
HOUSE BILL 3036

State of Washington 55th Legislature 1998 Regular Session

By Representatives Koster, Mielke, Keiser, Thompson, Dunn and McCune

Read first time 01/27/98. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to crimes against children; amending RCW 9A.44.073,
2 9A.44.083, and 9A.32.055; reenacting and amending RCW 9.94A.120 and
3 9.94A.320; adding a new section to chapter 9.94A RCW; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 A person convicted of a crime against a child must be punished by
9 confinement and fine to be no less than the following:

10 By confinement in a state correctional institution for a term of
11 life imprisonment without the possibility of parole; and by a fine of
12 no less than one hundred thousand dollars.

13 For purposes of this section a "crime against a child" is
14 designated as one of the following:

- 15 (1) Rape of a child in the first degree;
16 (2) Child molestation in the first degree;
17 (3) Homicide by abuse, if the victim is under sixteen years of age.

1 **Sec. 2.** RCW 9A.44.073 and 1988 c 145 s 2 are each amended to read
2 as follows:

3 (1) A person is guilty of rape of a child in the first degree when
4 the person has sexual intercourse with another who is less than twelve
5 years old and not married to the perpetrator and the perpetrator is at
6 least twenty-four months older than the victim.

7 (2) Rape of a child in the first degree is a class A felony and is
8 punishable according to section 1 of this act.

9 **Sec. 3.** RCW 9A.44.083 and 1994 c 271 s 303 are each amended to
10 read as follows:

11 (1) A person is guilty of child molestation in the first degree
12 when the person has, or knowingly causes another person under the age
13 of eighteen to have, sexual contact with another who is less than
14 twelve years old and not married to the perpetrator and the perpetrator
15 is at least thirty-six months older than the victim.

16 (2) Child molestation in the first degree is a class A felony and
17 is punishable according to section 1 of this act.

18 **Sec. 4.** RCW 9A.32.055 and 1987 c 187 s 1 are each amended to read
19 as follows:

20 (1) A person is guilty of homicide by abuse if, under circumstances
21 manifesting an extreme indifference to human life, the person causes
22 the death of a child or person under sixteen years of age, a
23 developmentally disabled person, or a dependent adult, and the person
24 has previously engaged in a pattern or practice of assault or torture
25 of said child, person under sixteen years of age, developmentally
26 disabled person, or dependent person.

27 (2) As used in this section, "dependent adult" means a person who,
28 because of physical or mental disability, or because of extreme
29 advanced age, is dependent upon another person to provide the basic
30 necessities of life.

31 (3) Homicide by abuse is a class A felony and, if the victim is
32 under sixteen years of age, is punishable according to section 1 of
33 this act.

34 **Sec. 5.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
35 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
36 amended to read as follows:

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

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

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

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

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

1 purpose of commitment to an inpatient treatment facility in the case of
2 an offender convicted of the crime of rape in the first degree.

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

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

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

16 (c) Pursue a prescribed, secular course of study or vocational
17 training;

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

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

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

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

27 (i) The offender is convicted of the manufacture, delivery, or
28 possession with intent to manufacture or deliver a controlled substance
29 classified in Schedule I or II that is a narcotic drug or a felony that
30 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
31 criminal solicitation, or criminal conspiracy to commit such crimes,
32 and the violation does not involve a sentence enhancement under RCW
33 9.94A.310 (3) or (4);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (D) Anticipated length of treatment; and

10 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 community custody, and either (B) terminate treatment, or (C) extend
2 treatment for up to the remaining period of community custody.

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

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

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

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

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

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

36 (b) When an offender commits any felony sex offense on or after
37 July 1, 1987, and is sentenced to a term of confinement of more than
38 one year but less than six years, the sentencing court may, on its own
39 motion or on the motion of the offender or the state, request the

1 department of corrections to evaluate whether the offender is amenable
2 to treatment and the department may place the offender in a treatment
3 program within a correctional facility operated by the department.

4 Except for an offender who has been convicted of a violation of RCW
5 9A.44.040 or 9A.44.050, if the offender completes the treatment program
6 before the expiration of his or her term of confinement, the department
7 of corrections may request the court to convert the balance of
8 confinement to community supervision and to place conditions on the
9 offender including crime-related prohibitions and requirements that the
10 offender perform any one or more of the following:

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

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

15 (iii) Report as directed to the court and a community corrections
16 officer;

17 (iv) Undergo available outpatient treatment.

18 If the offender violates any of the terms of his or her community
19 supervision, the court may order the offender to serve out the balance
20 of his or her community supervision term in confinement in the custody
21 of the department of corrections.

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

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

34 (9)(a) When a court sentences a person to a term of total
35 confinement to the custody of the department of corrections for an
36 offense categorized as a sex offense or a serious violent offense
37 committed after July 1, 1988, but before July 1, 1990, assault in the
38 second degree, assault of a child in the second degree, any crime
39 against a person where it is determined in accordance with RCW

1 9.94A.125 that the defendant or an accomplice was armed with a deadly
2 weapon at the time of commission, or any felony offense under chapter
3 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
4 committed on or after July 1, 1988, the court shall in addition to the
5 other terms of the sentence, sentence the offender to a one-year term
6 of community placement beginning either upon completion of the term of
7 confinement or at such time as the offender is transferred to community
8 custody in lieu of earned early release in accordance with RCW
9 9.94A.150 (1) and (2). When the court sentences an offender under this
10 subsection to the statutory maximum period of confinement then the
11 community placement portion of the sentence shall consist entirely of
12 such community custody to which the offender may become eligible, in
13 accordance with RCW 9.94A.150 (1) and (2). Any period of community
14 custody actually served shall be credited against the community
15 placement portion of the sentence.

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

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

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

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

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

5 (v) The residence location and living arrangements are subject to
6 the prior approval of the department of corrections during the period
7 of community placement; and

8 (vi) The offender shall submit to affirmative acts necessary to
9 monitor compliance with the orders of the court as required by the
10 department.

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

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

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

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

20 (iv) The offender shall not consume alcohol;

21 (v) The offender shall comply with any crime-related prohibitions;
22 or

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

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

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

1 custody in lieu of earned early release in accordance with RCW
2 9.94A.150 (1) and (2).

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

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

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

27 (12) If a sentence imposed includes payment of a legal financial
28 obligation, the sentence shall specify the total amount of the legal
29 financial obligation owed, and shall require the offender to pay a
30 specified monthly sum toward that legal financial obligation.
31 Restitution to victims shall be paid prior to any other payments of
32 monetary obligations. Any legal financial obligation that is imposed
33 by the court may be collected by the department, which shall deliver
34 the amount paid to the county clerk for credit. The offender's
35 compliance with payment of legal financial obligations shall be
36 supervised by the department for ten years following the entry of the
37 judgment and sentence or ten years following the offender's release
38 from total confinement. All monetary payments ordered shall be paid no
39 later than ten years after the last date of release from confinement

1 pursuant to a felony conviction or the date the sentence was entered
2 unless the superior court extends the criminal judgment an additional
3 ten years. If the legal financial obligations including crime victims'
4 assessments are not paid during the initial ten-year period, the
5 superior court may extend jurisdiction under the criminal judgment an
6 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
7 9.94A.145. If jurisdiction under the criminal judgment is extended,
8 the department is not responsible for supervision of the offender
9 during the subsequent period. Independent of the department, the party
10 or entity to whom the legal financial obligation is owed shall have the
11 authority to utilize any other remedies available to the party or
12 entity to collect the legal financial obligation. Nothing in this
13 section makes the department, the state, or any of its employees,
14 agents, or other persons acting on their behalf liable under any
15 circumstances for the payment of these legal financial obligations. If
16 an order includes restitution as one of the monetary assessments, the
17 county clerk shall make disbursements to victims named in the order.

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

22 (14) All offenders sentenced to terms involving community
23 supervision, community service, community placement, or legal financial
24 obligation shall be under the supervision of the department of
25 corrections and shall follow explicitly the instructions and conditions
26 of the department of corrections. The department may require an
27 offender to perform affirmative acts it deems appropriate to monitor
28 compliance with the conditions of the sentence imposed.

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

34 (b) For offenders sentenced to terms involving community custody
35 for crimes committed on or after June 6, 1996, the department may
36 include, in addition to the instructions in (a) of this subsection, any
37 appropriate conditions of supervision, including but not limited to,
38 prohibiting the offender from having contact with any other specified
39 individuals or specific class of individuals. The conditions

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

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

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

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

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

38 (18) The court shall order restitution whenever the offender is
39 convicted of a felony that results in injury to any person or damage to

1 or loss of property, whether the offender is sentenced to confinement
2 or placed under community supervision, unless extraordinary
3 circumstances exist that make restitution inappropriate in the court's
4 judgment. The court shall set forth the extraordinary circumstances in
5 the record if it does not order restitution.

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

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

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

21 **Sec. 6.** RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c
22 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each
23 reenacted and amended to read as follows:

24 TABLE 2

25 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

26	XV	Aggravated Murder 1 (RCW 10.95.020)
27		<u>Rape of a Child 1 (RCW 9A.44.073)</u>
28		<u>Child Molestation 1 (RCW 9A.44.083)</u>
29		<u>Homicide by Abuse (with child victim) (RCW</u>
30		<u>9A.32.055)</u>
31	XIV	Murder 1 (RCW 9A.32.030)
32		<u>Homicide by abuse (other than child victim)</u>
33		(RCW 9A.32.055)
34		Malicious explosion 1 (RCW 70.74.280(1))
35	XIII	Murder 2 (RCW 9A.32.050)
36		Malicious explosion 2 (RCW 70.74.280(2))

1 Malicious placement of an explosive 1 (RCW
2 70.74.270(1))

3 XII Assault 1 (RCW 9A.36.011)
4 Assault of a Child 1 (RCW 9A.36.120)
5 Rape 1 (RCW 9A.44.040)
6 ((~~Rape of a Child 1 (RCW 9A.44.073)~~))
7 Malicious placement of an imitation device
8 1 (RCW 70.74.272(1)(a))

9 XI Rape 2 (RCW 9A.44.050)
10 Rape of a Child 2 (RCW 9A.44.076)
11 Manslaughter 1 (RCW 9A.32.060)

12 X Kidnapping 1 (RCW 9A.40.020)
13 ((~~Child Molestation 1 (RCW 9A.44.083)~~))
14 Malicious explosion 3 (RCW 70.74.280(3))
15 Over 18 and deliver heroin or narcotic from
16 Schedule I or II to someone under 18
17 (RCW 69.50.406)
18 Leading Organized Crime (RCW
19 9A.82.060(1)(a))
20 Indecent Liberties (with forcible
21 compulsion) (RCW 9A.44.100(1)(a))

22 IX Assault of a Child 2 (RCW 9A.36.130)
23 Robbery 1 (RCW 9A.56.200)
24 Explosive devices prohibited (RCW
25 70.74.180)
26 Malicious placement of an explosive 2 (RCW
27 70.74.270(2))
28 Over 18 and deliver narcotic from Schedule
29 III, IV, or V or a nonnarcotic from
30 Schedule I-V to someone under 18 and 3
31 years junior (RCW 69.50.406)
32 Controlled Substance Homicide (RCW
33 69.50.415)
34 Sexual Exploitation (RCW 9.68A.040)
35 Inciting Criminal Profiteering (RCW
36 9A.82.060(1)(b))

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)

4 VIII Arson 1 (RCW 9A.48.020)
5 Promoting Prostitution 1 (RCW 9A.88.070)
6 Selling for profit (controlled or
7 counterfeit) any controlled substance
8 (RCW 69.50.410)
9 Manufacture, deliver, or possess with
10 intent to deliver heroin or cocaine
11 (RCW 69.50.401(a)(1)(i))
12 Manufacture, deliver, or possess with
13 intent to deliver methamphetamine (RCW
14 69.50.401(a)(1)(ii))
15 Possession of ephedrine or pseudoephedrine
16 with intent to manufacture
17 methamphetamine (RCW 69.50.440)
18 Vehicular Homicide, by the operation of any
19 vehicle in a reckless manner (RCW
20 46.61.520)
21 Manslaughter 2 (RCW 9A.32.070)

22 VII Burglary 1 (RCW 9A.52.020)
23 Vehicular Homicide, by disregard for the
24 safety of others (RCW 46.61.520)
25 Introducing Contraband 1 (RCW 9A.76.140)
26 Indecent Liberties (without forcible
27 compulsion) (RCW 9A.44.100(1) (b) and
28 (c))
29 Child Molestation 2 (RCW 9A.44.086)
30 Dealing in depictions of minor engaged in
31 sexually explicit conduct (RCW
32 9.68A.050)
33 Sending, bringing into state depictions of
34 minor engaged in sexually explicit
35 conduct (RCW 9.68A.060)
36 Involving a minor in drug dealing (RCW
37 69.50.401(f))
38 Drive-by Shooting (RCW 9A.36.045)

1 Unlawful Possession of a Firearm in the
2 first degree (RCW 9.41.040(1)(a))
3 Malicious placement of an explosive 3 (RCW
4 70.74.270(3))

5 VI Bribery (RCW 9A.68.010)
6 Rape of a Child 3 (RCW 9A.44.079)
7 Intimidating a Juror/Witness (RCW
8 9A.72.110, 9A.72.130)
9 Malicious placement of an imitation device
10 2 (RCW 70.74.272(1)(b))
11 Incest 1 (RCW 9A.64.020(1))
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule I or II (except heroin or
15 cocaine) (RCW 69.50.401(a)(1)(i))
16 Intimidating a Judge (RCW 9A.72.160)
17 Bail Jumping with Murder 1 (RCW
18 9A.76.170(2)(a))
19 Theft of a Firearm (RCW 9A.56.300)

20 V Persistent prison misbehavior (RCW
21 9.94.070)
22 Criminal Mistreatment 1 (RCW 9A.42.020)
23 Abandonment of dependent person 1 (RCW
24 9A.42.060)
25 Rape 3 (RCW 9A.44.060)
26 Sexual Misconduct with a Minor 1 (RCW
27 9A.44.093)
28 Child Molestation 3 (RCW 9A.44.089)
29 Kidnapping 2 (RCW 9A.40.030)
30 Extortion 1 (RCW 9A.56.120)
31 Incest 2 (RCW 9A.64.020(2))
32 Perjury 1 (RCW 9A.72.020)
33 Extortionate Extension of Credit (RCW
34 9A.82.020)
35 Advancing money or property for
36 extortionate extension of credit (RCW
37 9A.82.030)

1 Extortionate Means to Collect Extensions of
2 Credit (RCW 9A.82.040)
3 Rendering Criminal Assistance 1 (RCW
4 9A.76.070)
5 Bail Jumping with class A Felony (RCW
6 9A.76.170(2)(b))
7 Sexually Violating Human Remains (RCW
8 9A.44.105)
9 Delivery of imitation controlled substance
10 by person eighteen or over to person
11 under eighteen (RCW 69.52.030(2))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)

14 IV Residential Burglary (RCW 9A.52.025)
15 Theft of Livestock 1 (RCW 9A.56.080)
16 Robbery 2 (RCW 9A.56.210)
17 Assault 2 (RCW 9A.36.021)
18 Escape 1 (RCW 9A.76.110)
19 Arson 2 (RCW 9A.48.030)
20 Commercial Bribery (RCW 9A.68.060)
21 Bribing a Witness/Bribe Received by Witness
22 (RCW 9A.72.090, 9A.72.100)
23 Malicious Harassment (RCW 9A.36.080)
24 Threats to Bomb (RCW 9.61.160)
25 Willful Failure to Return from Furlough
26 (RCW 72.66.060)
27 Hit and Run--Injury Accident (RCW
28 46.52.020(4))
29 Hit and Run with Vessel--Injury Accident
30 (RCW 88.12.155(3))
31 Vehicular Assault (RCW 46.61.522)
32 Manufacture, deliver, or possess with
33 intent to deliver narcotics from
34 Schedule III, IV, or V or nonnarcotics
35 from Schedule I-V (except marijuana or
36 methamphetamines) (RCW 69.50.401
37 (a)(1) (iii) through (v))
38 Influencing Outcome of Sporting Event (RCW
39 9A.82.070)

1 Use of Proceeds of Criminal Profiteering
2 (RCW 9A.82.080 (1) and (2))
3 Knowingly Trafficking in Stolen Property
4 (RCW 9A.82.050(2))
5 III Criminal Gang Intimidation (RCW 9A.46.120)
6 Criminal Mistreatment 2 (RCW 9A.42.030)
7 Abandonment of dependent person 2 (RCW
8 9A.42.070)
9 Extortion 2 (RCW 9A.56.130)
10 Unlawful Imprisonment (RCW 9A.40.040)
11 Assault 3 (RCW 9A.36.031)
12 Assault of a Child 3 (RCW 9A.36.140)
13 Custodial Assault (RCW 9A.36.100)
14 Unlawful possession of firearm in the
15 second degree (RCW 9.41.040(1)(b))
16 Harassment (RCW 9A.46.020)
17 Promoting Prostitution 2 (RCW 9A.88.080)
18 Willful Failure to Return from Work Release
19 (RCW 72.65.070)
20 Burglary 2 (RCW 9A.52.030)
21 Introducing Contraband 2 (RCW 9A.76.150)
22 Communication with a Minor for Immoral
23 Purposes (RCW 9.68A.090)
24 Patronizing a Juvenile Prostitute (RCW
25 9.68A.100)
26 Escape 2 (RCW 9A.76.120)
27 Perjury 2 (RCW 9A.72.030)
28 Bail Jumping with class B or C Felony (RCW
29 9A.76.170(2)(c))
30 Intimidating a Public Servant (RCW
31 9A.76.180)
32 Tampering with a Witness (RCW 9A.72.120)
33 Manufacture, deliver, or possess with
34 intent to deliver marijuana (RCW
35 69.50.401(a)(1)(iii))
36 Delivery of a material in lieu of a
37 controlled substance (RCW
38 69.50.401(c))

1 Manufacture, distribute, or possess with
2 intent to distribute an imitation
3 controlled substance (RCW
4 69.52.030(1))
5 Recklessly Trafficking in Stolen Property
6 (RCW 9A.82.050(1))
7 Theft of livestock 2 (RCW 9A.56.080)
8 Securities Act violation (RCW 21.20.400)

9 II Unlawful Practice of Law (RCW 2.48.180)
10 Malicious Mischief 1 (RCW 9A.48.070)
11 Possession of Stolen Property 1 (RCW
12 9A.56.150)
13 Theft 1 (RCW 9A.56.030)
14 Class B Felony Theft of Rental, Leased, or
15 Lease-purchased Property (RCW
16 9A.56.096(4))
17 Trafficking in Insurance Claims (RCW
18 48.30A.015)
19 Unlicensed Practice of a Profession or
20 Business (RCW 18.130.190(7))
21 Health Care False Claims (RCW 48.80.030)
22 Possession of controlled substance that is
23 either heroin or narcotics from
24 Schedule I or II (RCW 69.50.401(d))
25 Possession of phencyclidine (PCP) (RCW
26 69.50.401(d))
27 Create, deliver, or possess a counterfeit
28 controlled substance (RCW
29 69.50.401(b))
30 Computer Trespass 1 (RCW 9A.52.110)
31 Escape from Community Custody (RCW
32 72.09.310)

33 I Theft 2 (RCW 9A.56.040)
34 Class C Felony Theft of Rental, Leased, or
35 Lease-purchased Property (RCW
36 9A.56.096(4))
37 Possession of Stolen Property 2 (RCW
38 9A.56.160)

1 Forgery (RCW 9A.60.020)
2 Taking Motor Vehicle Without Permission
3 (RCW 9A.56.070)
4 Vehicle Prowl 1 (RCW 9A.52.095)
5 Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 Malicious Mischief 2 (RCW 9A.48.080)
8 Reckless Burning 1 (RCW 9A.48.040)
9 Unlawful Issuance of Checks or Drafts (RCW
10 9A.56.060)
11 Unlawful Use of Food Stamps (RCW 9.91.140
12 (2) and (3))
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forged Prescription (RCW 69.41.020)
16 Forged Prescription for a Controlled
17 Substance (RCW 69.50.403)
18 Possess Controlled Substance that is a
19 Narcotic from Schedule III, IV, or V
20 or Non-narcotic from Schedule I-V
21 (except phencyclidine) (RCW
22 69.50.401(d))

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