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SENATE BILL 5760

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State of Washington

55th Legislature

1997 Regular Session

By Senators Long, Hargrove, Franklin, Deccio, Thibaudeau, Winsley and Kohl

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1 AN ACT Relating to mentally ill offenders; amending RCW 9.94A.110;  
2 reenacting and amending RCW 9.94A.120 and 9.94A.200; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
6 decrease the likelihood of recidivism and reincarceration by mentally  
7 ill offenders under correctional supervision in the community by  
8 authorizing:

9 (1) The courts to request presentence reports from the department  
10 of corrections when a relationship between mental illness and criminal  
11 behavior is suspected, and to order psychiatric evaluation or treatment  
12 for offenders whose criminal behavior is influenced by a mental  
13 illness; and

14 (2) Community corrections officers to work with community mental  
15 health providers to support participation in treatment by mentally ill  
16 offenders on community placement or community supervision.

17 **Sec. 2.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read  
18 as follows:

1 Before imposing a sentence upon a defendant, the court shall  
2 conduct a sentencing hearing. The sentencing hearing shall be held  
3 within forty court days following conviction. Upon the motion of  
4 either party for good cause shown, or on its own motion, the court may  
5 extend the time period for conducting the sentencing hearing.

6 The court shall order the department to complete a presentence  
7 report before imposing a sentence upon a defendant who has been  
8 convicted of a felony sexual offense. The department of corrections  
9 shall give priority to presentence investigations for sexual offenders.  
10 If the court determines that the defendant may be a mentally ill person  
11 as defined in RCW 71.24.025, although the defendant has not established  
12 a defense of insanity as defined in RCW 9A.12.010, the court shall  
13 order the department to complete a presentence report before imposing  
14 a sentence.

15 The court shall consider the presentence reports, if any, including  
16 any victim impact statement and criminal history, and allow arguments  
17 from the prosecutor, the defense counsel, the offender, the victim, the  
18 survivor of the victim, or a representative of the victim or survivor,  
19 and an investigative law enforcement officer as to the sentence to be  
20 imposed.

21 If the court is satisfied by a preponderance of the evidence that  
22 the defendant has a criminal history, the court shall specify the  
23 convictions it has found to exist. All of this information shall be  
24 part of the record. Copies of all presentence reports presented to the  
25 sentencing court and all written findings of facts and conclusions of  
26 law as to sentencing entered by the court shall be sent to the  
27 department by the clerk of the court at the conclusion of the  
28 sentencing and shall accompany the offender if the offender is  
29 committed to the custody of the department. Court clerks shall  
30 provide, without charge, certified copies of documents relating to  
31 criminal convictions requested by prosecuting attorneys.

32 **Sec. 3.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c  
33 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as  
34 follows:

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

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

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

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

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

37 (5) In sentencing a first-time offender the court may waive the  
38 imposition of a sentence within the sentence range and impose a  
39 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a  
2 requirement that the offender refrain from committing new offenses.  
3 The sentence may also include up to two years of community supervision,  
4 which, in addition to crime-related prohibitions, may include  
5 requirements that the offender perform any one or more of the  
6 following:

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

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

11 (c) Pursue a prescribed, secular course of study or vocational  
12 training;

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

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

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

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

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

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

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

35 (b) If the midpoint of the standard range is greater than one year  
36 and the sentencing judge determines that the offender is eligible for  
37 this option and that the offender and the community will benefit from  
38 the use of the special drug offender sentencing alternative, the judge  
39 may waive imposition of a sentence within the standard range and impose

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

- 23 (i) Devote time to a specific employment or training;
  - 24 (ii) Remain within prescribed geographical boundaries and notify  
25 the court or the community corrections officer before any change in the  
26 offender's address or employment;
  - 27 (iii) Report as directed to a community corrections officer;
  - 28 (iv) Pay all court-ordered legal financial obligations;
  - 29 (v) Perform community service work;
  - 30 (vi) Stay out of areas designated by the sentencing judge.
- 31 (c) If the offender violates any of the sentence conditions in (b)  
32 of this subsection, the department shall impose sanctions  
33 administratively, with notice to the prosecuting attorney and the  
34 sentencing court. Upon motion of the court or the prosecuting  
35 attorney, a violation hearing shall be held by the court. If the court  
36 finds that conditions have been willfully violated, the court may  
37 impose confinement consisting of up to the remaining one-half of the  
38 midpoint of the standard range. All total confinement served during  
39 the period of community custody shall be credited to the offender,

1 regardless of whether the total confinement is served as a result of  
2 the original sentence, as a result of a sanction imposed by the  
3 department, or as a result of a violation found by the court. The term  
4 of community supervision shall be tolled by any period of time served  
5 in total confinement as a result of a violation found by the court.

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

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

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

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

33 The examiner shall assess and report regarding the defendant's  
34 amenability to treatment and relative risk to the community. A  
35 proposed treatment plan shall be provided and shall include, at a  
36 minimum:

- 37 (A) Frequency and type of contact between offender and therapist;
- 38 (B) Specific issues to be addressed in the treatment and
- 39 description of planned treatment modalities;

1 (C) Monitoring plans, including any requirements regarding living  
2 conditions, lifestyle requirements, and monitoring by family members  
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

26 (B) The court shall order treatment for any period up to three  
27 years in duration. The court in its discretion shall order outpatient  
28 sex offender treatment or inpatient sex offender treatment, if  
29 available. A community mental health center may not be used for such  
30 treatment unless it has an appropriate program designed for sex  
31 offender treatment. The offender shall not change sex offender  
32 treatment providers or treatment conditions without first notifying the  
33 prosecutor, the community corrections officer, and the court, and shall  
34 not change providers without court approval after a hearing if the  
35 prosecutor or community corrections officer object to the change. In  
36 addition, as conditions of the suspended sentence, the court may impose  
37 other sentence conditions including up to six months of confinement,  
38 not to exceed the sentence range of confinement for that offense,

1 crime-related prohibitions, and requirements that the offender perform  
2 any one or more of the following:

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

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

7 (III) Report as directed to the court and a community corrections  
8 officer;

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

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

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

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

36 (v) If a violation of conditions occurs during community custody,  
37 the department shall either impose sanctions as provided for in RCW  
38 9.94A.205(2)(a) or refer the violation to the court and recommend



1 revocation of the suspended sentence as provided for in (a)(vi) of this  
2 subsection.

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

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

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

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

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

35 Except for an offender who has been convicted of a violation of RCW  
36 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
37 before the expiration of his or her term of confinement, the department  
38 of corrections may request the court to convert the balance of  
39 confinement to community supervision and to place conditions on the

1 offender including crime-related prohibitions and requirements that the  
2 offender perform any one or more of the following:

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

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

7 (iii) Report as directed to the court and a community corrections  
8 officer;

9 (iv) Undergo available outpatient treatment.

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

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

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

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

1 9.94A.150 (1) and (2). When the court sentences an offender under this  
2 subsection to the statutory maximum period of confinement then the  
3 community placement portion of the sentence shall consist entirely of  
4 such community custody to which the offender may become eligible, in  
5 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
6 custody actually served shall be credited against the community  
7 placement portion of the sentence.

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

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

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

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

34 (iv) An offender in community custody shall not unlawfully possess  
35 controlled substances;

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

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

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

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

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

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

13 (iv) The offender shall not consume alcohol;

14 (v) The offender shall comply with any crime-related prohibitions;  
15 or

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

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

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

35 (b) Unless a condition is waived by the court, the terms of  
36 community custody shall be the same as those provided for in subsection  
37 (9)(b) of this section and may include those provided for in subsection  
38 (9)(c) of this section. As part of any sentence that includes a term  
39 of community custody imposed under this subsection, the court shall

1 also require the offender to comply with any conditions imposed by the  
2 department of corrections under subsection (14) of this section.

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

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

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

1 restitution as one of the monetary assessments, the county clerk shall  
2 make disbursements to victims named in the order.

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

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

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

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

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

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

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

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

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

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

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

36 (20) The court may order an offender on community placement or  
37 community supervision to undergo psychiatric evaluation or to  
38 participate in available outpatient psychiatric treatment, if the court  
39 finds that reasonable grounds exist to believe that the offender is a

1 mentally ill person as defined in RCW 71.24.025, and that this  
2 condition is likely to have influenced the offense. An order of  
3 psychiatric evaluation or treatment must be based on a presentence  
4 report and, if applicable, psychiatric evaluations that have been filed  
5 with the court to determine the offender's competency or eligibility  
6 for a defense of insanity.

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

11 (~~(21)~~) (22) All court-ordered legal financial obligations  
12 collected by the department and remitted to the county clerk shall be  
13 credited and paid where restitution is ordered. Restitution shall be  
14 paid prior to any other payments of monetary obligations.

15 **Sec. 4.** RCW 9.94A.200 and 1995 c 167 s 1 and 1995 c 142 s 1 are  
16 each reenacted and amended to read as follows:

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

20 (2) In cases where conditions from a second or later sentence of  
21 community supervision begin prior to the term of the second or later  
22 sentence, the court shall treat a violation of such conditions as a  
23 violation of the sentence of community supervision currently being  
24 served.

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

27 (a)(i) Following the violation, if the offender and the department  
28 make a stipulated agreement, the department may impose sanctions such  
29 as work release, home detention with electronic monitoring, work crew,  
30 community service, inpatient treatment, daily reporting, curfew,  
31 educational or counseling sessions, supervision enhanced through  
32 electronic monitoring, jail time, or other sanctions available in the  
33 community.

34 (ii) Within seventy-two hours of signing the stipulated agreement,  
35 the department shall submit a report to the court and the prosecuting  
36 attorney outlining the violation or violations, and sanctions imposed.  
37 Within fifteen days of receipt of the report, if the court is not  
38 satisfied with the sanctions, the court may schedule a hearing and may



1 modify the department's sanctions. If this occurs, the offender may  
2 withdraw from the stipulated agreement.

3 (iii) If the offender fails to comply with the sanction  
4 administratively imposed by the department, the court may take action  
5 regarding the original noncompliance. Offender failure to comply with  
6 the sanction administratively imposed by the department may be  
7 considered an additional violation.

8 (b) In the absence of a stipulated agreement, or where the court is  
9 not satisfied with the department's sanctions as provided in (a) of  
10 this subsection, the court, upon the motion of the state, or upon its  
11 own motion, shall require the offender to show cause why the offender  
12 should not be punished for the noncompliance. The court may issue a  
13 summons or a warrant of arrest for the offender's appearance;

14 (c) The state has the burden of showing noncompliance by a  
15 preponderance of the evidence. If the court finds that the violation  
16 has occurred, it may order the offender to be confined for a period not  
17 to exceed sixty days for each violation, and may (i) convert a term of  
18 partial confinement to total confinement, (ii) convert community  
19 service obligation to total or partial confinement, (iii) convert  
20 monetary obligations, except restitution and the crime victim penalty  
21 assessment, to community service hours at the rate of the state minimum  
22 wage as established in RCW 49.46.020 for each hour of community  
23 service, or (iv) order one or more of the penalties authorized in  
24 (a)(i) of this subsection. Any time served in confinement awaiting a  
25 hearing on noncompliance shall be credited against any confinement  
26 order by the court; ((and))

27 (d) If the court finds that the violation was not willful, the  
28 court may modify its previous order regarding payment of legal  
29 financial obligations and regarding community service obligations; and

30 (e) If the violation involves a failure to undergo or comply with  
31 psychiatric evaluation and/or outpatient psychiatric treatment, the  
32 community corrections officer shall consult with the treatment provider  
33 or proposed treatment provider. The community corrections officer may  
34 obtain information from the treatment provider on the offender's status  
35 with respect to evaluation, application for services, registration for  
36 services, and compliance with the supervision plan, without the  
37 offender's consent, as described under RCW 71.05.630. Enforcement of  
38 orders concerning outpatient psychiatric treatment must reflect the  
39 availability of treatment and must pursue the least restrictive means

1 of promoting participation in treatment. If the offender's failure to  
2 receive care essential for health and safety presents a risk of serious  
3 physical harm or probable harmful consequences, the civil detention and  
4 commitment procedures of chapter 71.05 RCW shall be considered in  
5 preference to incarceration in a local or state correctional facility.

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

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