
SUBSTITUTE HOUSE BILL 2794

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives McCune, Sheahan, Sterk and D. Sommers)

Read first time 02/06/98. Referred to Committee on .

1 AN ACT Relating to conditions of sentences; reenacting and amending
2 RCW 9.94A.120 and 9.94A.030; and adding a new section to chapter 9.94A
3 RCW.

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

5 **Sec. 1.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
6 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
7 amended to read as follows:

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

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

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

17 (3) Whenever a sentence outside the standard range is imposed, the
18 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range
2 shall be a determinate sentence.

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

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

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

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

4 (c) Pursue a prescribed, secular course of study or vocational
5 training;

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

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

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

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

15 (i) The offender is convicted of the manufacture, delivery, or
16 possession with intent to manufacture or deliver a controlled substance
17 classified in Schedule I or II that is a narcotic drug or a felony that
18 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
19 criminal solicitation, or criminal conspiracy to commit such crimes,
20 and the violation does not involve a sentence enhancement under RCW
21 9.94A.310 (3) or (4);

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

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

28 (b) If the midpoint of the standard range is greater than one year
29 and the sentencing judge determines that the offender is eligible for
30 this option and that the offender and the community will benefit from
31 the use of the special drug offender sentencing alternative, the judge
32 may waive imposition of a sentence within the standard range and impose
33 a sentence that must include a period of total confinement in a state
34 facility for one-half of the midpoint of the standard range. During
35 incarceration in the state facility, offenders sentenced under this
36 subsection shall undergo a comprehensive substance abuse assessment and
37 receive, within available resources, treatment services appropriate for
38 the offender. The treatment services shall be designed by the division
39 of alcohol and substance abuse of the department of social and health

1 services, in cooperation with the department of corrections. If the
2 midpoint of the standard range is twenty-four months or less, no more
3 than three months of the sentence may be served in a work release
4 status. The court shall also impose one year of concurrent community
5 custody and community supervision that must include appropriate
6 outpatient substance abuse treatment, crime-related prohibitions
7 including a condition not to use illegal controlled substances, and a
8 requirement to submit to urinalysis or other testing to monitor that
9 status. The court may require that the monitoring for controlled
10 substances be conducted by the department or by a treatment
11 alternatives to street crime program or a comparable court or agency-
12 referred program. The offender may be required to pay thirty dollars
13 per month while on community custody to offset the cost of monitoring.
14 In addition, the court shall impose three or more of the following
15 conditions:

- 16 (i) Devote time to a specific employment or training;
 - 17 (ii) Remain within prescribed geographical boundaries and notify
18 the court or the community corrections officer before any change in the
19 offender's address or employment;
 - 20 (iii) Report as directed to a community corrections officer;
 - 21 (iv) Pay all court-ordered legal financial obligations;
 - 22 (v) Perform community service work;
 - 23 (vi) Stay out of areas designated by the sentencing judge.
- 24 (c) If the offender violates any of the sentence conditions in (b)
25 of this subsection, the department shall impose sanctions
26 administratively, with notice to the prosecuting attorney and the
27 sentencing court. Upon motion of the court or the prosecuting
28 attorney, a violation hearing shall be held by the court. If the court
29 finds that conditions have been willfully violated, the court may
30 impose confinement consisting of up to the remaining one-half of the
31 midpoint of the standard range. All total confinement served during
32 the period of community custody shall be credited to the offender,
33 regardless of whether the total confinement is served as a result of
34 the original sentence, as a result of a sanction imposed by the
35 department, or as a result of a violation found by the court. The term
36 of community supervision shall be tolled by any period of time served
37 in total confinement as a result of a violation found by the court.
- 38 (d) The department shall determine the rules for calculating the
39 value of a day fine based on the offender's income and reasonable

1 obligations which the offender has for the support of the offender and
2 any dependents. These rules shall be developed in consultation with
3 the administrator for the courts, the office of financial management,
4 and the commission.

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

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

20 The report of the examination shall include at a minimum the
21 following: The defendant's version of the facts and the official
22 version of the facts, the defendant's offense history, an assessment of
23 problems in addition to alleged deviant behaviors, the offender's
24 social and employment situation, and other evaluation measures used.
25 The report shall set forth the sources of the evaluator's information.

26 The examiner shall assess and report regarding the defendant's
27 amenability to treatment and relative risk to the community. A
28 proposed treatment plan shall be provided and shall include, at a
29 minimum:

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

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

33 (C) Monitoring plans, including any requirements regarding living
34 conditions, lifestyle requirements, and monitoring by family members
35 and others;

36 (D) Anticipated length of treatment; and

37 (E) Recommended crime-related prohibitions.

38 The court on its own motion may order, or on a motion by the state
39 shall order, a second examination regarding the offender's amenability

1 to treatment. The evaluator shall be selected by the party making the
2 motion. The defendant shall pay the cost of any second examination
3 ordered unless the court finds the defendant to be indigent in which
4 case the state shall pay the cost.

5 (ii) After receipt of the reports, the court shall consider whether
6 the offender and the community will benefit from use of this special
7 sex offender sentencing alternative and consider the victim's opinion
8 whether the offender should receive a treatment disposition under this
9 subsection. If the court determines that this special sex offender
10 sentencing alternative is appropriate, the court shall then impose a
11 sentence within the sentence range. If this sentence is less than
12 eleven years of confinement, the court may suspend the execution of the
13 sentence and impose the following conditions of suspension:

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

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

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

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

37 (III) Report as directed to the court and a community corrections
38 officer;

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

4 (V) Make recoupment to the victim for the cost of any counseling
5 required as a result of the offender's crime; and

6 (C) Sex offenders sentenced under this special sex offender
7 sentencing alternative are not eligible to accrue any earned early
8 release time while serving a suspended sentence.

9 (iii) The sex offender therapist shall submit quarterly reports on
10 the defendant's progress in treatment to the court and the parties.
11 The report shall reference the treatment plan and include at a minimum
12 the following: Dates of attendance, defendant's compliance with
13 requirements, treatment activities, the defendant's relative progress
14 in treatment, and any other material as specified by the court at
15 sentencing.

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

31 (v) If a violation of conditions occurs during community custody,
32 the department shall either impose sanctions as provided for in RCW
33 9.94A.205(2)(a) or refer the violation to the court and recommend
34 revocation of the suspended sentence as provided for in (a)(vi) of this
35 subsection.

36 (vi) The court may revoke the suspended sentence at any time during
37 the period of community custody and order execution of the sentence if:
38 (A) The defendant violates the conditions of the suspended sentence, or
39 (B) the court finds that the defendant is failing to make satisfactory

1 progress in treatment. All confinement time served during the period
2 of community custody shall be credited to the offender if the suspended
3 sentence is revoked.

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

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

17 (ix) For purposes of this subsection (8), "victim" means any person
18 who has sustained emotional, psychological, physical, or financial
19 injury to person or property as a result of the crime charged.
20 "Victim" also means a parent or guardian of a victim who is a minor
21 child unless the parent or guardian is the perpetrator of the offense.

22 (x) If the defendant was less than eighteen years of age when the
23 charge was filed, the state shall pay for the cost of initial
24 evaluation and treatment.

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

32 Except for an offender who has been convicted of a violation of RCW
33 9A.44.040 or 9A.44.050, if the offender completes the treatment program
34 before the expiration of his or her term of confinement, the department
35 of corrections may request the court to convert the balance of
36 confinement to community supervision and to place conditions on the
37 offender including crime-related prohibitions and requirements that the
38 offender perform any one or more of the following:

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

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

4 (iii) Report as directed to the court and a community corrections
5 officer;

6 (iv) Undergo available outpatient treatment.

7 If the offender violates any of the terms of his or her community
8 supervision, the court may order the offender to serve out the balance
9 of his or her community supervision term in confinement in the custody
10 of the department of corrections.

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

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

23 (9)(a) When a court sentences a person to a term of total
24 confinement to the custody of the department of corrections for an
25 offense categorized as a sex offense or a serious violent offense
26 committed after July 1, 1988, but before July 1, 1990, assault in the
27 second degree, assault of a child in the second degree, any crime
28 against a person where it is determined in accordance with RCW
29 9.94A.125 that the defendant or an accomplice was armed with a deadly
30 weapon at the time of commission, or any felony offense under chapter
31 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
32 committed on or after July 1, 1988, the court shall in addition to the
33 other terms of the sentence, sentence the offender to a one-year term
34 of community placement beginning either upon completion of the term of
35 confinement or at such time as the offender is transferred to community
36 custody in lieu of earned early release in accordance with RCW
37 9.94A.150 (1) and (2). When the court sentences an offender under this
38 subsection to the statutory maximum period of confinement then the
39 community placement portion of the sentence shall consist entirely of

1 such community custody to which the offender may become eligible, in
2 accordance with RCW 9.94A.150 (1) and (2). Any period of community
3 custody actually served shall be credited against the community
4 placement portion of the sentence.

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

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

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

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

31 (iv) The offender shall pay supervision fees as determined by the
32 department of corrections;

33 (v) The residence location and living arrangements are subject to
34 the prior approval of the department of corrections during the period
35 of community placement; and

36 (vi) The offender shall submit to affirmative acts necessary to
37 monitor compliance with the orders of the court as required by the
38 department.

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

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

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

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

10 (iv) The offender shall not consume alcohol;

11 (v) The offender shall comply with any crime-related prohibitions;

12 or

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

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

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

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

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

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

18 (12) If a sentence imposed includes payment of a legal financial
19 obligation, the sentence shall specify the total amount of the legal
20 financial obligation owed, and shall require the offender to pay a
21 specified monthly sum toward that legal financial obligation.
22 Restitution to victims shall be paid prior to any other payments of
23 monetary obligations. Any legal financial obligation that is imposed
24 by the court may be collected by the department, which shall deliver
25 the amount paid to the county clerk for credit. The offender's
26 compliance with payment of legal financial obligations shall be
27 supervised by the department for ten years following the entry of the
28 judgment and sentence or ten years following the offender's release
29 from total confinement. All monetary payments ordered shall be paid no
30 later than ten years after the last date of release from confinement
31 pursuant to a felony conviction or the date the sentence was entered
32 unless the superior court extends the criminal judgment an additional
33 ten years. If the legal financial obligations including crime victims'
34 assessments are not paid during the initial ten-year period, the
35 superior court may extend jurisdiction under the criminal judgment an
36 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
37 9.94A.145. If jurisdiction under the criminal judgment is extended,
38 the department is not responsible for supervision of the offender
39 during the subsequent period. Independent of the department, the party

1 or entity to whom the legal financial obligation is owed shall have the
2 authority to utilize any other remedies available to the party or
3 entity to collect the legal financial obligation. Nothing in this
4 section makes the department, the state, or any of its employees,
5 agents, or other persons acting on their behalf liable under any
6 circumstances for the payment of these legal financial obligations. If
7 an order includes restitution as one of the monetary assessments, the
8 county clerk shall make disbursements to victims named in the order.

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

13 (14) All offenders sentenced to terms involving community
14 supervision, community service, community placement, or legal financial
15 obligation shall be under the supervision of the department of
16 corrections and shall follow explicitly the instructions and conditions
17 of the department of corrections. The department may require an
18 offender to perform affirmative acts it deems appropriate to monitor
19 compliance with the conditions of the sentence imposed.

20 (a) The instructions shall include, at a minimum, reporting as
21 directed to a community corrections officer, remaining within
22 prescribed geographical boundaries, notifying the community corrections
23 officer of any change in the offender's address or employment, obeying
24 all laws, and paying the supervision fee assessment.

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

1 to the court that any or all of the conditions imposed by the court or
2 the department pursuant to subsection (10) of this section be continued
3 beyond the expiration of the offender's term of community custody as
4 authorized in subsection (10)(c) of this section.

5 The department may require offenders to pay for special services
6 rendered on or after July 25, 1993, including electronic monitoring,
7 day reporting, and telephone reporting, dependent upon the offender's
8 ability to pay. The department may pay for these services for
9 offenders who are not able to pay.

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

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

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

30 (18) The court shall order restitution whenever the offender is
31 convicted of a felony that results in injury to any person or damage to
32 or loss of property, whether the offender is sentenced to confinement
33 or placed under community supervision, unless extraordinary
34 circumstances exist that make restitution inappropriate in the court's
35 judgment. The court shall set forth the extraordinary circumstances in
36 the record if it does not order restitution.

37 (19) As a part of any sentence, the court may impose and enforce an
38 order that relates directly to the circumstances of the crime for which
39 the offender has been convicted, prohibiting the offender from having

1 any contact with other specified individuals or a specific class of
2 individuals for a period not to exceed the maximum allowable sentence
3 for the crime, regardless of the expiration of the offender's term of
4 community supervision or community placement.

5 (20) In any sentence of partial confinement, the court may require
6 the defendant to serve the partial confinement in work release, in a
7 program of home detention, on work crew, or in a combined program of
8 work crew and home detention.

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

13 (22) In sentencing any offender who commits a felony after the
14 effective date of this act, the court shall order the offender to
15 refrain from committing new offenses as a condition of community
16 supervision or community placement. Offenders who commit new offenses
17 in violation of this condition shall be subject to the appropriate
18 violation and sanction process in addition to prosecution for the
19 offense.

20 **Sec. 2.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
21 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
22 reenacted and amended to read as follows:

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

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

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

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

37 (4) "Community custody" means that portion of an inmate's sentence
38 of confinement in lieu of earned early release time or imposed pursuant

1 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
2 controls placed on the inmate's movement and activities by the
3 department of corrections.

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

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

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

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

26 (9) "Conviction" means an adjudication of guilt pursuant to Titles
27 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
28 acceptance of a plea of guilty.

29 (10) "Court-ordered legal financial obligation" means a sum of
30 money that is ordered by a superior court of the state of Washington
31 for legal financial obligations which may include restitution to the
32 victim, statutorily imposed crime victims' compensation fees as
33 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
34 drug funds, court-appointed attorneys' fees, and costs of defense,
35 fines, and any other financial obligation that is assessed to the
36 offender as a result of a felony conviction. Upon conviction for
37 vehicular assault while under the influence of intoxicating liquor or
38 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
39 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),

1 legal financial obligations may also include payment to a public agency
2 of the expense of an emergency response to the incident resulting in
3 the conviction, subject to the provisions in RCW 38.52.430.

4 (11) "Crime-related prohibition" means an order of a court
5 prohibiting conduct that directly relates to the circumstances of the
6 crime for which the offender has been convicted, and (~~shall not be~~
7 ~~construed to mean~~) may include orders directing an offender
8 affirmatively to participate in rehabilitative programs or to otherwise
9 perform affirmative conduct. (~~However~~) In addition, affirmative acts
10 necessary to monitor compliance with the order of a court may be
11 required by the department.

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

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

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

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

28 (16) "Determinate sentence" means a sentence that states with
29 exactitude the number of actual years, months, or days of total
30 confinement, of partial confinement, of community supervision, the
31 number of actual hours or days of community service work, or dollars or
32 terms of a legal financial obligation. The fact that an offender
33 through "earned early release" can reduce the actual period of
34 confinement shall not affect the classification of the sentence as a
35 determinate sentence.

36 (17) "Disposable earnings" means that part of the earnings of an
37 individual remaining after the deduction from those earnings of any
38 amount required by law to be withheld. For the purposes of this
39 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 (18) "Drug offense" means:

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

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

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

19 (19) "Escape" means:

20 (a) Escape in the first degree (RCW 9A.76.110), escape in the
21 second degree (RCW 9A.76.120), willful failure to return from furlough
22 (RCW 72.66.060), willful failure to return from work release (RCW
23 72.65.070), or willful failure to be available for supervision by the
24 department while in community custody (RCW 72.09.310); or

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

28 (20) "Felony traffic offense" means:

29 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
30 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
31 and-run injury-accident (RCW 46.52.020(4)); or

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

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

37 (22) "First-time offender" means any person who is convicted of a
38 felony (a) not classified as a violent offense or a sex offense under
39 this chapter, or (b) that is not the manufacture, delivery, or

1 possession with intent to manufacture or deliver a controlled substance
2 classified in schedule I or II that is a narcotic drug, nor the
3 manufacture, delivery, or possession with intent to deliver
4 methamphetamine, its salts, isomers, and salts of its isomers as
5 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
6 controlled substance or counterfeit substance classified in schedule I,
7 RCW 69.50.204, except leaves and flowering tops of marihuana, who
8 previously has never been convicted of a felony in this state, federal
9 court, or another state, and who has never participated in a program of
10 deferred prosecution for a felony offense.

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

14 (a) Any felony defined under any law as a class A felony or
15 criminal solicitation of or criminal conspiracy to commit a class A
16 felony;

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Promoting prostitution in the first degree;

29 (n) Rape in the third degree;

30 (o) Robbery in the second degree;

31 (p) Sexual exploitation;

32 (q) Vehicular assault;

33 (r) Vehicular homicide, when proximately caused by the driving of
34 any vehicle by any person while under the influence of intoxicating
35 liquor or any drug as defined by RCW 46.61.502, or by the operation of
36 any vehicle in a reckless manner;

37 (s) Any other class B felony offense with a finding of sexual
38 motivation, as "sexual motivation" is defined under this section;

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

8 (v)(i) A prior conviction for indecent liberties under RCW
9 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
10 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
11 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
12 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (24) "Nonviolent offense" means an offense which is not a violent
22 offense.

23 (25) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

30 (26) "Partial confinement" means confinement for no more than one
31 year in a facility or institution operated or utilized under contract
32 by the state or any other unit of government, or, if home detention or
33 work crew has been ordered by the court, in an approved residence, for
34 a substantial portion of each day with the balance of the day spent in
35 the community. Partial confinement includes work release, home
36 detention, work crew, and a combination of work crew and home detention
37 as defined in this section.

38 (27) "Persistent offender" is an offender who:

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

3 (ii) 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; or

11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
12 of a child in the first degree, child molestation in the first degree,
13 rape in the second degree, rape of a child in the second degree, or
14 indecent liberties by forcible compulsion; (B) murder in the first
15 degree, murder in the second degree, homicide by abuse, kidnapping in
16 the first degree, kidnapping in the second degree, assault in the first
17 degree, assault in the second degree, assault of a child in the first
18 degree, or burglary in the first degree, with a finding of sexual
19 motivation; or (C) an attempt to commit any crime listed in this
20 subsection (27)(b)(i); and

21 (ii) Has, before the commission of the offense under (b)(i) of this
22 subsection, been convicted as an offender on at least one occasion,
23 whether in this state or elsewhere, of an offense listed in (b)(i) of
24 this subsection. A conviction for rape of a child in the first degree
25 constitutes a conviction under subsection (27)(b)(i) only when the
26 offender was sixteen years of age or older when the offender committed
27 the offense. A conviction for rape of a child in the second degree
28 constitutes a conviction under subsection (27)(b)(i) only when the
29 offender was eighteen years of age or older when the offender committed
30 the offense.

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

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

37 (30) "Serious traffic offense" means:

38 (a) Driving while under the influence of intoxicating liquor or any
39 drug (RCW 46.61.502), actual physical control while under the influence

1 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
2 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
3 or

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

7 (31) "Serious violent offense" is a subcategory of violent offense
8 and means:

9 (a) Murder in the first degree, homicide by abuse, murder in the
10 second degree, manslaughter in the first degree, assault in the first
11 degree, kidnapping in the first degree, or rape in the first degree,
12 assault of a child in the first degree, or an attempt, criminal
13 solicitation, or criminal conspiracy to commit one of these felonies;
14 or

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

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

20 (33) "Sex offense" means:

21 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
22 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
23 criminal attempt, criminal solicitation, or criminal conspiracy to
24 commit such crimes;

25 (b) A felony with a finding of sexual motivation under RCW
26 9.94A.127 or 13.40.135; or

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

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

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

37 (36) "Transition training" means written and verbal instructions
38 and assistance provided by the department to the offender during the
39 two weeks prior to the offender's successful completion of the work

1 ethic camp program. The transition training shall include instructions
2 in the offender's requirements and obligations during the offender's
3 period of community custody.

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

7 (38) "Violent offense" means:

8 (a) Any of the following felonies, as now existing or hereafter
9 amended: Any felony defined under any law as a class A felony or an
10 attempt to commit a class A felony, criminal solicitation of or
11 criminal conspiracy to commit a class A felony, manslaughter in the
12 first degree, manslaughter in the second degree, indecent liberties if
13 committed by forcible compulsion, kidnapping in the second degree,
14 arson in the second degree, assault in the second degree, assault of a
15 child in the second degree, extortion in the first degree, robbery in
16 the second degree, drive-by shooting, vehicular assault, and vehicular
17 homicide, when proximately caused by the driving of any vehicle by any
18 person while under the influence of intoxicating liquor or any drug as
19 defined by RCW 46.61.502, or by the operation of any vehicle in a
20 reckless manner;

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

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

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

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

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

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

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 9.94A RCW
16 to read as follows:

17 (1) In addition to any other sentence terms required or permitted
18 under this chapter, a court may, as a condition of the sentence, order
19 an offender to participate in rehabilitative programs or otherwise to
20 perform affirmative conduct reasonably related to the circumstances of
21 the crime for which the offender has been convicted and reasonably
22 necessary or beneficial to the offender and the community in
23 rehabilitating the offender or preventing the offender from committing
24 the same or a similar crime in the future.

25 (2) This section applies to sentences which include any term other
26 than, or in addition to, a term of total confinement, including
27 suspended sentences.

--- END ---