
SENATE BILL 5519

State of Washington

55th Legislature

1997 Regular Session

By Senators Sellar and Oke

Read first time 01/29/97. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to assuring compliance with sentence conditions;
2 and reenacting and amending RCW 9.94A.030 and 9.94A.120.

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

4 **Sec. 1.** RCW 9.94A.030 and 1996 c 289 s 1 and 1996 c 275 s 5 are
5 each reenacted and amended to read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

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

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

16 (3) "Community corrections officer" means an employee of the
17 department who is responsible for carrying out specific duties in
18 supervision of sentenced offenders and monitoring of sentence
19 conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (16) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community service work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through "earned early release" can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

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

21 (18) "Drug offense" means:

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

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

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

31 (19) "Escape" means:

32 (a) Escape in the first degree (RCW 9A.76.110), escape in the
33 second degree (RCW 9A.76.120), willful failure to return from furlough
34 (RCW 72.66.060), willful failure to return from work release (RCW
35 72.65.070), or willful failure to be available for supervision by the
36 department while in community custody (RCW 72.09.310); or

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

1 (20) "Felony traffic offense" means:

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

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

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

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

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

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

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

34 (b) Assault in the second degree;

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

36 (d) Child molestation in the second degree;

37 (e) Controlled substance homicide;

38 (f) Extortion in the first degree;

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

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

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

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

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

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

19 (ii) Has, before the commission of the offense under (b)(i) of this
20 subsection, been convicted as an offender on at least one occasion,
21 whether in this state or elsewhere, of an offense listed in (b)(i) of
22 this subsection.

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

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

29 (30) "Serious traffic offense" means:

30 (a) Driving while under the influence of intoxicating liquor or any
31 drug (RCW 46.61.502), actual physical control while under the influence
32 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
33 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
34 or

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

38 (31) "Serious violent offense" is a subcategory of violent offense
39 and means:

1 (a) Murder in the first degree, homicide by abuse, murder in the
2 second degree, assault in the first degree, kidnapping in the first
3 degree, or rape in the first degree, assault of a child in the first
4 degree, or an attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or

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

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

11 (33) "Sex offense" means:

12 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
13 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
14 criminal attempt, criminal solicitation, or criminal conspiracy to
15 commit such crimes;

16 (b) A felony with a finding of sexual motivation under RCW
17 9.94A.127 or 13.40.135; or

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

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

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

28 (36) "Transition training" means written and verbal instructions
29 and assistance provided by the department to the offender during the
30 two weeks prior to the offender's successful completion of the work
31 ethic camp program. The transition training shall include instructions
32 in the offender's requirements and obligations during the offender's
33 period of community custody.

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

37 (38) "Violent offense" means:

38 (a) Any of the following felonies, as now existing or hereafter
39 amended: Any felony defined under any law as a class A felony or an

1 attempt to commit a class A felony, criminal solicitation of or
2 criminal conspiracy to commit a class A felony, manslaughter in the
3 first degree, manslaughter in the second degree, indecent liberties if
4 committed by forcible compulsion, kidnapping in the second degree,
5 arson in the second degree, assault in the second degree, assault of a
6 child in the second degree, extortion in the first degree, robbery in
7 the second degree, vehicular assault, and vehicular homicide, when
8 proximately caused by the driving of any vehicle by any person while
9 under the influence of intoxicating liquor or any drug as defined by
10 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

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

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

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

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

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

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

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

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

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

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

1 or any other form of authorized leave of absence from the correctional
2 facility while not in the direct custody of a corrections officer or
3 officers during such minimum terms of total confinement except in the
4 case of an offender in need of emergency medical treatment or for the
5 purpose of commitment to an inpatient treatment facility in the case of
6 an offender convicted of the crime of rape in the first degree.

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

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

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

20 (c) Pursue a prescribed, secular course of study or vocational
21 training;

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

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

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

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

31 (i) The offender is convicted of the manufacture, delivery, or
32 possession with intent to manufacture or deliver a controlled substance
33 classified in Schedule I or II that is a narcotic drug or a felony that
34 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
35 criminal solicitation, or criminal conspiracy to commit such crimes,
36 and the violation does not involve a sentence enhancement under RCW
37 9.94A.310 (3) or (4);

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

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

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

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

1 (c) If the offender violates any of the sentence conditions in (b)
2 of this subsection, the department shall impose sanctions
3 administratively, with notice to the prosecuting attorney and the
4 sentencing court. Upon motion of the court or the prosecuting
5 attorney, a violation hearing shall be held by the court. If the court
6 finds that conditions have been willfully violated, the court may
7 impose confinement consisting of up to the remaining one-half of the
8 midpoint of the standard range. All total confinement served during
9 the period of community custody shall be credited to the offender,
10 regardless of whether the total confinement is served as a result of
11 the original sentence, as a result of a sanction imposed by the
12 department, or as a result of a violation found by the court. The term
13 of community supervision shall be tolled by any period of time served
14 in total confinement as a result of a violation found by the court.

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

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

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

36 The report of the examination shall include at a minimum the
37 following: The defendant's version of the facts and the official
38 version of the facts, the defendant's offense history, an assessment of
39 problems in addition to alleged deviant behaviors, the offender's

1 social and employment situation, and other evaluation measures used.
2 The report shall set forth the sources of the evaluator's information.

3 The examiner shall assess and report regarding the defendant's
4 amenability to treatment and relative risk to the community. A
5 proposed treatment plan shall be provided and shall include, at a
6 minimum:

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

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

10 (C) Monitoring plans, including any requirements regarding living
11 conditions, lifestyle requirements, and monitoring by family members
12 and others;

13 (D) Anticipated length of treatment; and

14 (E) Recommended crime-related prohibitions.

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

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

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

35 (B) The court shall order treatment for any period up to three
36 years in duration. The court in its discretion shall order outpatient
37 sex offender treatment or inpatient sex offender treatment, if
38 available. A community mental health center may not be used for such
39 treatment unless it has an appropriate program designed for sex

1 offender treatment. The offender shall not change sex offender
2 treatment providers or treatment conditions without first notifying the
3 prosecutor, the community corrections officer, and the court, and shall
4 not change providers without court approval after a hearing if the
5 prosecutor or community corrections officer object to the change. In
6 addition, as conditions of the suspended sentence, the court may impose
7 other sentence conditions including up to six months of confinement,
8 not to exceed the sentence range of confinement for that offense,
9 crime-related prohibitions, and requirements that the offender perform
10 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) Pay all court-ordered legal financial obligations as provided
18 in RCW 9.94A.030, perform community service work, or any combination
19 thereof; or

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

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

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

1 be indigent in which case the state shall pay the cost. At the
2 treatment termination hearing the court may: (A) Modify conditions of
3 community custody, and either (B) terminate treatment, or (C) extend
4 treatment for up to the remaining period of community custody.

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

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

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

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

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

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

1 to treatment and the department may place the offender in a treatment
2 program within a correctional facility operated by the department.

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

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

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

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

16 (iv) Undergo available outpatient treatment.

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

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

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

33 (9)(a) When a court sentences a person to a term of total
34 confinement to the custody of the department of corrections for an
35 offense categorized as a sex offense or a serious violent offense
36 committed after July 1, 1988, but before July 1, 1990, assault in the
37 second degree, assault of a child in the second degree, any crime
38 against a person where it is determined in accordance with RCW
39 9.94A.125 that the defendant or an accomplice was armed with a deadly

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

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

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

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

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

3 (iv) An offender in community custody shall not unlawfully possess
4 controlled substances;

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

7 (vi) The residence location and living arrangements are subject to
8 the prior approval of the department of corrections during the period
9 of community placement; and

10 (vii) The offender shall submit to affirmative acts necessary to
11 monitor compliance with the orders of the court as required by the
12 department.

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

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

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

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

22 (iv) The offender shall not consume alcohol;

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

24 or

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

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

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

1 community custody shall begin either upon completion of the term of
2 confinement or at such time as the offender is transferred to community
3 custody in lieu of earned early release in accordance with RCW
4 9.94A.150 (1) and (2).

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

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

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

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

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

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

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

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

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

1 provided in RCW 9.94A.205. At any time prior to the completion of a
2 sex offender's term of community custody, the department may recommend
3 to the court that any or all of the conditions imposed by the court or
4 the department pursuant to subsection (10) of this section be continued
5 beyond the expiration of the offender's term of community custody as
6 authorized in subsection (10)(c) of this section.

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

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

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

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

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

38 (19) As a part of any sentence, the court may impose and enforce an
39 order that relates directly to the circumstances of the crime for which

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

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

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

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