
HOUSE BILL 1178

State of Washington 55th Legislature 1997 Regular Session

By Representatives Quall and Wolfe; by request of Governor Lowry

Read first time 01/16/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sentencing requirements for nonviolent offenders
2 who violate drug laws; amending RCW 9.94A.137; reenacting and amending
3 RCW 9.94A.320 and 9.94A.120; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996
6 c 36 s 2 are each reenacted and amended to read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- 9 XV Aggravated Murder 1 (RCW 10.95.020)
- 10 XIV Murder 1 (RCW 9A.32.030)
- 11 Homicide by abuse (RCW 9A.32.055)
- 12 XIII Murder 2 (RCW 9A.32.050)
- 13 XII Assault 1 (RCW 9A.36.011)
- 14 Assault of a Child 1 (RCW 9A.36.120)

1 XI Rape 1 (RCW 9A.44.040)
2 Rape of a Child 1 (RCW 9A.44.073)
3 X Kidnapping 1 (RCW 9A.40.020)
4 Rape 2 (RCW 9A.44.050)
5 Rape of a Child 2 (RCW 9A.44.076)
6 Child Molestation 1 (RCW 9A.44.083)
7 Damaging building, etc., by explosion with
8 threat to human being (RCW
9 70.74.280(1))
10 Over 18 and deliver heroin or narcotic from
11 Schedule I or II to someone under 18
12 (RCW 69.50.406)
13 Leading Organized Crime (RCW
14 9A.82.060(1)(a))
15 IX Assault of a Child 2 (RCW 9A.36.130)
16 Robbery 1 (RCW 9A.56.200)
17 Manslaughter 1 (RCW 9A.32.060)
18 Explosive devices prohibited (RCW
19 70.74.180)
20 Indecent Liberties (with forcible
21 compulsion) (RCW 9A.44.100(1)(a))
22 Endangering life and property by explosives
23 with threat to human being (RCW
24 70.74.270)
25 Over 18 and deliver narcotic from Schedule
26 III, IV, or V or a nonnarcotic from
27 Schedule I-V to someone under 18 and 3
28 years junior (RCW 69.50.406)
29 Controlled Substance Homicide (RCW
30 69.50.415)
31 Sexual Exploitation (RCW 9.68A.040)
32 Inciting Criminal Profiteering (RCW
33 9A.82.060(1)(b))
34 Vehicular Homicide, by being under the
35 influence of intoxicating liquor or
36 any drug (RCW 46.61.520)

1 Manufacture, deliver, or possess with
2 intent to deliver ten or more grams of
3 narcotics from Schedule I or II (RCW
4 69.50.401(a)(1)(i))

5 VIII Arson 1 (RCW 9A.48.020)
6 Promoting Prostitution 1 (RCW 9A.88.070)
7 Selling for profit (controlled or
8 counterfeit) any controlled substance
9 (RCW 69.50.410)

10 Manufacture, deliver, or possess with
11 intent to deliver more than three
12 grams but less than ten grams of
13 heroin or cocaine (RCW
14 69.50.401(a)(1)(i))

15 Manufacture, deliver, or possess with
16 intent to deliver methamphetamine (RCW
17 69.50.401(a)(1)(ii))

18 Possession of ephedrine or pseudoephedrine
19 with intent to manufacture
20 methamphetamine (RCW 69.50.440)

21 Vehicular Homicide, by the operation of any
22 vehicle in a reckless manner (RCW
23 46.61.520)

24 VII Burglary 1 (RCW 9A.52.020)
25 Vehicular Homicide, by disregard for the
26 safety of others (RCW 46.61.520)
27 Introducing Contraband 1 (RCW 9A.76.140)
28 Indecent Liberties (without forcible
29 compulsion) (RCW 9A.44.100(1) (b) and
30 (c))
31 Child Molestation 2 (RCW 9A.44.086)
32 Dealing in depictions of minor engaged in
33 sexually explicit conduct (RCW
34 9.68A.050)

1 Sending, bringing into state depictions of
2 minor engaged in sexually explicit
3 conduct (RCW 9.68A.060)
4 Involving a minor in drug dealing (RCW
5 69.50.401(f))
6 Reckless Endangerment 1 (RCW 9A.36.045)
7 Unlawful Possession of a Firearm in the
8 first degree (RCW 9.41.040(1)(a))

9 VI Bribery (RCW 9A.68.010)
10 Manslaughter 2 (RCW 9A.32.070)
11 Rape of a Child 3 (RCW 9A.44.079)
12 Intimidating a Juror/Witness (RCW
13 9A.72.110, 9A.72.130)
14 Damaging building, etc., by explosion with
15 no threat to human being (RCW
16 70.74.280(2))
17 Endangering life and property by explosives
18 with no threat to human being (RCW
19 70.74.270)
20 Incest 1 (RCW 9A.64.020(1))
21 Manufacture, deliver, or possess with
22 intent to deliver narcotics from
23 Schedule I or II (except heroin or
24 cocaine) (RCW 69.50.401(a)(1)(i))
25 Intimidating a Judge (RCW 9A.72.160)
26 Bail Jumping with Murder 1 (RCW
27 9A.76.170(2)(a))
28 Theft of a Firearm (RCW 9A.56.300)
29 Manufacture, deliver, or possess with
30 intent to deliver three grams or less
31 of cocaine or heroin (RCW
32 69.50.401(a)(1)(i))

1 V Persistent prison misbehavior (RCW
2 9.94.070)
3 Criminal Mistreatment 1 (RCW 9A.42.020)
4 Abandonment of dependent person 1 (RCW
5 9A.42.060)
6 Rape 3 (RCW 9A.44.060)
7 Sexual Misconduct with a Minor 1 (RCW
8 9A.44.093)
9 Child Molestation 3 (RCW 9A.44.089)
10 Kidnapping 2 (RCW 9A.40.030)
11 Extortion 1 (RCW 9A.56.120)
12 Incest 2 (RCW 9A.64.020(2))
13 Perjury 1 (RCW 9A.72.020)
14 Extortionate Extension of Credit (RCW
15 9A.82.020)
16 Advancing money or property for
17 extortionate extension of credit (RCW
18 9A.82.030)
19 Extortionate Means to Collect Extensions of
20 Credit (RCW 9A.82.040)
21 Rendering Criminal Assistance 1 (RCW
22 9A.76.070)
23 Bail Jumping with class A Felony (RCW
24 9A.76.170(2)(b))
25 Sexually Violating Human Remains (RCW
26 9A.44.105)
27 Delivery of imitation controlled substance
28 by person eighteen or over to person
29 under eighteen (RCW 69.52.030(2))
30 Possession of a Stolen Firearm (RCW
31 9A.56.310)

32 IV Residential Burglary (RCW 9A.52.025)
33 Theft of Livestock 1 (RCW 9A.56.080)
34 Robbery 2 (RCW 9A.56.210)
35 Assault 2 (RCW 9A.36.021)
36 Escape 1 (RCW 9A.76.110)
37 Arson 2 (RCW 9A.48.030)
38 Commercial Bribery (RCW 9A.68.060)

1 Bribing a Witness/Bribe Received by Witness
2 (RCW 9A.72.090, 9A.72.100)
3 Malicious Harassment (RCW 9A.36.080)
4 Threats to Bomb (RCW 9.61.160)
5 Willful Failure to Return from Furlough
6 (RCW 72.66.060)
7 Hit and Run -- Injury Accident (RCW
8 46.52.020(4))
9 Hit and Run with Vessel -- Injury Accident
10 (RCW 88.12.155(3))
11 Vehicular Assault (RCW 46.61.522)
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule III, IV, or V or nonnarcotics
15 from Schedule I-V (except marijuana or
16 methamphetamines) (RCW 69.50.401(a)(1)
17 (iii) through (v))
18 Influencing Outcome of Sporting Event (RCW
19 9A.82.070)
20 Use of Proceeds of Criminal Profiteering
21 (RCW 9A.82.080 (1) and (2))
22 Knowingly Trafficking in Stolen Property
23 (RCW 9A.82.050(2))

24 III Criminal Mistreatment 2 (RCW 9A.42.030)
25 Abandonment of dependent person 2 (RCW
26 9A.42.070)
27 Extortion 2 (RCW 9A.56.130)
28 Unlawful Imprisonment (RCW 9A.40.040)
29 Assault 3 (RCW 9A.36.031)
30 Assault of a Child 3 (RCW 9A.36.140)
31 Custodial Assault (RCW 9A.36.100)
32 Unlawful possession of firearm in the
33 second degree (RCW 9.41.040(1)(b))
34 Harassment (RCW 9A.46.020)
35 Promoting Prostitution 2 (RCW 9A.88.080)
36 Willful Failure to Return from Work Release
37 (RCW 72.65.070)
38 Burglary 2 (RCW 9A.52.030)
39 Introducing Contraband 2 (RCW 9A.76.150)

1 Communication with a Minor for Immoral
2 Purposes (RCW 9.68A.090)
3 Patronizing a Juvenile Prostitute (RCW
4 9.68A.100)
5 Escape 2 (RCW 9A.76.120)
6 Perjury 2 (RCW 9A.72.030)
7 Bail Jumping with class B or C Felony (RCW
8 9A.76.170(2)(c))
9 Intimidating a Public Servant (RCW
10 9A.76.180)
11 Tampering with a Witness (RCW 9A.72.120)
12 Manufacture, deliver, or possess with
13 intent to deliver marijuana (RCW
14 69.50.401(a)(1)(iii))
15 Delivery of a material in lieu of a
16 controlled substance (RCW
17 69.50.401(c))
18 Manufacture, distribute, or possess with
19 intent to distribute an imitation
20 controlled substance (RCW
21 69.52.030(1))
22 Recklessly Trafficking in Stolen Property
23 (RCW 9A.82.050(1))
24 Theft of livestock 2 (RCW 9A.56.080)
25 Securities Act violation (RCW 21.20.400)
26 II Unlawful Practice of Law (RCW 2.48.180)
27 Malicious Mischief 1 (RCW 9A.48.070)
28 Possession of Stolen Property 1 (RCW
29 9A.56.150)
30 Theft 1 (RCW 9A.56.030)
31 Trafficking in Insurance Claims (RCW
32 48.30A.015)
33 Unlicensed Practice of a Profession or
34 Business (RCW 18.130.190(7))
35 Health Care False Claims (RCW 48.80.030)
36 Possession of controlled substance that is
37 either heroin or narcotics from
38 Schedule I or II (RCW 69.50.401(d))

1 Possession of phencyclidine (PCP) (RCW
2 69.50.401(d))
3 Create, deliver, or possess a counterfeit
4 controlled substance (RCW
5 69.50.401(b))
6 Computer Trespass 1 (RCW 9A.52.110)
7 Escape from Community Custody (RCW
8 72.09.310)

9 I Theft 2 (RCW 9A.56.040)
10 Possession of Stolen Property 2 (RCW
11 9A.56.160)
12 Forgery (RCW 9A.60.020)
13 Taking Motor Vehicle Without Permission
14 (RCW 9A.56.070)
15 Vehicle Prowl 1 (RCW 9A.52.095)
16 Attempting to Elude a Pursuing Police
17 Vehicle (RCW 46.61.024)
18 Malicious Mischief 2 (RCW 9A.48.080)
19 Reckless Burning 1 (RCW 9A.48.040)
20 Unlawful Issuance of Checks or Drafts (RCW
21 9A.56.060)
22 Unlawful Use of Food Stamps (RCW 9.91.140
23 (2) and (3))
24 False Verification for Welfare (RCW
25 74.08.055)
26 Forged Prescription (RCW 69.41.020)
27 Forged Prescription for a Controlled
28 Substance (RCW 69.50.403)
29 Possess Controlled Substance that is a
30 Narcotic from Schedule III, IV, or V
31 or Non-narcotic from Schedule I-V
32 (except phencyclidine) (RCW
33 69.50.401(d))

34 **Sec. 2.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
35 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
36 follows:

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

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

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

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

14 (4) A persistent offender shall be sentenced to a term of total
15 confinement for life without the possibility of parole or, when
16 authorized by RCW 10.95.030 for the crime of aggravated murder in the
17 first degree, sentenced to death, notwithstanding the maximum sentence
18 under any other law. An offender convicted of the crime of murder in
19 the first degree shall be sentenced to a term of total confinement not
20 less than twenty years. An offender convicted of the crime of assault
21 in the first degree or assault of a child in the first degree where the
22 offender used force or means likely to result in death or intended to
23 kill the victim shall be sentenced to a term of total confinement not
24 less than five years. An offender convicted of the crime of rape in
25 the first degree shall be sentenced to a term of total confinement not
26 less than five years. The foregoing minimum terms of total confinement
27 are mandatory and shall not be varied or modified as provided in
28 subsection (2) of this section. In addition, all offenders subject to
29 the provisions of this subsection shall not be eligible for community
30 custody, earned early release time, furlough, home detention, partial
31 confinement, work crew, work release, or any other form of early
32 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
33 or any other form of authorized leave of absence from the correctional
34 facility while not in the direct custody of a corrections officer or
35 officers during such minimum terms of total confinement except in the
36 case of an offender in need of emergency medical treatment or for the
37 purpose of commitment to an inpatient treatment facility in the case of
38 an offender convicted of the crime of rape in the first degree.

1 (5) In sentencing a first-time offender the court may waive the
2 imposition of a sentence within the sentence range and impose a
3 sentence which may include up to ninety days of confinement in a
4 facility operated or utilized under contract by the county and a
5 requirement that the offender refrain from committing new offenses.
6 The sentence may also include up to two years of community supervision,
7 which, in addition to crime-related prohibitions, may include
8 requirements that the offender perform any one or more of the
9 following:

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

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

14 (c) Pursue a prescribed, secular course of study or vocational
15 training;

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

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

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

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

25 (i) The offender is convicted of the manufacture, delivery, or
26 possession with intent to manufacture or deliver a controlled substance
27 classified in Schedule I or II that is a narcotic drug or a felony that
28 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
29 criminal solicitation, or criminal conspiracy to commit such crimes,
30 and the violation does not involve a sentence enhancement under RCW
31 9.94A.310 (3) or (4);

32 (ii) With the exception of prior convictions for possession of a
33 controlled substance or nonviolent offenses, the offender has no prior
34 convictions for a felony in this state, another state, or the United
35 States; and

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

1 (b) If the midpoint of the standard range is greater than one year
2 and the sentencing judge determines that the offender is eligible for
3 this option and that the offender and the community will benefit from
4 the use of the special drug offender sentencing alternative, the judge
5 may waive imposition of a sentence within the standard range and impose
6 a sentence that must include a period of total confinement in a state
7 facility for one-half of the midpoint of the standard range. During
8 incarceration in the state facility, offenders sentenced under this
9 subsection shall undergo a comprehensive substance abuse assessment and
10 receive, within available resources, treatment services appropriate for
11 the offender. The treatment services shall be designed by the division
12 of alcohol and substance abuse of the department of social and health
13 services, in cooperation with the department of corrections. If the
14 midpoint of the standard range is twenty-four months or less, no more
15 than three months of the sentence may be served in a work release
16 status. The court shall also impose one year of concurrent community
17 custody and community supervision that must include appropriate
18 outpatient substance abuse treatment, crime-related prohibitions
19 including a condition not to use illegal controlled substances, and a
20 requirement to submit to urinalysis or other testing to monitor that
21 status. The court may require that the monitoring for controlled
22 substances be conducted by the department or by a treatment
23 alternatives to street crime program or a comparable court or agency-
24 referred program. The offender may be required to pay thirty dollars
25 per month while on community custody to offset the cost of monitoring.
26 In addition, the court shall impose three or more of the following
27 conditions:

- 28 (i) Devote time to a specific employment or training;
- 29 (ii) Remain within prescribed geographical boundaries and notify
30 the court or the community corrections officer before any change in the
31 offender's address or employment;
- 32 (iii) Report as directed to a community corrections officer;
- 33 (iv) Pay all court-ordered legal financial obligations;
- 34 (v) Perform community service work;
- 35 (vi) Stay out of areas designated by the sentencing judge.

36 (c) If the offender violates any of the sentence conditions in (b)
37 of this subsection, the department shall impose sanctions
38 administratively, with notice to the prosecuting attorney and the
39 sentencing court. Upon motion of the court or the prosecuting

1 attorney, a violation hearing shall be held by the court. If the court
2 finds that conditions have been willfully violated, the court may
3 impose confinement consisting of up to the remaining one-half of the
4 midpoint of the standard range. All total confinement served during
5 the period of community custody shall be credited to the offender,
6 regardless of whether the total confinement is served as a result of
7 the original sentence, as a result of a sanction imposed by the
8 department, or as a result of a violation found by the court. The term
9 of community supervision shall be tolled by any period of time served
10 in total confinement as a result of a violation found by the court.

11 (d) The department shall determine the rules for calculating the
12 value of a day fine based on the offender's income and reasonable
13 obligations which the offender has for the support of the offender and
14 any dependents. These rules shall be developed in consultation with
15 the administrator for the courts, the office of financial management,
16 and the commission.

17 (7) If a sentence range has not been established for the
18 defendant's crime, the court shall impose a determinate sentence which
19 may include not more than one year of confinement, community service
20 work, a term of community supervision not to exceed one year, and/or
21 other legal financial obligations. The court may impose a sentence
22 which provides more than one year of confinement if the court finds,
23 considering the purpose of this chapter, that there are substantial and
24 compelling reasons justifying an exceptional sentence.

25 (8)(a)(i) When an offender is convicted of a sex offense other than
26 a violation of RCW 9A.44.050 or a sex offense that is also a serious
27 violent offense and has no prior convictions for a sex offense or any
28 other felony sex offenses in this or any other state, the sentencing
29 court, on its own motion or the motion of the state or the defendant,
30 may order an examination to determine whether the defendant is amenable
31 to treatment.

32 The report of the examination shall include at a minimum the
33 following: The defendant's version of the facts and the official
34 version of the facts, the defendant's offense history, an assessment of
35 problems in addition to alleged deviant behaviors, the offender's
36 social and employment situation, and other evaluation measures used.
37 The report shall set forth the sources of the evaluator's information.

38 The examiner shall assess and report regarding the defendant's
39 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

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

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

6 (C) Monitoring plans, including any requirements regarding living
7 conditions, lifestyle requirements, and monitoring by family members
8 and others;

9 (D) Anticipated length of treatment; and

10 (E) Recommended crime-related prohibitions.

11 The court on its own motion may order, or on a motion by the state
12 shall order, a second examination regarding the offender's amenability
13 to treatment. The evaluator shall be selected by the party making the
14 motion. The defendant shall pay the cost of any second examination
15 ordered unless the court finds the defendant to be indigent in which
16 case the state shall pay the cost.

17 (ii) After receipt of the reports, the court shall consider whether
18 the offender and the community will benefit from use of this special
19 sexual offender sentencing alternative and consider the victim's
20 opinion whether the offender should receive a treatment disposition
21 under this subsection. If the court determines that this special sex
22 offender sentencing alternative is appropriate, the court shall then
23 impose a sentence within the sentence range. If this sentence is less
24 than eight years of confinement, the court may suspend the execution of
25 the sentence and impose the following conditions of suspension:

26 (A) The court shall place the defendant on community custody for
27 the length of the suspended sentence or three years, whichever is
28 greater, and require the offender to comply with any conditions imposed
29 by the department of corrections under subsection (14) of this section;
30 and

31 (B) The court shall order treatment for any period up to three
32 years in duration. The court in its discretion shall order outpatient
33 sex offender treatment or inpatient sex offender treatment, if
34 available. A community mental health center may not be used for such
35 treatment unless it has an appropriate program designed for sex
36 offender treatment. The offender shall not change sex offender
37 treatment providers or treatment conditions without first notifying the
38 prosecutor, the community corrections officer, and the court, and shall
39 not change providers without court approval after a hearing if the

1 prosecutor or community corrections officer object to the change. In
2 addition, as conditions of the suspended sentence, the court may impose
3 other sentence conditions including up to six months of confinement,
4 not to exceed the sentence range of confinement for that offense,
5 crime-related prohibitions, and requirements that the offender perform
6 any one or more of the following:

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

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

11 (III) Report as directed to the court and a community corrections
12 officer;

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

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

18 (iii) The sex offender therapist shall submit quarterly reports on
19 the defendant's progress in treatment to the court and the parties.
20 The report shall reference the treatment plan and include at a minimum
21 the following: Dates of attendance, defendant's compliance with
22 requirements, treatment activities, the defendant's relative progress
23 in treatment, and any other material as specified by the court at
24 sentencing.

25 (iv) At the time of sentencing, the court shall set a treatment
26 termination hearing for three months prior to the anticipated date for
27 completion of treatment. Prior to the treatment termination hearing,
28 the treatment professional and community corrections officer shall
29 submit written reports to the court and parties regarding the
30 defendant's compliance with treatment and monitoring requirements, and
31 recommendations regarding termination from treatment, including
32 proposed community supervision conditions. Either party may request
33 and the court may order another evaluation regarding the advisability
34 of termination from treatment. The defendant shall pay the cost of any
35 additional evaluation ordered unless the court finds the defendant to
36 be indigent in which case the state shall pay the cost. At the
37 treatment termination hearing the court may: (A) Modify conditions of
38 community custody, and either (B) terminate treatment, or (C) extend
39 treatment for up to the remaining period of community custody.

1 (v) If a violation of conditions occurs during community custody,
2 the department shall either impose sanctions as provided for in RCW
3 9.94A.205(2)(a) or refer the violation to the court and recommend
4 revocation of the suspended sentence as provided for in (a)(vi) of this
5 subsection.

6 (vi) The court may revoke the suspended sentence at any time during
7 the period of community custody and order execution of the sentence if:
8 (A) The defendant violates the conditions of the suspended sentence, or
9 (B) the court finds that the defendant is failing to make satisfactory
10 progress in treatment. All confinement time served during the period
11 of community custody shall be credited to the offender if the suspended
12 sentence is revoked.

13 (vii) Except as provided in (a) (viii) of this subsection, after
14 July 1, 1991, examinations and treatment ordered pursuant to this
15 subsection shall only be conducted by sex offender treatment providers
16 certified by the department of health pursuant to chapter 18.155 RCW.

17 (viii) A sex offender therapist who examines or treats a sex
18 offender pursuant to this subsection (8) does not have to be certified
19 by the department of health pursuant to chapter 18.155 RCW if the court
20 finds that: (A) The offender has already moved to another state or
21 plans to move to another state for reasons other than circumventing the
22 certification requirements; (B) no certified providers are available
23 for treatment within a reasonable geographical distance of the
24 offender's home; and (C) the evaluation and treatment plan comply with
25 this subsection (8) and the rules adopted by the department of health.

26 For purposes of this subsection, "victim" means any person who has
27 sustained emotional, psychological, physical, or financial injury to
28 person or property as a result of the crime charged. "Victim" also
29 means a parent or guardian of a victim who is a minor child unless the
30 parent or guardian is the perpetrator of the offense.

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

38 Except for an offender who has been convicted of a violation of RCW
39 9A.44.040 or 9A.44.050, if the offender completes the treatment program

1 before the expiration of his or her term of confinement, the department
2 of corrections may request the court to convert the balance of
3 confinement to community supervision and to place conditions on the
4 offender including crime-related prohibitions and requirements that the
5 offender perform any one or more of the following:

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

7 (ii) Remain within prescribed geographical boundaries and notify
8 the court or the community corrections officer prior to any change in
9 the offender's address or employment;

10 (iii) Report as directed to the court and a community corrections
11 officer;

12 (iv) Undergo available outpatient treatment.

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

17 Nothing in this subsection (8)(b) shall confer eligibility for such
18 programs for offenders convicted and sentenced for a sex offense
19 committed prior to July 1, 1987. This subsection (8)(b) does not apply
20 to any crime committed after July 1, 1990.

21 (c) Offenders convicted and sentenced for a sex offense committed
22 prior to July 1, 1987, may, subject to available funds, request an
23 evaluation by the department of corrections to determine whether they
24 are amenable to treatment. If the offender is determined to be
25 amenable to treatment, the offender may request placement in a
26 treatment program within a correctional facility operated by the
27 department. Placement in such treatment program is subject to
28 available funds.

29 (9)(a) When a court sentences a person to a term of total
30 confinement to the custody of the department of corrections for an
31 offense categorized as a sex offense or a serious violent offense
32 committed after July 1, 1988, but before July 1, 1990, assault in the
33 second degree, assault of a child in the second degree, any crime
34 against a person where it is determined in accordance with RCW
35 9.94A.125 that the defendant or an accomplice was armed with a deadly
36 weapon at the time of commission, or any felony offense under chapter
37 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
38 committed on or after July 1, 1988, the court shall in addition to the
39 other terms of the sentence, sentence the offender to a one-year term

1 of community placement beginning either upon completion of the term of
2 confinement or at such time as the offender is transferred to community
3 custody in lieu of earned early release in accordance with RCW
4 9.94A.150 (1) and (2). When the court sentences an offender under this
5 subsection to the statutory maximum period of confinement then the
6 community placement portion of the sentence shall consist entirely of
7 such 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.

11 (b) When a court sentences a person to a term of total confinement
12 to the custody of the department of corrections for an offense
13 categorized as a sex offense committed on or after July 1, 1990, but
14 before June 6, 1996, a serious violent offense, vehicular homicide, or
15 vehicular assault, committed on or after July 1, 1990, the court shall
16 in addition to other terms of the sentence, sentence the offender to
17 community placement for two years or up to the period of earned early
18 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
19 longer. The community placement shall begin either upon completion of
20 the term of confinement or at such time as the offender is transferred
21 to community custody in lieu of earned early release in accordance with
22 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
23 this subsection to the statutory maximum period of confinement then the
24 community placement portion of the sentence shall consist entirely of
25 the community custody to which the offender may become eligible, in
26 accordance with RCW 9.94A.150 (1) and (2). Any period of community
27 custody actually served shall be credited against the community
28 placement portion of the sentence. Unless a condition is waived by the
29 court, the terms of community placement for offenders sentenced
30 pursuant to this section shall include the following conditions:

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

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

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

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

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

3 (vi) The residence location and living arrangements are subject to
4 the prior approval of the department of corrections during the period
5 of community placement.

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

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

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

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

15 (iv) The offender shall not consume alcohol;

16 (v) The offender shall comply with any crime-related prohibitions;
17 or

18 (vi) For an offender convicted of a felony sex offense against a
19 minor victim after June 6, 1996, the offender shall comply with any
20 terms and conditions of community placement imposed by the department
21 of corrections relating to contact between the sex offender and a minor
22 victim or a child of similar age or circumstance as a previous victim.

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

27 (10)(a) When a court sentences a person to the custody of the
28 department of corrections for an offense categorized as a sex offense
29 committed on or after June 6, 1996, the court shall, in addition to
30 other terms of the sentence, sentence the offender to community custody
31 for three years or up to the period of earned early release awarded
32 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
33 community custody shall begin either upon completion of the term of
34 confinement or at such time as the offender is transferred to community
35 custody in lieu of earned early release in accordance with RCW
36 9.94A.150 (1) and (2).

37 (b) Unless a condition is waived by the court, the terms of
38 community custody shall be the same as those provided for in subsection
39 (9)(b) of this section and may include those provided for in subsection

1 (9)(c) of this section. As part of any sentence that includes a term
2 of community custody imposed under this subsection, the court shall
3 also require the offender to comply with any conditions imposed by the
4 department of corrections under subsection (14) of this section.

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

16 (11) If the court imposes a sentence requiring confinement of
17 thirty days or less, the court may, in its discretion, specify that the
18 sentence be served on consecutive or intermittent days. A sentence
19 requiring more than thirty days of confinement shall be served on
20 consecutive days. Local jail administrators may schedule court-ordered
21 intermittent sentences as space permits.

22 (12) If a sentence imposed includes payment of a legal financial
23 obligation, the sentence shall specify the total amount of the legal
24 financial obligation owed, and shall require the offender to pay a
25 specified monthly sum toward that legal financial obligation.
26 Restitution to victims shall be paid prior to any other payments of
27 monetary obligations. Any legal financial obligation that is imposed
28 by the court may be collected by the department, which shall deliver
29 the amount paid to the county clerk for credit. The offender's
30 compliance with payment of legal financial obligations shall be
31 supervised by the department. All monetary payments ordered shall be
32 paid no later than ten years after the last date of release from
33 confinement pursuant to a felony conviction or the date the sentence
34 was entered. Independent of the department, the party or entity to
35 whom the legal financial obligation is owed shall have the authority to
36 utilize any other remedies available to the party or entity to collect
37 the legal financial obligation. Nothing in this section makes the
38 department, the state, or any of its employees, agents, or other
39 persons acting on their behalf liable under any circumstances for the

1 payment of these legal financial obligations. If an order includes
2 restitution as one of the monetary assessments, the county clerk shall
3 make disbursements to victims named in the order.

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

8 (14) All offenders sentenced to terms involving community
9 supervision, community service, community placement, or legal financial
10 obligation shall be under the supervision of the department of
11 corrections and shall follow explicitly the instructions and conditions
12 of the department of corrections.

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

18 (b) For sex offenders sentenced to terms involving community
19 custody for crimes committed on or after June 6, 1996, the department
20 may include, in addition to the instructions in (a) of this subsection,
21 any appropriate conditions of supervision, including but not limited
22 to, prohibiting the offender from having contact with any other
23 specified individuals or specific class of individuals. The conditions
24 authorized under this subsection (14)(b) may be imposed by the
25 department prior to or during a sex offender's community custody term.
26 If a violation of conditions imposed by the court or the department
27 pursuant to subsection (10) of this section occurs during community
28 custody, it shall be deemed a violation of community placement for the
29 purposes of RCW 9.94A.207 and shall authorize the department to
30 transfer an offender to a more restrictive confinement status as
31 provided in RCW 9.94A.205. At any time prior to the completion of a
32 sex offender's term of community custody, the department may recommend
33 to the court that any or all of the conditions imposed by the court or
34 the department pursuant to subsection (10) of this section be continued
35 beyond the expiration of the offender's term of community custody as
36 authorized in subsection (10)(c) of this section.

37 The department may require offenders to pay for special services
38 rendered on or after July 25, 1993, including electronic monitoring,
39 day reporting, and telephone reporting, dependent upon the offender's

1 ability to pay. The department may pay for these services for
2 offenders who are not able to pay.

3 (15) All offenders sentenced to terms involving community
4 supervision, community service, or community placement under the
5 supervision of the department of corrections shall not own, use, or
6 possess firearms or ammunition. Offenders who own, use, or are found
7 to be in actual or constructive possession of firearms or ammunition
8 shall be subject to the appropriate violation process and sanctions.
9 "Constructive possession" as used in this subsection means the power
10 and intent to control the firearm or ammunition. "Firearm" as used in
11 this subsection means a weapon or device from which a projectile may be
12 fired by an explosive such as gunpowder.

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

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

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

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

36 (20) In any sentence of partial confinement, the court may require
37 the defendant to serve the partial confinement in work release, in a
38 program of home detention, on work crew, or in a combined program of
39 work crew and home detention.

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

5 **Sec. 3.** RCW 9.94A.137 and 1995 1st sp.s. c 19 s 20 are each
6 amended to read as follows:

7 (1)(a) An offender is eligible to be sentenced to a work ethic camp
8 if the offender:

9 (i) Is sentenced to a term of total confinement of not less than
10 sixteen months or more than (~~thirty-six~~) forty-eight months; and

11 (ii) Has no current or prior convictions for any sex offenses or
12 for violent offenses other than drug offenses for manufacturing,
13 possession, delivery, or intent to deliver a controlled substance.

14 (b) The length of the work ethic camp shall be at least one hundred
15 twenty days and not more than one hundred eighty days. Because of the
16 conversion ratio, earned early release time shall not accrue to
17 offenders who successfully complete the program.

18 (2) If the sentencing judge determines that the offender is
19 eligible for the work ethic camp and is likely to qualify under
20 subsection (3) of this section, the judge shall impose a sentence
21 within the standard range and may recommend that the offender serve the
22 sentence at a work ethic camp. The sentence shall provide that if the
23 offender successfully completes the program, the department shall
24 convert the period of work ethic camp confinement at the rate of one
25 day of work ethic camp confinement to three days of total standard
26 confinement. In sentencing an offender to the work ethic camp, the
27 court shall specify: (a) That upon completion of the work ethic camp
28 the offender shall be released on community custody for any remaining
29 time of total confinement; (b) the applicable conditions of supervision
30 on community custody status as required by RCW 9.94A.120(9)(b) and
31 authorized by RCW 9.94A.120(9)(c); and (c) that violation of the
32 conditions may result in a return to total confinement for the balance
33 of the offender's remaining time of confinement.

34 (3) The department shall place the offender in the work ethic camp
35 program, subject to capacity, unless: (a) The department determines
36 that the offender has physical or mental impairments that would prevent
37 participation and completion of the program; (b) the department
38 determines that the offender's custody level prevents placement in the

1 program; or (c) the offender refuses to agree to the terms and
2 conditions of the program.

3 (4) An offender who fails to complete the work ethic camp program,
4 who is administratively terminated from the program, or who otherwise
5 violates any conditions of supervision, as defined by the department,
6 shall be reclassified to serve the unexpired term of his or her
7 sentence as ordered by the sentencing judge and shall be subject to all
8 rules relating to earned early release time.

9 (5) During the last two weeks prior to release from the work ethic
10 camp program the department shall provide the offender with
11 comprehensive transition training.

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