentencing
5 court, on its own motion or the motion of the state or the defendant,
6 may order an examination to determine whether the defendant is amenable
7 to treatment.

8 The report of the examination shall include at a minimum the
9 following: The defendant's version of the facts and the official
10 version of the facts, the defendant's offense history, an assessment of
11 problems in addition to alleged deviant behaviors, the offender's
12 social and employment situation, and other evaluation measures used.
13 The report shall set forth the sources of the evaluator's information.

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

18 (A) Frequency and type of contact between offender and therapist;

19 (B) Specific issues to be addressed in the treatment and
20 description of planned treatment modalities;

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

26 The court on its own motion may order, or on a motion by the state
27 shall order, a second examination regarding the offender's amenability
28 to treatment. The evaluator shall be selected by the party making the
29 motion. The defendant shall pay the cost of any second examination
30 ordered unless the court finds the defendant to be indigent in which
31 case the state shall pay the cost.

32 (ii) After receipt of the reports, the court shall consider whether
33 the offender and the community will benefit from use of this special
34 sexual offender sentencing alternative and consider the victim's
35 opinion whether the offender should receive a treatment disposition
36 under this subsection. If the court determines that this special sex
37 offender sentencing alternative is appropriate, the court shall then
38 impose a sentence within the sentence range. If this sentence is less

1 than eight years of confinement, the court may suspend the execution of
2 the sentence and impose the following conditions of suspension:

3 (A) The court shall place the defendant on community
4 (~~supervision~~) custody for the length of the suspended sentence or
5 three years, whichever is greater, and require the offender to comply
6 with any conditions imposed by the department of corrections under
7 subsection (14) of this section; and

8 (B) The court shall order treatment for any period up to three
9 years in duration. The court in its discretion shall order outpatient
10 sex offender treatment or inpatient sex offender treatment, if
11 available. A community mental health center may not be used for such
12 treatment unless it has an appropriate program designed for sex
13 offender treatment. The offender shall not change sex offender
14 treatment providers or treatment conditions without first notifying the
15 prosecutor, the community corrections officer, and the court, and shall
16 not change providers without court approval after a hearing if the
17 prosecutor or community corrections officer object to the change. In
18 addition, as conditions of the suspended sentence, the court may impose
19 other sentence conditions including up to six months of confinement,
20 not to exceed the sentence range of confinement for that offense,
21 crime-related prohibitions, and requirements that the offender perform
22 any one or more of the following:

23 (I) Devote time to a specific employment or occupation;

24 (II) Remain within prescribed geographical boundaries and notify
25 the court or the community corrections officer prior to any change in
26 the offender's address or employment;

27 (III) Report as directed to the court and a community corrections
28 officer;

29 (IV) Pay all court-ordered legal financial obligations as provided
30 in RCW 9.94A.030, perform community service work, or any combination
31 thereof; or

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

34 (iii) The sex offender therapist shall submit quarterly reports on
35 the defendant's progress in treatment to the court and the parties.
36 The report shall reference the treatment plan and include at a minimum
37 the following: Dates of attendance, defendant's compliance with
38 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at
2 sentencing.

3 (iv) At the time of sentencing, the court shall set a treatment
4 termination hearing for three months prior to the anticipated date for
5 completion of treatment. Prior to the treatment termination hearing,
6 the treatment professional and community corrections officer shall
7 submit written reports to the court and parties regarding the
8 defendant's compliance with treatment and monitoring requirements, and
9 recommendations regarding termination from treatment, including
10 proposed community supervision conditions. Either party may request
11 and the court may order another evaluation regarding the advisability
12 of termination from treatment. The defendant shall pay the cost of any
13 additional evaluation ordered unless the court finds the defendant to
14 be indigent in which case the state shall pay the cost. At the
15 treatment termination hearing the court may: (A) Modify conditions of
16 community (~~supervision~~) custody, and either (B) terminate treatment,
17 or (C) extend treatment for up to the remaining period of community
18 (~~supervision~~) custody.

19 (v) If a violation of conditions occurs during community custody,
20 the department shall either impose sanctions as provided for in RCW
21 9.94A.205(2)(a) or refer the violation to the court and recommend
22 revocation of the suspended sentence as provided for in (a)(vi) of this
23 subsection.

24 (vi) The court may revoke the suspended sentence at any time during
25 the period of community (~~supervision~~) custody and order execution of
26 the sentence if: (A) The defendant violates the conditions of the
27 suspended sentence, or (B) the court finds that the defendant is
28 failing to make satisfactory progress in treatment. All confinement
29 time served during the period of community (~~supervision~~) custody
30 shall be credited to the offender if the suspended sentence is revoked.

31 (~~(vi)~~) (vii) Except as provided in (a)(~~(vii)~~)(viii) of this
32 subsection, after July 1, 1991, examinations and treatment ordered
33 pursuant to this subsection shall only be conducted by sex offender
34 treatment providers certified by the department of health pursuant to
35 chapter 18.155 RCW.

36 (~~(vii)~~) (viii) A sex offender therapist who examines or treats a
37 sex offender pursuant to this subsection (8) does not have to be
38 certified by the department of health pursuant to chapter 18.155 RCW if
39 the court finds that: (A) The offender has already moved to another

1 state or plans to move to another state for reasons other than
2 circumventing the certification requirements; (B) no certified
3 providers are available for treatment within a reasonable geographical
4 distance of the offender's home; and (C) the evaluation and treatment
5 plan comply with this subsection (8) and the rules adopted by the
6 department of health.

7 For purposes of this subsection, "victim" means any person who has
8 sustained emotional, psychological, physical, or financial injury to
9 person or property as a result of the crime charged. "Victim" also
10 means a parent or guardian of a victim who is a minor child unless the
11 parent or guardian is the perpetrator of the offense.

12 (b) When an offender commits any felony sex offense on or after
13 July 1, 1987, and is sentenced to a term of confinement of more than
14 one year but less than six years, the sentencing court may, on its own
15 motion or on the motion of the offender or the state, request the
16 department of corrections to evaluate whether the offender is amenable
17 to treatment and the department may place the offender in a treatment
18 program within a correctional facility operated by the department.

19 Except for an offender who has been convicted of a violation of RCW
20 9A.44.040 or 9A.44.050, if the offender completes the treatment program
21 before the expiration of his or her term of confinement, the department
22 of corrections may request the court to convert the balance of
23 confinement to community supervision and to place conditions on the
24 offender including crime-related prohibitions and requirements that the
25 offender perform any one or more of the following:

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

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

37 Nothing in this subsection (8)(b) shall confer eligibility for such
38 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (8)(b) does not apply
2 to any crime committed after July 1, 1990.

3 (c) Offenders convicted and sentenced for a sex offense committed
4 prior to July 1, 1987, may, subject to available funds, request an
5 evaluation by the department of corrections to determine whether they
6 are amenable to treatment. If the offender is determined to be
7 amenable to treatment, the offender may request placement in a
8 treatment program within a correctional facility operated by the
9 department. Placement in such treatment program is subject to
10 available funds.

11 (9)(a) When a court sentences a person to a term of total
12 confinement to the custody of the department of corrections for an
13 offense categorized as a sex offense or a serious violent offense
14 committed after July 1, 1988, but before July 1, 1990, assault in the
15 second degree, assault of a child in the second degree, any crime
16 against a person where it is determined in accordance with RCW
17 9.94A.125 that the defendant or an accomplice was armed with a deadly
18 weapon at the time of commission, or any felony offense under chapter
19 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
20 committed on or after July 1, 1988, the court shall in addition to the
21 other terms of the sentence, sentence the offender to a one-year term
22 of community placement beginning either upon completion of the term of
23 confinement or at such time as the offender is transferred to community
24 custody in lieu of earned early release in accordance with RCW
25 9.94A.150 (1) and (2). When the court sentences an offender under this
26 subsection to the statutory maximum period of confinement then the
27 community placement portion of the sentence shall consist entirely of
28 such community custody to which the offender may become eligible, in
29 accordance with RCW 9.94A.150 (1) and (2). Any period of community
30 custody actually served shall be credited against the community
31 placement portion of the sentence.

32 (b) When a court sentences a person to a term of total confinement
33 to the custody of the department of corrections for an offense
34 categorized as a sex offense committed on or after July 1, 1990, but
35 before the effective date of this act, or a serious violent offense
36 committed on or after July 1, 1990, the court shall in addition to
37 other terms of the sentence, sentence the offender to community
38 placement for two years or up to the period of earned early release
39 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.

1 The community placement shall begin either upon completion of the term
2 of confinement or at such time as the offender is transferred to
3 community custody in lieu of earned early release in accordance with
4 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
5 this subsection to the statutory maximum period of confinement then the
6 community placement portion of the sentence shall consist entirely of
7 the community custody to which the offender may become eligible, in
8 accordance with RCW 9.94A.150 (1) and (2). Any period of community
9 custody actually served shall be credited against the community
10 placement portion of the sentence. Unless a condition is waived by the
11 court, the terms of community placement for offenders sentenced
12 pursuant to this section shall include the following conditions:

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

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

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

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

21 (v) The offender shall pay supervision fees as determined by the
22 department of corrections; and

23 (vi) The residence location and living arrangements are subject to
24 the prior approval of the department of corrections during the period
25 of community placement.

26 (c) As a part of any sentence imposed under (a) or (b) of this
27 subsection, the court may also order any of the following special
28 conditions:

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

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

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

35 (iv) The offender shall not consume alcohol; or

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

37 (d) Prior to transfer to, or during, community placement, any
38 conditions of community placement may be removed or modified so as not

1 to be more restrictive by the sentencing court, upon recommendation of
2 the department of corrections.

3 (10)(a) When a court sentences a person to the custody of the
4 department of corrections for an offense categorized as a sex offense
5 committed on or after the effective date of this act, the court shall,
6 in addition to other terms of the sentence, sentence the offender to
7 community custody for three years or up to the period of earned early
8 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
9 longer. The community custody shall begin either upon completion of
10 the term of confinement or at such time as the offender is transferred
11 to community custody in lieu of earned early release in accordance with
12 RCW 9.94A.150 (1) and (2).

13 (b) Unless a condition is waived by the court, the terms of
14 community custody shall be the same as those provided for in subsection
15 (9)(b) of this section and may include those provided for in subsection
16 (9)(c) of this section. As part of any sentence that includes a term
17 of community custody imposed under this subsection, the court shall
18 also require the offender to comply with any conditions imposed by the
19 department of corrections under subsection (14) of this section.

20 (c) At any time prior to the completion of a sex offender's term of
21 community custody, if the court finds that public safety would be
22 enhanced, the court may impose and enforce an order extending any or
23 all of the conditions imposed pursuant to this section for a period up
24 to the maximum allowable sentence for the crime as it is classified in
25 chapter 9A.20 RCW, regardless of the expiration of the offender's term
26 of community custody. If a violation of a condition extended under
27 this subsection occurs after the expiration of the offender's term of
28 community custody, it shall be deemed a violation of the sentence for
29 the purposes of RCW 9.94A.195 and may be punishable as contempt of
30 court as provided for in RCW 7.21.040.

31 (11) If the court imposes a sentence requiring confinement of
32 thirty days or less, the court may, in its discretion, specify that the
33 sentence be served on consecutive or intermittent days. A sentence
34 requiring more than thirty days of confinement shall be served on
35 consecutive days. Local jail administrators may schedule court-ordered
36 intermittent sentences as space permits.

37 ~~((11))~~ (12) If a sentence imposed includes payment of a legal
38 financial obligation, the sentence shall specify the total amount of
39 the legal financial obligation owed, and shall require the offender to

1 pay a specified monthly sum toward that legal financial obligation.
2 Restitution to victims shall be paid prior to any other payments of
3 monetary obligations. Any legal financial obligation that is imposed
4 by the court may be collected by the department, which shall deliver
5 the amount paid to the county clerk for credit. The offender's
6 compliance with payment of legal financial obligations shall be
7 supervised by the department. All monetary payments ordered shall be
8 paid no later than ten years after the last date of release from
9 confinement pursuant to a felony conviction or the date the sentence
10 was entered. Independent of the department, the party or entity to
11 whom the legal financial obligation is owed shall have the authority to
12 utilize any other remedies available to the party or entity to collect
13 the legal financial obligation. Nothing in this section makes the
14 department, the state, or any of its employees, agents, or other
15 persons acting on their behalf liable under any circumstances for the
16 payment of these legal financial obligations. If an order includes
17 restitution as one of the monetary assessments, the county clerk shall
18 make disbursements to victims named in the order.

19 ~~((12))~~ (13) Except as provided under RCW 9.94A.140(1) and
20 9.94A.142(1), a court may not impose a sentence providing for a term of
21 confinement or community supervision or community placement which
22 exceeds the statutory maximum for the crime as provided in chapter
23 9A.20 RCW.

24 ~~((13))~~ (14) All offenders sentenced to terms involving community
25 supervision, community service, community placement, or legal financial
26 obligation shall be under the supervision of the ~~((secretary of the))~~
27 department of corrections ~~((or such person as the secretary may~~
28 ~~designate))~~ and shall follow explicitly the instructions and conditions
29 of the ~~((secretary including))~~ department of corrections.

30 (a) The instructions shall include, at a minimum, reporting as
31 directed to a community corrections officer, remaining within
32 prescribed geographical boundaries, notifying the community corrections
33 officer of any change in the offender's address or employment, and
34 paying the supervision fee assessment.

35 (b) For sex offenders sentenced to terms involving community
36 custody for crimes committed on or after the effective date of this
37 act, the department may include, in addition to the instructions in (a)
38 of this subsection, any appropriate conditions of supervision,
39 including but not limited to, prohibiting the offender from having

1 contact with any other specified individuals or specific class of
2 individuals. The conditions authorized under this subsection (14)(b)
3 may be imposed by the department prior to or during a sex offenders'
4 community custody term. If a violation of conditions imposed by the
5 court or the department pursuant to subsection (10) of this section
6 occurs during community custody, it shall be deemed a violation of
7 community placement for the purposes of RCW 9.94A.207 and shall
8 authorize the department to transfer an offender to a more restrictive
9 confinement status as provided in RCW 9.94A.205. At any time prior to
10 the completion of a sex offender's term of community custody, the
11 department may recommend to the court that any or all of the conditions
12 imposed by the court or the department pursuant to subsection (10) of
13 this section be continued beyond the expiration of the offender's term
14 of community custody as authorized in subsection (10)(c) of this
15 section.

16 The department may require offenders to pay for special services
17 rendered on or after July 25, 1993, including electronic monitoring,
18 day reporting, and telephone reporting, dependent upon the offender's
19 ability to pay. The department may pay for these services for
20 offenders who are not able to pay.

21 (~~(14)~~) (15) All offenders sentenced to terms involving community
22 supervision, community service, or community placement under the
23 supervision of the department of corrections shall not own, use, or
24 possess firearms or ammunition. Offenders who own, use, or are found
25 to be in actual or constructive possession of firearms or ammunition
26 shall be subject to the appropriate violation process and sanctions.
27 "Constructive possession" as used in this subsection means the power
28 and intent to control the firearm or ammunition. "Firearm" as used in
29 this subsection means a weapon or device from which a projectile may be
30 fired by an explosive such as gunpowder.

31 (~~(15)~~) (16) The sentencing court shall give the offender credit
32 for all confinement time served before the sentencing if that
33 confinement was solely in regard to the offense for which the offender
34 is being sentenced.

35 (~~(16)~~) (17) A departure from the standards in RCW 9.94A.400 (1)
36 and (2) governing whether sentences are to be served consecutively or
37 concurrently is an exceptional sentence subject to the limitations in
38 subsections (2) and (3) of this section, and may be appealed by the
39 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

1 (~~(17)~~) (18) The court shall order restitution whenever the
2 offender is convicted of a felony that results in injury to any person
3 or damage to or loss of property, whether the offender is sentenced to
4 confinement or placed under community supervision, unless extraordinary
5 circumstances exist that make restitution inappropriate in the court's
6 judgment. The court shall set forth the extraordinary circumstances in
7 the record if it does not order restitution.

8 (~~(18)~~) (19) As a part of any sentence, the court may impose and
9 enforce an order that relates directly to the circumstances of the
10 crime for which the offender has been convicted, prohibiting the
11 offender from having any contact with other specified individuals or a
12 specific class of individuals for a period not to exceed the maximum
13 allowable sentence for the crime, regardless of the expiration of the
14 offender's term of community supervision or community placement.

15 (~~(19)~~) (20) In any sentence of partial confinement, the court may
16 require the defendant to serve the partial confinement in work release,
17 in a program of home detention, on work crew, or in a combined program
18 of work crew and home detention.

19 (~~(20)~~) (21) All court-ordered legal financial obligations
20 collected by the department and remitted to the county clerk shall be
21 credited and paid where restitution is ordered. Restitution shall be
22 paid prior to any other payments of monetary obligations.

23 **Sec. 3.** RCW 9.94A.205 and 1988 c 153 s 4 are each amended to read
24 as follows:

25 (1) If an inmate violates any condition or requirement of community
26 custody, the department may transfer the inmate to a more restrictive
27 confinement status to serve up to the remaining portion of the
28 sentence, less credit for any period actually spent in community
29 custody or in detention awaiting disposition of an alleged violation
30 and subject to the limitations of subsection (2) of this section.

31 (2)(a) For a sex offender sentenced to a term of community custody
32 under RCW 9.94A.120(8) who violates any condition of community custody,
33 the department may impose a sanction of up to sixty days confinement in
34 a local correctional facility for each violation. If the department
35 imposes a sanction, the department shall submit within seventy-two
36 hours a report to the court and the prosecuting attorney outlining the
37 violation or violations and the sanctions imposed.

1 (b) For a sex offender sentenced to a term of community custody
2 under RCW 9.94A.120(10) who violates any condition of community custody
3 after having completed his or her maximum term of total confinement,
4 including time served on community custody in lieu of earned early
5 release, the department may impose a sanction of up to sixty days in a
6 local correctional facility for each violation.

7 (3) If an inmate is accused of violating any condition or
8 requirement of community custody, he or she is entitled to a hearing
9 before the department prior to the imposition of sanctions. The
10 hearing shall be considered as inmate disciplinary proceedings and
11 shall not be subject to chapter 34.05 RCW. The department shall
12 develop hearing procedures and sanctions.

13 **Sec. 4.** RCW 9.94A.207 and 1988 c 153 s 5 are each amended to read
14 as follows:

15 (1) The secretary may issue warrants for the arrest of any offender
16 who violates a condition of community placement. The arrest warrants
17 shall authorize any law enforcement or peace officer or community
18 corrections officer of this state or any other state where such
19 offender may be located, to arrest the offender and place him or her in
20 total confinement pending disposition of the alleged violation. The
21 department shall compensate the local jurisdiction at the office of
22 financial management's adjudicated rate, in accordance with RCW
23 70.48.440. A community corrections officer, if he or she has
24 reasonable cause to believe an offender in community placement has
25 violated a condition of community placement, may suspend the person's
26 community placement status and arrest or cause the arrest and detention
27 in total confinement of the offender, pending the determination of the
28 secretary as to whether the violation has occurred. The community
29 corrections officer shall report to the secretary all facts and
30 circumstances and the reasons for the action of suspending community
31 placement status. A violation of a condition of community placement
32 shall be deemed a violation of the sentence for purposes of RCW
33 9.94A.195. The authority granted to community corrections officers
34 under this section shall be in addition to that set forth in RCW
35 9.94A.195.

36 (2) Inmates, as defined in RCW (~~(72.09.020)~~) 72.09.015, who have
37 been transferred to community custody and who are detained in a local
38 correctional facility are the financial responsibility of the

1 department of corrections, except as provided in subsection (3) of this
2 section. The community custody inmate shall be removed from the local
3 correctional facility, except as provided in subsection (3) of this
4 section, not later than eight days, excluding weekends and holidays,
5 following admittance to the local correctional facility and
6 notification that the inmate is available for movement to a state
7 correctional institution. ~~((However, if good cause is shown,))~~

8 (3) The department may negotiate with local correctional
9 authorities for an additional period of detention; however, sex
10 offenders sanctioned for community custody violations under RCW
11 9.94A.205(2) to a term of confinement shall remain in the local
12 correctional facility for the complete term of the sanction. For
13 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
14 correctional facility shall be financially responsible. For
15 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
16 of corrections shall be financially responsible for that portion of the
17 sanction served during the time in which the sex offender is on
18 community custody in lieu of earned early release, and the local
19 correctional facility shall be financially responsible for that portion
20 of the sanction served by the sex offender after the time in which the
21 sex offender is on community custody in lieu of earned early release.

22 **Sec. 5.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995
23 c 101 s 2 are each reenacted and amended to read as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

26 (1) "Collect," or any derivative thereof, "collect and remit," or
27 "collect and deliver," when used with reference to the department of
28 corrections, means that the department is responsible for monitoring
29 and enforcing the offender's sentence with regard to the legal
30 financial obligation, receiving payment thereof from the offender, and,
31 consistent with current law, delivering daily the entire payment to the
32 superior court clerk without depositing it in a departmental account.

33 (2) "Commission" means the sentencing guidelines commission.

34 (3) "Community corrections officer" means an employee of the
35 department who is responsible for carrying out specific duties in
36 supervision of sentenced offenders and monitoring of sentence
37 conditions.

1 (4) "Community custody" means that portion of an inmate's sentence
2 of confinement in lieu of earned early release time or imposed pursuant
3 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
4 controls placed on the inmate's movement and activities by the
5 department of corrections.

6 (5) "Community placement" means that period during which the
7 offender is subject to the conditions of community custody and/or
8 postrelease supervision, which begins either upon completion of the
9 term of confinement (postrelease supervision) or at such time as the
10 offender is transferred to community custody in lieu of earned early
11 release. Community placement may consist of entirely community
12 custody, entirely postrelease supervision, or a combination of the two.

13 (6) "Community service" means compulsory service, without
14 compensation, performed for the benefit of the community by the
15 offender.

16 (7) "Community supervision" means a period of time during which a
17 convicted offender is subject to crime-related prohibitions and other
18 sentence conditions imposed by a court pursuant to this chapter or RCW
19 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
20 may include crime-related prohibitions and other conditions imposed
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
22 for out-of-state supervision of parolees and probationers, RCW
23 9.95.270, community supervision is the functional equivalent of
24 probation and should be considered the same as probation by other
25 states.

26 (8) "Confinement" means total or partial confinement as defined in
27 this section.

28 (9) "Conviction" means an adjudication of guilt pursuant to Titles
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

31 (10) "Court-ordered legal financial obligation" means a sum of
32 money that is ordered by a superior court of the state of Washington
33 for legal financial obligations which may include restitution to the
34 victim, statutorily imposed crime victims' compensation fees as
35 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
36 drug funds, court-appointed attorneys' fees, and costs of defense,
37 fines, and any other financial obligation that is assessed to the
38 offender as a result of a felony conviction. Upon conviction for
39 vehicular assault while under the influence of intoxicating liquor or

1 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
2 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
3 legal financial obligations may also include payment to a public agency
4 of the expense of an emergency response to the incident resulting in
5 the conviction, subject to the provisions in RCW 38.52.430.

6 (11) "Crime-related prohibition" means an order of a court
7 prohibiting conduct that directly relates to the circumstances of the
8 crime for which the offender has been convicted, and shall not be
9 construed to mean orders directing an offender affirmatively to
10 participate in rehabilitative programs or to otherwise perform
11 affirmative conduct.

12 (12)(a) "Criminal history" means the list of a defendant's prior
13 convictions, whether in this state, in federal court, or elsewhere.
14 The history shall include, where known, for each conviction (i) whether
15 the defendant has been placed on probation and the length and terms
16 thereof; and (ii) whether the defendant has been incarcerated and the
17 length of incarceration.

18 (b) "Criminal history" shall always include juvenile convictions
19 for sex offenses and serious violent offenses and shall also include a
20 defendant's other prior convictions in juvenile court if: (i) The
21 conviction was for an offense which is a felony or a serious traffic
22 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
23 the defendant was fifteen years of age or older at the time the offense
24 was committed; and (iii) with respect to prior juvenile class B and C
25 felonies or serious traffic offenses, the defendant was less than
26 twenty-three years of age at the time the offense for which he or she
27 is being sentenced was committed.

28 (13) "Day fine" means a fine imposed by the sentencing judge that
29 equals the difference between the offender's net daily income and the
30 reasonable obligations that the offender has for the support of the
31 offender and any dependents.

32 (14) "Day reporting" means a program of enhanced supervision
33 designed to monitor the defendant's daily activities and compliance
34 with sentence conditions, and in which the defendant is required to
35 report daily to a specific location designated by the department or the
36 sentencing judge.

37 (15) "Department" means the department of corrections.

38 (16) "Determinate sentence" means a sentence that states with
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community service work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through "earned early release" can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

7 (17) "Disposable earnings" means that part of the earnings of an
8 individual remaining after the deduction from those earnings of any
9 amount required by law to be withheld. For the purposes of this
10 definition, "earnings" means compensation paid or payable for personal
11 services, whether denominated as wages, salary, commission, bonuses, or
12 otherwise, and, notwithstanding any other provision of law making the
13 payments exempt from garnishment, attachment, or other process to
14 satisfy a court-ordered legal financial obligation, specifically
15 includes periodic payments pursuant to pension or retirement programs,
16 or insurance policies of any type, but does not include payments made
17 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
18 or Title 74 RCW.

19 (18) "Drug offense" means:

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

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

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

29 (19) "Escape" means:

30 (a) Escape in the first degree (RCW 9A.76.110), escape in the
31 second degree (RCW 9A.76.120), willful failure to return from furlough
32 (RCW 72.66.060), willful failure to return from work release (RCW
33 72.65.070), or willful failure to be available for supervision by the
34 department while in community custody (RCW 72.09.310); or

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

38 (20) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
3 and-run injury-accident (RCW 46.52.020(4)); or

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

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

9 (22)(a) "First-time offender" means any person who is convicted of
10 a felony (i) not classified as a violent offense or a sex offense under
11 this chapter, or (ii) that is not the manufacture, delivery, or
12 possession with intent to manufacture or deliver a controlled substance
13 classified in schedule I or II that is a narcotic drug, nor the
14 manufacture, delivery, or possession with intent to deliver
15 methamphetamine, its salts, isomers, and salts of its isomers as
16 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
17 controlled substance or counterfeit substance classified in schedule I,
18 RCW 69.50.204, except leaves and flowering tops of marihuana, and
19 except as provided in (b) of this subsection, who previously has never
20 been convicted of a felony in this state, federal court, or another
21 state, and who has never participated in a program of deferred
22 prosecution for a felony offense.

23 (b) For purposes of (a) of this subsection, a juvenile adjudication
24 for an offense committed before the age of fifteen years is not a
25 previous felony conviction except for adjudications of sex offenses and
26 serious violent offenses.

27 (23) "Most serious offense" means any of the following felonies or
28 a felony attempt to commit any of the following felonies, as now
29 existing or hereafter amended:

30 (a) Any felony defined under any law as a class A felony or
31 criminal solicitation of or criminal conspiracy to commit a class A
32 felony;

33 (b) Assault in the second degree;

34 (c) Assault of a child in the second degree;

35 (d) Child molestation in the second degree;

36 (e) Controlled substance homicide;

37 (f) Extortion in the first degree;

38 (g) Incest when committed against a child under age fourteen;

39 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault;
- 10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
- 14 (s) Any other class B felony offense with a finding of sexual
15 motivation, as "sexual motivation" is defined under this section;
- 16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.125;
- 18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection.
- 23 (24) "Nonviolent offense" means an offense which is not a violent
24 offense.
- 25 (25) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older or is
27 less than eighteen years of age but whose case has been transferred by
28 the appropriate juvenile court to a criminal court pursuant to RCW
29 13.40.110. Throughout this chapter, the terms "offender" and
30 "defendant" are used interchangeably.
- 31 (26) "Partial confinement" means confinement for no more than one
32 year in a facility or institution operated or utilized under contract
33 by the state or any other unit of government, or, if home detention or
34 work crew has been ordered by the court, in an approved residence, for
35 a substantial portion of each day with the balance of the day spent in
36 the community. Partial confinement includes work release, home
37 detention, work crew, and a combination of work crew and home detention
38 as defined in this section.
- 39 (27) "Persistent offender" is an offender who:

1 (a) Has been convicted in this state of any felony considered a
2 most serious offense; and

3 (b) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.360; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted.

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

13 (29) "Restitution" means the requirement that the offender pay a
14 specific sum of money over a specific period of time to the court as
15 payment of damages. The sum may include both public and private costs.
16 The imposition of a restitution order does not preclude civil redress.

17 (30) "Serious traffic offense" means:

18 (a) Driving while under the influence of intoxicating liquor or any
19 drug (RCW 46.61.502), actual physical control while under the influence
20 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
21 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
22 or

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

26 (31) "Serious violent offense" is a subcategory of violent offense
27 and means:

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

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

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

38 (33) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
2 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
3 criminal attempt, criminal solicitation, or criminal conspiracy to
4 commit such crimes;

5 (b) A felony with a finding of sexual motivation under RCW
6 9.94A.127 or 13.40.135; or

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

10 (34) "Sexual motivation" means that one of the purposes for which
11 the defendant committed the crime was for the purpose of his or her
12 sexual gratification.

13 (35) "Total confinement" means confinement inside the physical
14 boundaries of a facility or institution operated or utilized under
15 contract by the state or any other unit of government for twenty-four
16 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

17 (36) "Transition training" means written and verbal instructions
18 and assistance provided by the department to the offender during the
19 two weeks prior to the offender's successful completion of the work
20 ethic camp program. The transition training shall include instructions
21 in the offender's requirements and obligations during the offender's
22 period of community custody.

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

26 (38) "Violent offense" means:

27 (a) Any of the following felonies, as now existing or hereafter
28 amended: Any felony defined under any law as a class A felony or an
29 attempt to commit a class A felony, criminal solicitation of or
30 criminal conspiracy to commit a class A felony, manslaughter in the
31 first degree, manslaughter in the second degree, indecent liberties if
32 committed by forcible compulsion, kidnapping in the second degree,
33 arson in the second degree, assault in the second degree, assault of a
34 child in the second degree, extortion in the first degree, robbery in
35 the second degree, vehicular assault, and vehicular homicide, when
36 proximately caused by the driving of any vehicle by any person while
37 under the influence of intoxicating liquor or any drug as defined by
38 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

7 (39) "Work crew" means a program of partial confinement consisting
8 of civic improvement tasks for the benefit of the community of not less
9 than thirty-five hours per week that complies with RCW 9.94A.135. The
10 civic improvement tasks shall have minimal negative impact on existing
11 private industries or the labor force in the county where the service
12 or labor is performed. The civic improvement tasks shall not affect
13 employment opportunities for people with developmental disabilities
14 contracted through sheltered workshops as defined in RCW 82.04.385.
15 Only those offenders sentenced to a facility operated or utilized under
16 contract by a county or the state are eligible to participate on a work
17 crew. Offenders sentenced for a sex offense as defined in subsection
18 (33) of this section are not eligible for the work crew program.

19 (40) "Work ethic camp" means an alternative incarceration program
20 designed to reduce recidivism and lower the cost of corrections by
21 requiring offenders to complete a comprehensive array of real-world job
22 and vocational experiences, character-building work ethics training,
23 life management skills development, substance abuse rehabilitation,
24 counseling, literacy training, and basic adult education.

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

30 (42) "Home detention" means a program of partial confinement
31 available to offenders wherein the offender is confined in a private
32 residence subject to electronic surveillance.

33 **Sec. 6.** RCW 9.94A.155 and 1994 c 129 s 3 and 1994 c 77 s 1 are
34 each reenacted and amended to read as follows:

35 (1) At the earliest possible date, and in no event later than
36 thirty days before release except in the event of escape or emergency
37 furloughs as defined in RCW 72.66.010, the department of corrections
38 shall send written notice of parole, release, community placement, work

1 release placement, furlough, or escape about a specific inmate
2 convicted of a violent offense, a sex offense as defined by RCW
3 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060
4 or 9A.46.110, to the following:

5 (a) The chief of police of the city, if any, in which the inmate
6 will reside or in which placement will be made in a work release
7 program; and

8 (b) The sheriff of the county in which the inmate will reside or in
9 which placement will be made in a work release program.

10 The sheriff of the county where the offender was convicted shall be
11 notified if the department does not know where the offender will
12 reside. The department shall notify the state patrol of the release of
13 all sex offenders, and that information shall be placed in the
14 Washington crime information center for dissemination to all law
15 enforcement.

16 (2) The same notice as required by subsection (1) of this section
17 shall be sent to the following if such notice has been requested in
18 writing about a specific inmate convicted of a violent offense, a sex
19 offense as defined by RCW 9.94A.030, or a felony harassment offense as
20 defined by RCW 9A.46.060 or 9A.46.110:

21 (a) The victim of the crime for which the inmate was convicted or
22 the victim's next of kin if the crime was a homicide;

23 (b) Any witnesses who testified against the inmate in any court
24 proceedings involving the violent offense; ((and))

25 (c) Any person specified in writing by the prosecuting attorney;
26 and

27 (d) Any person who requests such notice about a specific inmate
28 convicted of a sex offense as defined by RCW 9.94A.030 from the
29 department of corrections at least sixty days prior to the expected
30 release date of the offender.

31 Information regarding victims, next of kin, or witnesses requesting
32 the notice, information regarding any other person specified in writing
33 by the prosecuting attorney to receive the notice, and the notice are
34 confidential and shall not be available to the inmate. Whenever the
35 department of corrections mails notice pursuant to this subsection and
36 the notice is returned as undeliverable, the department shall attempt
37 alternative methods of notification, including a telephone call to the
38 person's last known telephone number.

1 (3) The existence of the notice requirements contained in
2 subsections (1) and (2) of this section shall not require an extension
3 of the release date in the event that the release plan changes after
4 notification.

5 (4) If an inmate convicted of a violent offense, a sex offense as
6 defined by RCW 9.94A.030, or a felony harassment offense as defined by
7 RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the
8 department of corrections shall immediately notify, by the most
9 reasonable and expedient means available, the chief of police of the
10 city and the sheriff of the county in which the inmate resided
11 immediately before the inmate's arrest and conviction. If previously
12 requested, the department shall also notify the witnesses and the
13 victim of the crime for which the inmate was convicted or the victim's
14 next of kin if the crime was a homicide. If the inmate is recaptured,
15 the department shall send notice to the persons designated in this
16 subsection as soon as possible but in no event later than two working
17 days after the department learns of such recapture.

18 (5) If the victim, the victim's next of kin, or any witness is
19 under the age of sixteen, the notice required by this section shall be
20 sent to the parents or legal guardian of the child.

21 (6) The department of corrections shall send the notices required
22 by this chapter to the last address provided to the department by the
23 requesting party. The requesting party shall furnish the department
24 with a current address.

25 (7) The department of corrections shall keep, for a minimum of two
26 years following the release of an inmate, the following:

27 (a) A document signed by an individual as proof that that person is
28 registered in the victim or witness notification program; and

29 (b) A receipt showing that an individual registered in the victim
30 or witness notification program was mailed a notice, at the
31 individual's last known address, upon the release or movement of an
32 inmate.

33 (8) For purposes of this section the following terms have the
34 following meanings:

35 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

36 (b) "Next of kin" means a person's spouse, parents, siblings and
37 children.

1 (9) Nothing in this section shall impose any liability upon a chief
2 of police of a city or sheriff of a county for failing to request in
3 writing a notice as provided in subsection (1) of this section.

4 **Sec. 7.** RCW 72.09.340 and 1990 c 3 s 708 are each amended to read
5 as follows:

6 (1) In making all discretionary decisions regarding release plans
7 for and supervision of (~~sexually violent~~) sex offenders, the
8 department (~~of corrections~~) shall set priorities and make decisions
9 based on an assessment of public safety risks (~~rather than the legal~~
10 ~~category of the sentences~~).

11 (2) The department shall, no later than September 1, 1996,
12 implement a policy governing the department's evaluation and approval
13 of release plans for sex offenders. The policy shall include, at a
14 minimum, a formal process by which victims, witnesses, and other
15 interested people may provide information and comments to the
16 department on potential safety risks to specific individuals or classes
17 of individuals posed by a specific sex offender. The department shall
18 make all reasonable efforts to publicize the availability of this
19 process through currently existing mechanisms and shall seek the
20 assistance of courts, prosecutors, law enforcement, and victims'
21 advocacy groups in doing so. Notice of an offender's proposed
22 residence shall be provided to all people registered to receive notice
23 of an offender's release under RCW 9.94A.155(2), except that in no case
24 may this notification requirement be construed to require an extension
25 of an offender's release date.

26 (3) For any offender convicted of a felony sex offense against a
27 minor victim after the effective date of this act, the department shall
28 not approve a residence location if the proposed residence: (a)
29 Includes a minor victim or child of similar age or circumstance as a
30 previous victim who the department determines may be put at substantial
31 risk of harm by the offender's residence in the household; or (b) is
32 within close proximity of the current residence of a minor victim,
33 unless the whereabouts of the minor victim cannot be determined or
34 unless such a restriction would impede family reunification efforts
35 ordered by the court or directed by the department of social and health
36 services. The department is further authorized to reject a residence
37 location if the proposed residence is within close proximity to
38 schools, child care centers, or other facilities where children of

1 similar age or circumstance as a previous victim are present who the
2 department determines may be put at substantial risk of harm by the sex
3 offender's residence at that location.

4 **Sec. 8.** RCW 71.09.092 and 1995 c 216 s 10 are each amended to read
5 as follows:

6 Before the court may enter an order directing conditional release
7 to a less restrictive alternative, it must find the following: (1) The
8 person will be treated by a treatment provider who is qualified to
9 provide such treatment in the state of Washington under chapter 18.155
10 RCW; (2) the treatment provider has presented a specific course of
11 treatment and has agreed to assume responsibility for such treatment
12 and will report progress to the court on a regular basis, and will
13 report violations immediately to the court, the prosecutor, the
14 supervising community corrections officer, and the superintendent of
15 the special commitment center; (3) ~~((housing exists that is~~
16 ~~sufficiently secure to protect the community, and the person or agency~~
17 ~~providing housing to the conditionally released person has agreed in~~
18 ~~writing to accept the person, to provide the level of security required~~
19 ~~by the court, and immediately to report to the court, the prosecutor,~~
20 ~~the supervising community corrections officer, and the superintendent~~
21 ~~of the special commitment center if the person leaves the housing to~~
22 ~~which he or she has been assigned without authorization)) the person or~~
23 agency providing housing to the conditionally released person meets the
24 qualifications established by the department of social and health
25 services under section 9 of this act and agrees in writing to: (a)
26 Accept the person; (b) provide the level of security required by the
27 court; and (c) immediately report to the court, the prosecutor, the
28 supervising community corrections officer, and the superintendent of
29 the special commitment center if the person leaves, without
30 authorization, the housing to which he or she has been assigned; (4)
31 the person is willing to comply with the treatment provider and all
32 requirements imposed by the treatment provider and by the court; and
33 (5) the person is willing to comply with supervision requirements
34 imposed by the department of corrections.

35 NEW SECTION. **Sec. 9.** A new section is added to chapter 71.09 RCW
36 to read as follows:

1 The department of social and health services shall adopt rules
2 establishing the qualifications for any person or agency seeking to
3 provide housing to a person on conditional release pursuant to this
4 chapter. The rules shall address, at a minimum, public safety concerns
5 relating to: (1) The proximity of the proposed housing to vulnerable
6 populations; (2) the appropriate level of security at the facility,
7 including physical requirements of the building or grounds and minimum
8 staffing levels; and (3) the minimum education, training, and
9 experience requirements of staff.

10 **Sec. 10.** RCW 71.09.096 and 1995 c 216 s 12 are each amended to
11 read as follows:

12 (1) If the court or jury determines that conditional release to a
13 less restrictive alternative is in the best interest of the person and
14 will adequately protect the community, and the court determines that
15 the minimum conditions set forth in (~~section 9 of this act~~) RCW
16 71.09.092 are met, the court shall enter judgment and direct a
17 conditional release.

18 (2) The court shall impose any additional conditions necessary to
19 ensure compliance with treatment and to protect the community. If the
20 court finds that conditions do not exist that will both ensure the
21 person's compliance with treatment and protect the community, then the
22 person shall be remanded to the custody of the department of social and
23 health services for control, care, and treatment in a secure facility
24 as designated in RCW 71.09.060(1).

25 (3) If the service provider designated to provide inpatient or
26 outpatient treatment or to monitor or supervise any other terms and
27 conditions of a person's placement in a less restrictive alternative is
28 other than the department of social and health services or the
29 department of corrections, then the service provider so designated must
30 agree in writing to provide such treatment.

31 (4) Prior to authorizing any release to a less restrictive
32 alternative, the court shall impose such conditions upon the person as
33 are necessary to ensure the safety of the community, including
34 prohibiting the person from living within a specified distance of the
35 current residence of any minor victimized by the person, unless the
36 whereabouts of the minor victim cannot be determined. The court shall
37 order the department of corrections to investigate the less restrictive
38 alternative and recommend any additional conditions to the court.

1 These conditions shall include, but are not limited to the following:
2 Specification of residence, including proximity to prior victims,
3 schools, child care centers, or other facilities with vulnerable
4 populations; prohibition of contact with potential or past
5 victims(()); prohibition of alcohol and other drug use(());
6 participation in a specific course of inpatient or outpatient treatment
7 that may include monitoring by the use of polygraph and
8 plethysmograph(()); supervision by a department of corrections
9 community corrections officer(()); a requirement that the person
10 remain within the state unless the person receives prior authorization
11 by the court(()); and any other conditions that the court determines
12 are in the best interest of the person or others. A copy of the
13 conditions of release shall be given to the person and to any
14 designated service providers.

15 (5) Any service provider designated to provide inpatient or
16 outpatient treatment shall monthly, or as otherwise directed by the
17 court, submit to the court, to the department of social and health
18 services facility from which the person was released, to the prosecutor
19 of the county in which the person was found to be a sexually violent
20 predator, and to the supervising community corrections officer, a
21 report stating whether the person is complying with the terms and
22 conditions of the conditional release to a less restrictive
23 alternative.

24 (6) Each person released to a less restrictive alternative shall
25 have his or her case reviewed by the court that released him or her no
26 later than one year after such release and annually thereafter until
27 the person is unconditionally discharged. Review may occur in a
28 shorter time or more frequently, if the court, in its discretion on its
29 own motion, or on motion of the person, the secretary, or the
30 prosecuting attorney so determines. The sole question to be determined
31 by the court is whether the person shall continue to be conditionally
32 released to a less restrictive alternative. The court in making its
33 determination shall be aided by the periodic reports filed pursuant to
34 subsection (5) of this section and the opinions of the secretary and
35 other experts or professional persons.

36 **Sec. 11.** RCW 4.24.550 and 1994 c 129 s 2 are each amended to read
37 as follows:

1 (1) Public agencies are authorized to release relevant and
2 necessary information regarding sex offenders to the public when the
3 release of the information is necessary for public protection. This
4 authority exists whether or not the public agency received notification
5 about the sex offender from the department of corrections or the
6 department of social and health services or any other public agency.

7 (2) Local law enforcement agencies and officials who decide to
8 release information pursuant to this section shall make a good faith
9 effort to notify the public and residents at least fourteen days before
10 the sex offender is released or if the offender receives a special sex
11 offender disposition alternative under RCW 13.40.160 or special sex
12 offender sentencing alternative under RCW 9.94A.120 at least thirty
13 days after the sex offender is sentenced. If a change occurs in the
14 release plan, this notification provision will not require an extension
15 of the release date. The department of corrections and the department
16 of social and health services shall provide local law enforcement
17 officials with all relevant information on sex offenders about to be
18 released or placed into the community in a timely manner. The juvenile
19 court shall provide local law enforcement officials with all relevant
20 information on sex offenders allowed to remain in the community in a
21 timely manner.

22 (3) An elected public official, public employee, or public agency
23 as defined in RCW 4.24.470 is immune from civil liability for damages
24 for any discretionary decision to release relevant and necessary
25 information, unless it is shown that the official, employee, or agency
26 acted with gross negligence or in bad faith. The authorization and
27 immunity in this section applies to information regarding: (a) A
28 person convicted of, or juvenile found to have committed, a sex offense
29 as defined by RCW 9.94A.030; (b) a person found not guilty of a sex
30 offense by reason of insanity under chapter 10.77 RCW; (c) a person
31 found incompetent to stand trial for a sex offense and subsequently
32 committed under chapter 71.05 or 71.34 RCW; (d) a person committed as
33 a sexual psychopath under chapter 71.06 RCW; or (e) a person committed
34 as a sexually violent predator under chapter 71.09 RCW. The immunity
35 provided under this section applies to the release of relevant
36 information to other employees or officials or to the general public.

37 (4) Except as otherwise provided by statute, nothing in this
38 section shall impose any liability upon a public official, public

1 employee, or public agency for failing to release information as
2 provided in subsections (2) and (3) of this section.

3 (5) Nothing in this section implies that information regarding
4 persons designated in subsections (2) and (3) of this section is
5 confidential except as otherwise provided by statute.

6 **Sec. 12.** RCW 13.40.215 and 1995 c 324 s 1 are each amended to read
7 as follows:

8 (1)(a) Except as provided in subsection (2) of this section, at the
9 earliest possible date, and in no event later than thirty days before
10 discharge, parole, or any other authorized leave or release, or before
11 transfer to a community residential facility, the secretary shall send
12 written notice of the discharge, parole, authorized leave or release,
13 or transfer of a juvenile found to have committed a violent offense, a
14 sex offense, or stalking, to the following:

15 (i) The chief of police of the city, if any, in which the juvenile
16 will reside;

17 (ii) The sheriff of the county in which the juvenile will reside;
18 and

19 (iii) The approved private schools and the common school district
20 board of directors of the district in which the juvenile intends to
21 reside or the approved private school or public school district in
22 which the juvenile last attended school, whichever is appropriate,
23 except when it has been determined by the department that the juvenile
24 is twenty-one years old; is not required to return to school under
25 chapter 28A.225 RCW; or will be in the community for less than seven
26 consecutive days on approved leave and will not be attending school
27 during that time.

28 (b) The same notice as required by (a) of this subsection shall be
29 sent to the following, if such notice has been requested in writing
30 about a specific juvenile:

31 (i) The victim of the offense for which the juvenile was found to
32 have committed or the victim's next of kin if the crime was a homicide;

33 (ii) Any witnesses who testified against the juvenile in any court
34 proceedings involving the offense; and

35 (iii) Any person specified in writing by the prosecuting attorney.
36 Information regarding victims, next of kin, or witnesses requesting the
37 notice, information regarding any other person specified in writing by
38 the prosecuting attorney to receive the notice, and the notice are

1 confidential and shall not be available to the juvenile. The notice to
2 the chief of police or the sheriff shall include the identity of the
3 juvenile, the residence where the juvenile will reside, the identity of
4 the person, if any, responsible for supervising the juvenile, and the
5 time period of any authorized leave.

6 (c) The thirty-day notice requirements contained in this subsection
7 shall not apply to emergency medical furloughs.

8 (d) The existence of the notice requirements in this subsection
9 will not require any extension of the release date in the event the
10 release plan changes after notification.

11 (2)(a) If a juvenile found to have committed a violent offense, a
12 sex offense, or stalking escapes from a facility of the department, the
13 secretary shall immediately notify, by the most reasonable and
14 expedient means available, the chief of police of the city and the
15 sheriff of the county in which the juvenile resided immediately before
16 the juvenile's arrest. If previously requested, the secretary shall
17 also notify the witnesses and the victim of the offense which the
18 juvenile was found to have committed or the victim's next of kin if the
19 crime was a homicide. If the juvenile is recaptured, the secretary
20 shall send notice to the persons designated in this subsection as soon
21 as possible but in no event later than two working days after the
22 department learns of such recapture.

23 (b) The secretary may authorize a leave, for a juvenile found to
24 have committed a violent offense, a sex offense, or stalking, which
25 shall not exceed forty-eight hours plus travel time, to meet an
26 emergency situation such as a death or critical illness of a member of
27 the juvenile's family. The secretary may authorize a leave, which
28 shall not exceed the time medically necessary, to obtain medical care
29 not available in a juvenile facility maintained by the department.
30 Prior to the commencement of an emergency or medical leave, the
31 secretary shall give notice of the leave to the appropriate law
32 enforcement agency in the jurisdiction in which the juvenile will be
33 during the leave period. The notice shall include the identity of the
34 juvenile, the time period of the leave, the residence of the juvenile
35 during the leave, and the identity of the person responsible for
36 supervising the juvenile during the leave. If previously requested,
37 the department shall also notify the witnesses and victim of the
38 offense which the juvenile was found to have committed or the victim's
39 next of kin if the offense was a homicide.

1 In case of an emergency or medical leave the secretary may waive
2 all or any portion of the requirements for leaves pursuant to RCW
3 13.40.205 (2)(a), (3), (4), and (5).

4 (3) If the victim, the victim's next of kin, or any witness is
5 under the age of sixteen, the notice required by this section shall be
6 sent to the parents or legal guardian of the child.

7 (4) The secretary shall send the notices required by this chapter
8 to the last address provided to the department by the requesting party.
9 The requesting party shall furnish the department with a current
10 address.

11 (5) Except as provided in subsection (2) of this section, at the
12 earliest possible date, and in no event later than five days after
13 sentencing a sex offender to a special sex offender disposition
14 alternative under RCW 13.40.160(5), the juvenile court shall send
15 written notice of the disposition to the following:

16 (a) The chief of police of the city, if any, in which the juvenile
17 will reside; and

18 (b) The sheriff of the county in which the juvenile will reside.

19 (6) Upon discharge, parole, or other authorized leave or release,
20 a convicted juvenile sex offender shall not attend a public elementary,
21 middle, or high school that is attended by a victim of the sex
22 offender. The parents or legal guardians of the convicted juvenile sex
23 offender shall be responsible for transportation or other costs
24 associated with or required by the sex offender's change in school that
25 otherwise would be paid by a school district. Upon discharge, parole,
26 or other authorized leave or release of a convicted juvenile sex
27 offender, the secretary shall send written notice of the discharge,
28 parole, or other authorized leave or release and the requirements of
29 this subsection to the common school district board of directors of the
30 district in which the sex offender intends to reside or the district in
31 which the sex offender last attended school, whichever is appropriate.

32 (~~(6)~~) (7) For purposes of this section the following terms have
33 the following meanings:

34 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

35 (b) "Sex offense" means a sex offense under RCW 9.94A.030;

36 (c) "Stalking" means the crime of stalking as defined in RCW
37 9A.46.110;

38 (d) "Next of kin" means a person's spouse, parents, siblings, and
39 children.

1 **Sec. 13.** RCW 13.40.217 and 1990 c 3 s 102 are each amended to read
2 as follows:

3 In addition to any other information required to be released under
4 this chapter, the department (~~(is)~~) and juvenile courts are authorized,
5 pursuant to RCW 4.24.550, to release relevant information that is
6 necessary to protect the public concerning juveniles adjudicated of sex
7 offenses.

8 NEW SECTION. **Sec. 14.** Sections 11 through 13 of this act are
9 necessary for the immediate preservation of the public peace, health,
10 or safety, or support of the state government and its existing public
11 institutions, and shall take effect immediately.

12 NEW SECTION. **Sec. 15.** Sections 1 through 5 of this act apply to
13 crimes committed on or after the effective date of this act.

14 NEW SECTION. **Sec. 16.** If specific funding for the purposes of
15 this act, referencing this act by bill or chapter number, is not
16 provided by June 30, 1996, in the supplemental omnibus appropriations
17 act, this act is null and void."

18 **SSB 6274** - H COMM AMD
19 By Committee on Appropriations

20

21 On page 1, line 1 of the title, after "offenders;" strike the
22 remainder of the title and insert "amending RCW 9.94A.120, 9.94A.205,
23 9.94A.207, 72.09.340, 71.09.092, 71.09.096, 4.24.550, 13.40.215, and
24 13.40.217; reenacting and amending RCW 9.94A.030 and 9.94A.155; adding
25 a new section to chapter 71.09 RCW; creating new sections; prescribing
26 penalties; and declaring an emergency."

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