

---

HOUSE BILL 1906

---

State of Washington

55th Legislature

1997 Regular Session

By Representatives Costa, Ballasiotes, Quall, Blalock, Linville, Cole and Tokuda

Read first time 02/13/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sentencing; amending RCW 9.94A.110; and  
2 reenacting and amending RCW 9.94A.120 and 9.94A.200.

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

4 **Sec. 1.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read  
5 as follows:

6 Before imposing a sentence upon a defendant, the court shall  
7 conduct a sentencing hearing. The sentencing hearing shall be held  
8 within forty court days following conviction. Upon the motion of  
9 either party for good cause shown, or on its own motion, the court may  
10 extend the time period for conducting the sentencing hearing. The  
11 court shall order the department to complete a presentence report  
12 before imposing a sentence upon a defendant who has been convicted of  
13 a felony sexual offense. The department of corrections shall give  
14 priority to presentence investigations for sexual offenders. If the  
15 court determines that the defendant may be chronically mentally ill,  
16 gravely disabled, or seriously disturbed as defined in RCW 71.05.020  
17 and 71.24.025, although the defendant has not established a defense of  
18 insanity as defined in RCW 9A.12.010, the court shall order the  
19 department to complete a presentence report before imposing a sentence.

1 The court shall consider the presentence reports, if any, including any  
2 victim impact statement and criminal history, and allow arguments from  
3 the prosecutor, the defense counsel, the offender, the victim, the  
4 survivor of the victim, or a representative of the victim or survivor,  
5 and an investigative law enforcement officer as to the sentence to be  
6 imposed. If the court is satisfied by a preponderance of the evidence  
7 that the defendant has a criminal history, the court shall specify the  
8 convictions it has found to exist. All of this information shall be  
9 part of the record. Copies of all presentence reports presented to the  
10 sentencing court and all written findings of facts and conclusions of  
11 law as to sentencing entered by the court shall be sent to the  
12 department by the clerk of the court at the conclusion of the  
13 sentencing and shall accompany the offender if the offender is  
14 committed to the custody of the department. Court clerks shall  
15 provide, without charge, certified copies of documents relating to  
16 criminal convictions requested by prosecuting attorneys.

17 **Sec. 2.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c  
18 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as  
19 follows:

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

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

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

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

33 (4) A persistent offender shall be sentenced to a term of total  
34 confinement for life without the possibility of parole or, when  
35 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
36 first degree, sentenced to death, notwithstanding the maximum sentence  
37 under any other law. An offender convicted of the crime of murder in  
38 the first degree shall be sentenced to a term of total confinement not

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

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

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

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

33 (c) Pursue a prescribed, secular course of study or vocational  
34 training;

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

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

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

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

5 (i) The offender is convicted of the manufacture, delivery, or  
6 possession with intent to manufacture or deliver a controlled substance  
7 classified in Schedule I or II that is a narcotic drug or a felony that  
8 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
9 criminal solicitation, or criminal conspiracy to commit such crimes,  
10 and the violation does not involve a sentence enhancement under RCW  
11 9.94A.310 (3) or (4);

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

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

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

1 alternatives to street crime program or a comparable court or agency-  
2 referred program. The offender may be required to pay thirty dollars  
3 per month while on community custody to offset the cost of monitoring.  
4 In addition, the court shall impose three or more of the following  
5 conditions:

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

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

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

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

12 (v) Perform community service work;

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

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

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

34 (7) If a sentence range has not been established for the  
35 defendant's crime, the court shall impose a determinate sentence which  
36 may include not more than one year of confinement, community service  
37 work, a term of community supervision not to exceed one year, and/or  
38 other legal financial obligations. The court may impose a sentence  
39 which provides more than one year of confinement if the court finds,

1 considering the purpose of this chapter, that there are substantial and  
2 compelling reasons justifying an exceptional sentence.

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

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

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

- 20 (A) Frequency and type of contact between offender and therapist;
- 21 (B) Specific issues to be addressed in the treatment and  
22 description of planned treatment modalities;
- 23 (C) Monitoring plans, including any requirements regarding living  
24 conditions, lifestyle requirements, and monitoring by family members  
25 and others;
- 26 (D) Anticipated length of treatment; and
- 27 (E) Recommended crime-related prohibitions.

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

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

1 impose a sentence within the sentence range. If this sentence is less  
2 than eight years of confinement, the court may suspend the execution of  
3 the sentence and impose the following conditions of suspension:

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

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

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

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

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

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

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

35 (iii) The sex offender therapist shall submit quarterly reports on  
36 the defendant's progress in treatment to the court and the parties.  
37 The report shall reference the treatment plan and include at a minimum  
38 the following: Dates of attendance, defendant's compliance with  
39 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 custody, and either (B) terminate treatment, or (C) extend  
17 treatment for up to the remaining period of community custody.

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

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

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

34 (viii) A sex offender therapist who examines or treats a sex  
35 offender pursuant to this subsection (8) does not have to be certified  
36 by the department of health pursuant to chapter 18.155 RCW if the court  
37 finds that: (A) The offender has already moved to another state or  
38 plans to move to another state for reasons other than circumventing the  
39 certification requirements; (B) no certified providers are available



1 for treatment within a reasonable geographical distance of the  
2 offender's home; and (C) the evaluation and treatment plan comply with  
3 this subsection (8) and the rules adopted by the department of health.

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

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

16 Except for an offender who has been convicted of a violation of RCW  
17 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
18 before the expiration of his or her term of confinement, the department  
19 of corrections may request the court to convert the balance of  
20 confinement to community supervision and to place conditions on the  
21 offender including crime-related prohibitions and requirements that the  
22 offender perform 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) Undergo available outpatient treatment.

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

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

38 (c) Offenders convicted and sentenced for a sex offense committed  
39 prior to July 1, 1987, may, subject to available funds, request an

1 evaluation by the department of corrections to determine whether they  
2 are amenable to treatment. If the offender is determined to be  
3 amenable to treatment, the offender may request placement in a  
4 treatment program within a correctional facility operated by the  
5 department. Placement in such treatment program is subject to  
6 available funds.

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

28 (b) When a court sentences a person to a term of total confinement  
29 to the custody of the department of corrections for an offense  
30 categorized as a sex offense committed on or after July 1, 1990, but  
31 before June 6, 1996, a serious violent offense, vehicular homicide, or  
32 vehicular assault, committed on or after July 1, 1990, the court shall  
33 in addition to other terms of the sentence, sentence the offender to  
34 community placement for two years or up to the period of earned early  
35 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
36 longer. The community placement shall begin either upon completion of  
37 the term of confinement or at such time as the offender is transferred  
38 to community custody in lieu of earned early release in accordance with  
39 RCW 9.94A.150 (1) and (2). When the court sentences an offender under

1 this subsection to the statutory maximum period of confinement then the  
2 community placement portion of the sentence shall consist entirely of  
3 the community custody to which the offender may become eligible, in  
4 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
5 custody actually served shall be credited against the community  
6 placement portion of the sentence. Unless a condition is waived by the  
7 court, the terms of community placement for offenders sentenced  
8 pursuant to this section shall include the following conditions:

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

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

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

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

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

19 (vi) The residence location and living arrangements are subject to  
20 the prior approval of the department of corrections during the period  
21 of community placement.

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

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

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

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

31 (iv) The offender shall not consume alcohol;

32 (v) The offender shall comply with any crime-related prohibitions;  
33 or

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

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

5 (10)(a) When a court sentences a person to the custody of the  
6 department of corrections for an offense categorized as a sex offense  
7 committed on or after June 6, 1996, the court shall, in addition to  
8 other terms of the sentence, sentence the offender to community custody  
9 for three years or up to the period of earned early release awarded  
10 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
11 community custody shall begin either upon completion of the term of  
12 confinement or at such time as the offender is transferred to community  
13 custody in lieu of earned early release in accordance with RCW  
14 9.94A.150 (1) and (2).

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

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

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

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

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

26 (14) All offenders sentenced to terms involving community  
27 supervision, community service, community placement, or legal financial  
28 obligation shall be under the supervision of the department of  
29 corrections and shall follow explicitly the instructions and conditions  
30 of the department of corrections.

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

36 (b) For sex offenders sentenced to terms involving community  
37 custody for crimes committed on or after June 6, 1996, the department  
38 may include, in addition to the instructions in (a) of this subsection,  
39 any appropriate conditions of supervision, including but not limited

1 to, prohibiting the offender from having contact with any other  
2 specified individuals or specific class of individuals. The conditions  
3 authorized under this subsection (14)(b) may be imposed by the  
4 department prior to or during a sex offender's community custody term.  
5 If a violation of conditions imposed by the court or the department  
6 pursuant to subsection (10) of this section occurs during community  
7 custody, it shall be deemed a violation of community placement for the  
8 purposes of RCW 9.94A.207 and shall authorize the department to  
9 transfer an offender to a more restrictive confinement status as  
10 provided in RCW 9.94A.205. At any time prior to the completion of a  
11 sex offender's term of community custody, the department may recommend  
12 to the court that any or all of the conditions imposed by the court or  
13 the department pursuant to subsection (10) of this section be continued  
14 beyond the expiration of the offender's term of community custody as  
15 authorized in subsection (10)(c) of this 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 (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 (16) The sentencing court shall give the offender credit for all  
32 confinement time served before the sentencing if that confinement was  
33 solely in regard to the offense for which the offender is being  
34 sentenced.

35 (17) A departure from the standards in RCW 9.94A.400 (1) and (2)  
36 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 (18) The court shall order restitution whenever the offender is  
2 convicted of a felony that results in injury to any person or damage to  
3 or loss of property, whether the offender is sentenced to confinement  
4 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 (19) As a part of any sentence, the court may impose and enforce an  
9 order that relates directly to the circumstances of the crime for which  
10 the offender has been convicted, prohibiting the offender from having  
11 any contact with other specified individuals or a specific class of  
12 individuals for a period not to exceed the maximum allowable sentence  
13 for the crime, regardless of the expiration of the offender's term of  
14 community supervision or community placement.

15 (20) As part of a community placement or community supervision  
16 sentence, the court may order the offender to undergo psychiatric  
17 evaluation or participate in available outpatient psychiatric  
18 treatment, or both, if the court determines that strong grounds exist  
19 for assessing the offender as chronically mentally ill, gravely  
20 disabled, or seriously disturbed as defined in RCW 71.05.020 and  
21 71.24.025, and that this condition is likely to have influenced the  
22 offense. An order of psychiatric evaluation or treatment shall be  
23 based on a presentence report and, if applicable, psychiatric  
24 evaluations that may have been ordered by the court under RCW 10.77.060  
25 to determine the offender's competency or eligibility for a defense of  
26 insanity.

27 (21) In any sentence of partial confinement, the court may require  
28 the defendant to serve the partial confinement in work release, in a  
29 program of home detention, on work crew, or in a combined program of  
30 work crew and home detention.

31 (~~(21)~~) (22) All court-ordered legal financial obligations  
32 collected by the department and remitted to the county clerk shall be  
33 credited and paid where restitution is ordered. Restitution shall be  
34 paid prior to any other payments of monetary obligations.

35 **Sec. 3.** RCW 9.94A.200 and 1995 c 167 s 1 and 1995 c 142 s 1 are  
36 each reenacted and amended to read as follows:

1 (1) If an offender violates any condition or requirement of a  
2 sentence, the court may modify its order of judgment and sentence and  
3 impose further punishment in accordance with this section.

4 (2) In cases where conditions from a second or later sentence of  
5 community supervision begin prior to the term of the second or later  
6 sentence, the court shall treat a violation of such conditions as a  
7 violation of the sentence of community supervision currently being  
8 served.

9 (3) If an offender fails to comply with any of the requirements or  
10 conditions of a sentence the following provisions apply:

11 (a)(i) Following the violation, if the offender and the department  
12 make a stipulated agreement, the department may impose sanctions such  
13 as work release, home detention with electronic monitoring, work crew,  
14 community service, inpatient treatment, daily reporting, curfew,  
15 educational or counseling sessions, supervision enhanced through  
16 electronic monitoring, jail time, or other sanctions available in the  
17 community.

18 (ii) Within seventy-two hours of signing the stipulated agreement,  
19 the department shall submit a report to the court and the prosecuting  
20 attorney outlining the violation or violations, and sanctions imposed.  
21 Within fifteen days of receipt of the report, if the court is not  
22 satisfied with the sanctions, the court may schedule a hearing and may  
23 modify the department's sanctions. If this occurs, the offender may  
24 withdraw from the stipulated agreement.

25 (iii) If the offender fails to comply with the sanction  
26 administratively imposed by the department, the court may take action  
27 regarding the original noncompliance. Offender failure to comply with  
28 the sanction administratively imposed by the department may be  
29 considered an additional violation.

30 (b) In the absence of a stipulated agreement, or where the court is  
31 not satisfied with the department's sanctions as provided in (a) of  
32 this subsection, the court, upon the motion of the state, or upon its  
33 own motion, shall require the offender to show cause why the offender  
34 should not be punished for the noncompliance. The court may issue a  
35 summons or a warrant of arrest for the offender's appearance((+)).

36 (c) The state has the burden of showing noncompliance by a  
37 preponderance of the evidence. If the court finds that the violation  
38 has occurred, it may order the offender to be confined for a period not  
39 to exceed sixty days for each violation, and may (i) convert a term of



1 partial confinement to total confinement, (ii) convert community  
2 service obligation to total or partial confinement, (iii) convert  
3 monetary obligations, except restitution and the crime victim penalty  
4 assessment, to community service hours at the rate of the state minimum  
5 wage as established in RCW 49.46.020 for each hour of community  
6 service, or (iv) order one or more of the penalties authorized in  
7 (a)(i) of this subsection. Any time served in confinement awaiting a  
8 hearing on noncompliance shall be credited against any confinement  
9 order by the court(~~and~~).

10 (d) If the court finds that the violation was not willful, the  
11 court may modify its previous order regarding payment of legal  
12 financial obligations and regarding community service obligations.

13 (e) If the violation concerns a failure to undergo or comply with  
14 psychiatric evaluation or outpatient psychiatric treatment, or both,  
15 the community corrections officer shall consult with the treatment  
16 provider or the proposed treatment provider. The community corrections  
17 officer may obtain information from the treatment provider on the  
18 offender's status with respect to evaluation, application for services,  
19 registration for services, and compliance with the supervision plan,  
20 without the offender's consent, as described under RCW 71.05.630.  
21 Enforcement of orders concerning outpatient psychiatric treatment shall  
22 pursue the least-restrictive means of promoting participation in  
23 treatment. If the offender's failure to receive care essential for  
24 health and safety presents a risk of serious physical harm or probable  
25 harmful consequences, the civil detention and commitment procedures  
26 described in chapter 71.05 RCW shall be invoked in preference to  
27 incarceration in a local or state correctional facility.

28 (4) Nothing in this section prohibits the filing of escape charges  
29 if appropriate.

--- END ---