

2 **E2SSB 5421** - H AMD 0212 ADOPTED 04/16/99

3 By Representatives Ballasiotes and O'Brien

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read  
8 as follows:

9 The purpose of this chapter is to make the criminal justice system  
10 accountable to the public by developing a system for the sentencing of  
11 felony offenders which structures, but does not eliminate,  
12 discretionary decisions affecting sentences, and to ~~((add a new chapter  
13 to Title 9 RCW designed to))~~:

14 (1) Ensure that the punishment for a criminal offense is  
15 proportionate to the seriousness of the offense and the offender's  
16 criminal history;

17 (2) Promote respect for the law by providing punishment which is  
18 just;

19 (3) Be commensurate with the punishment imposed on others  
20 committing similar offenses;

21 (4) Protect the public;

22 (5) Offer the offender an opportunity to improve him or herself;  
23 ~~((and))~~

24 (6) Make frugal use of the state's and local governments'  
25 resources; and

26 (7) Reduce the risk of reoffending by offenders in the community.

27 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read  
28 as follows:

29 Unless the context clearly requires otherwise, the definitions in  
30 this section apply throughout this chapter.

31 (1) "Collect," or any derivative thereof, "collect and remit," or  
32 "collect and deliver," when used with reference to the department of  
33 corrections, means that the department, either directly or through a  
34 collection agreement authorized by RCW 9.94A.145, is responsible for  
35 monitoring and enforcing the offender's sentence with regard to the

1 legal financial obligation, receiving payment thereof from the  
2 offender, and, consistent with current law, delivering daily the entire  
3 payment to the superior court clerk without depositing it in a  
4 departmental account.

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

6 (3) "Community corrections officer" means an employee of the  
7 department who is responsible for carrying out specific duties in  
8 supervision of sentenced offenders and monitoring of sentence  
9 conditions.

10 (4) "Community custody" means that portion of an (~~inmate's~~)  
11 offender's sentence of confinement in lieu of earned (~~early~~) release  
12 time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), (~~or~~)~~  
13 ~~(10), or (11), or RCW 9.94A.383,~~ served in the community subject to  
14 controls placed on the (~~inmate's~~) offender's movement and activities  
15 by the department of corrections. For offenders placed on community  
16 custody for crimes committed on or after July 1, 2000, the department  
17 shall assess the offender's risk of reoffense and may establish and  
18 modify conditions of community custody, in addition to those imposed by  
19 the court, based upon the risk to community safety.

20 (5) "Community custody range" means the minimum and maximum period  
21 of community custody included as part of a sentence under RCW  
22 9.94A.120(11), as established by the sentencing guidelines commission  
23 or the legislature under RCW 9.94A.040, for crimes committed on or  
24 after July 1, 2000.

25 (6) "Community placement" means that period during which the  
26 offender is subject to the conditions of community custody and/or  
27 postrelease supervision, which begins either upon completion of the  
28 term of confinement (postrelease supervision) or at such time as the  
29 offender is transferred to community custody in lieu of earned  
30 (~~early~~) release. Community placement may consist of entirely  
31 community custody, entirely postrelease supervision, or a combination  
32 of the two.

33 (~~(6)~~) (7) "Community service" means compulsory service, without  
34 compensation, performed for the benefit of the community by the  
35 offender.

36 (~~(7)~~) (8) "Community supervision" means a period of time during  
37 which a convicted offender is subject to crime-related prohibitions and  
38 other sentence conditions imposed by a court pursuant to this chapter  
39 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the

1 supervision may include crime-related prohibitions and other conditions  
2 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate  
3 compact for out-of-state supervision of parolees and probationers, RCW  
4 9.95.270, community supervision is the functional equivalent of  
5 probation and should be considered the same as probation by other  
6 states.

7 ~~((+8+))~~ (9) "Confinement" means total or partial confinement as  
8 defined in this section.

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

12 ~~((+10+))~~ (11) "Court-ordered legal financial obligation" means a  
13 sum of money that is ordered by a superior court of the state of  
14 Washington for legal financial obligations which may include  
15 restitution to the victim, statutorily imposed crime victims'  
16 compensation fees as assessed pursuant to RCW 7.68.035, court costs,  
17 county or interlocal drug funds, court-appointed attorneys' fees, and  
18 costs of defense, fines, and any other financial obligation that is  
19 assessed to the offender as a result of a felony conviction. Upon  
20 conviction for vehicular assault while under the influence of  
21 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular  
22 homicide while under the influence of intoxicating liquor or any drug,  
23 RCW 46.61.520(1)(a), legal financial obligations may also include  
24 payment to a public agency of the expense of an emergency response to  
25 the incident resulting in the conviction, subject to the provisions in  
26 RCW 38.52.430.

27 ~~((+11+))~~ (12) "Crime-related prohibition" means an order of a court  
28 prohibiting conduct that directly relates to the circumstances of the  
29 crime for which the offender has been convicted, and shall not be  
30 construed to mean orders directing an offender affirmatively to  
31 participate in rehabilitative programs or to otherwise perform  
32 affirmative conduct. However, affirmative acts necessary to monitor  
33 compliance with the order of a court may be required by the department.

34 ~~((+12+))~~ (13) "Criminal history" means the list of a defendant's  
35 prior convictions and juvenile adjudications, whether in this state, in  
36 federal court, or elsewhere. The history shall include, where known,  
37 for each conviction (a) whether the defendant has been placed on  
38 probation and the length and terms thereof; and (b) whether the  
39 defendant has been incarcerated and the length of incarceration.

1       (~~(13)~~) (14) "Day fine" means a fine imposed by the sentencing  
2 judge that equals the difference between the offender's net daily  
3 income and the reasonable obligations that the offender has for the  
4 support of the offender and any dependents.

5       (~~(14)~~) (15) "Day reporting" means a program of enhanced  
6 supervision designed to monitor the defendant's daily activities and  
7 compliance with sentence conditions, and in which the defendant is  
8 required to report daily to a specific location designated by the  
9 department or the sentencing judge.

10       (~~(15)~~) (16) "Department" means the department of corrections.

11       (~~(16)~~) (17) "Determinate sentence" means a sentence that states  
12 with exactitude the number of actual years, months, or days of total  
13 confinement, of partial confinement, of community supervision, the  
14 number of actual hours or days of community service work, or dollars or  
15 terms of a legal financial obligation. The fact that an offender  
16 through "earned (~~early~~) release" can reduce the actual period of  
17 confinement shall not affect the classification of the sentence as a  
18 determinate sentence.

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

31       (~~(18)~~) (19) "Drug offense" means:

32       (a) Any felony violation of chapter 69.50 RCW except possession of  
33 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
34 controlled substance (RCW 69.50.403);

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

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

4 (~~(19)~~) (20) "Escape" means:

5 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
6 second degree (RCW 9A.76.120), willful failure to return from furlough  
7 (RCW 72.66.060), willful failure to return from work release (RCW  
8 72.65.070), or willful failure to be available for supervision by the  
9 department while in community custody (RCW 72.09.310); or

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

13 (~~(20)~~) (21) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
16 and-run injury-accident (RCW 46.52.020(4)); or

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

20 (~~(21)~~) (22) "Fines" means the requirement that the offender pay  
21 a specific sum of money over a specific period of time to the court.

22 (~~(22)~~) (23) "First-time offender" means any person who is  
23 convicted of a felony (a) not classified as a violent offense or a sex  
24 offense under this chapter, or (b) that is not the manufacture,  
25 delivery, or possession with intent to manufacture or deliver a  
26 controlled substance classified in Schedule I or II that is a narcotic  
27 drug or flunitrazepam classified in Schedule IV, nor the manufacture,  
28 delivery, or possession with intent to deliver methamphetamine, its  
29 salts, isomers, and salts of its isomers as defined in RCW  
30 69.50.206(d)(2), nor the selling for profit of any controlled substance  
31 or counterfeit substance classified in Schedule I, RCW 69.50.204,  
32 except leaves and flowering tops of marihuana, who previously has never  
33 been convicted of a felony in this state, federal court, or another  
34 state, and who has never participated in a program of deferred  
35 prosecution for a felony offense.

36 (~~(23)~~) (24) "Home detention" means a program of partial  
37 confinement available to offenders wherein the offender is confined in  
38 a private residence subject to electronic surveillance.

1       (25) "Most serious offense" means any of the following felonies or  
2 a felony attempt to commit any of the following felonies, as now  
3 existing or hereafter amended:

4       (a) Any felony defined under any law as a class A felony or  
5 criminal solicitation of or criminal conspiracy to commit a class A  
6 felony;

7       (b) Assault in the second degree;

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

9       (d) Child molestation in the second degree;

10       (e) Controlled substance homicide;

11       (f) Extortion in the first degree;

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

13       (h) Indecent liberties;

14       (i) Kidnapping in the second degree;

15       (j) Leading organized crime;

16       (k) Manslaughter in the first degree;

17       (l) Manslaughter in the second degree;

18       (m) Promoting prostitution in the first degree;

19       (n) Rape in the third degree;

20       (o) Robbery in the second degree;

21       (p) Sexual exploitation;

22       (q) Vehicular assault;

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

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

29       (t) Any other felony with a deadly weapon verdict under RCW  
30 9.94A.125;

31       (u) Any felony offense in effect at any time prior to December 2,  
32 1993, that is comparable to a most serious offense under this  
33 subsection, or any federal or out-of-state conviction for an offense  
34 that under the laws of this state would be a felony classified as a  
35 most serious offense under this subsection;

36       (v)(i) A prior conviction for indecent liberties under RCW  
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
3 (ii) A prior conviction for indecent liberties under RCW  
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
5 if: (A) The crime was committed against a child under the age of  
6 fourteen; or (B) the relationship between the victim and perpetrator is  
7 included in the definition of indecent liberties under RCW  
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
10 through July 27, 1997.

11 (~~(24)~~) (26) "Nonviolent offense" means an offense which is not a  
12 violent offense.

13 (~~(25)~~) (27) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. Throughout this chapter, the terms "offender" and  
19 "defendant" are used interchangeably.

20 (~~(26)~~) (28) "Partial confinement" means confinement for no more  
21 than one year in a facility or institution operated or utilized under  
22 contract by the state or any other unit of government, or, if home  
23 detention or work crew has been ordered by the court, in an approved  
24 residence, for a substantial portion of each day with the balance of  
25 the day spent in the community. Partial confinement includes work  
26 release, home detention, work crew, and a combination of work crew and  
27 home detention as defined in this section.

28 (~~(27)~~) (29) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of this  
32 subsection, been convicted as an offender on at least two separate  
33 occasions, whether in this state or elsewhere, of felonies that under  
34 the laws of this state would be considered most serious offenses and  
35 would be included in the offender score under RCW 9.94A.360; provided  
36 that of the two or more previous convictions, at least one conviction  
37 must have occurred before the commission of any of the other most  
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
2 of a child in the first degree, child molestation in the first degree,  
3 rape in the second degree, rape of a child in the second degree, or  
4 indecent liberties by forcible compulsion; (B) murder in the first  
5 degree, murder in the second degree, homicide by abuse, kidnapping in  
6 the first degree, kidnapping in the second degree, assault in the first  
7 degree, assault in the second degree, assault of a child in the first  
8 degree, or burglary in the first degree, with a finding of sexual  
9 motivation; or (C) an attempt to commit any crime listed in this  
10 subsection (~~((+27+))~~) (29)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this  
12 subsection, been convicted as an offender on at least one occasion,  
13 whether in this state or elsewhere, of an offense listed in (b)(i) of  
14 this subsection. A conviction for rape of a child in the first degree  
15 constitutes a conviction under subsection (~~((+27+))~~) (29)(b)(i) only when  
16 the offender was sixteen years of age or older when the offender  
17 committed the offense. A conviction for rape of a child in the second  
18 degree constitutes a conviction under subsection (~~((+27+))~~) (29)(b)(i)  
19 only when the offender was eighteen years of age or older when the  
20 offender committed the offense.

21 (~~((+28+))~~) (30) "Postrelease supervision" is that portion of an  
22 offender's community placement that is not community custody.

23 (~~((+29+))~~) (31) "Restitution" means the requirement that the offender  
24 pay a specific sum of money over a specific period of time to the court  
25 as payment of damages. The sum may include both public and private  
26 costs. The imposition of a restitution order does not preclude civil  
27 redress.

28 (~~((+30+))~~) (32) "Risk assessment" means the application of an  
29 objective instrument supported by research and adopted by the  
30 department for the purpose of assessing an offender's risk of  
31 reoffense, taking into consideration the nature of the harm done by the  
32 offender, place and circumstances of the offender related to risk, the  
33 offender's relationship to any victim, and any information provided to  
34 the department by victims. The results of a risk assessment shall not  
35 be based on unconfirmed or unconfirmable allegations.

36 (33) "Serious traffic offense" means:

37 (a) Driving while under the influence of intoxicating liquor or any  
38 drug (RCW 46.61.502), actual physical control while under the influence  
39 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving



1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
2 or

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

6 (~~(31)~~) (34) "Serious violent offense" is a subcategory of violent  
7 offense and means:

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

14 (b) 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 serious  
16 violent offense under (a) of this subsection.

17 (~~(32)~~) (35) "Sentence range" means the sentencing court's  
18 discretionary range in imposing a nonappealable sentence.

19 (~~(33)~~) (36) "Sex offense" means:

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

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

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

29 (~~(34)~~) (37) "Sexual motivation" means that one of the purposes  
30 for which the defendant committed the crime was for the purpose of his  
31 or her sexual gratification.

32 (~~(35)~~) (38) "Total confinement" means confinement inside the  
33 physical boundaries of a facility or institution operated or utilized  
34 under contract by the state or any other unit of government for twenty-  
35 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

36 (~~(36)~~) (39) "Transition training" means written and verbal  
37 instructions and assistance provided by the department to the offender  
38 during the two weeks prior to the offender's successful completion of  
39 the work ethic camp program. The transition training shall include

1 instructions in the offender's requirements and obligations during the  
2 offender's period of community custody.

3 ~~((+37+))~~ (40) "Victim" means any person who has sustained  
4 emotional, psychological, physical, or financial injury to person or  
5 property as a direct result of the crime charged.

6 ~~((+38+))~~ (41) "Violent offense" means:

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

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

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

26 ~~((+39+))~~ (42) "Work crew" means a program of partial confinement  
27 consisting of civic improvement tasks for the benefit of the community  
28 of not less than thirty-five hours per week that complies with RCW  
29 9.94A.135. The civic improvement tasks shall have minimal negative  
30 impact on existing private industries or the labor force in the county  
31 where the service or labor is performed. The civic improvement tasks  
32 shall not affect employment opportunities for people with developmental  
33 disabilities contracted through sheltered workshops as defined in RCW  
34 82.04.385. Only those offenders sentenced to a facility operated or  
35 utilized under contract by a county or the state, or sanctioned under  
36 RCW 9.94A.205, are eligible to participate on a work crew. Offenders  
37 sentenced for a sex offense as defined in subsection ~~((+33+))~~ (36) of  
38 this section are not eligible for the work crew program.

1       (~~(40)~~) (43) "Work ethic camp" means an alternative incarceration  
2 program designed to reduce recidivism and lower the cost of corrections  
3 by requiring offenders to complete a comprehensive array of real-world  
4 job and vocational experiences, character-building work ethics  
5 training, life management skills development, substance abuse  
6 rehabilitation, counseling, literacy training, and basic adult  
7 education.

8       (~~(41)~~) (44) "Work release" means a program of partial confinement  
9 available to offenders who are employed or engaged as a student in a  
10 regular course of study at school. Participation in work release shall  
11 be conditioned upon the offender attending work or school at regularly  
12 defined hours and abiding by the rules of the work release facility.

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

16       **Sec. 3.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are  
17 each reenacted and amended to read as follows:

18       (1) A sentencing guidelines commission is established as an agency  
19 of state government.

20       (2) The legislature finds that the commission, having accomplished  
21 its original statutory directive to implement this chapter, and having  
22 expertise in sentencing practice and policies, shall:

23       (a) Evaluate state sentencing policy, to include whether the  
24 sentencing ranges and standards are consistent with and further:

25       (i) The purposes of this chapter as defined in RCW 9.94A.010; and

26       (ii) The intent of the legislature to emphasize confinement for the  
27 violent offender and alternatives to confinement for the nonviolent  
28 offender.

29       The commission shall provide the governor and the legislature with  
30 its evaluation and recommendations under this subsection not later than  
31 December 1, 1996, and every two years thereafter;

32       (b) Recommend to the legislature revisions or modifications to the  
33 standard sentence ranges, state sentencing policy, prosecuting  
34 standards, and other standards. If implementation of the revisions or  
35 modifications would result in exceeding the capacity of correctional  
36 facilities, then the commission shall accompany its recommendation with  
37 an additional list of standard sentence ranges which are consistent  
38 with correction capacity;

- 1 (c) Study the existing criminal code and from time to time make  
2 recommendations to the legislature for modification;
- 3 (d)(i) Serve as a clearinghouse and information center for the  
4 collection, preparation, analysis, and dissemination of information on  
5 state and local adult and juvenile sentencing practices; (ii) develop  
6 and maintain a computerized adult and juvenile sentencing information  
7 system by individual superior court judge consisting of offender,  
8 offense, history, and sentence information entered from judgment and  
9 sentence forms for all adult felons; and (iii) conduct ongoing research  
10 regarding adult and juvenile sentencing guidelines, use of total  
11 confinement and alternatives to total confinement, plea bargaining, and  
12 other matters relating to the improvement of the adult criminal justice  
13 system and the juvenile justice system;
- 14 (e) Assume the powers and duties of the juvenile disposition  
15 standards commission after June 30, 1996;
- 16 (f) Evaluate the effectiveness of existing disposition standards  
17 and related statutes in implementing policies set forth in RCW  
18 13.40.010 generally, specifically review the guidelines relating to the  
19 confinement of minor and first offenders as well as the use of  
20 diversion, and review the application of current and proposed juvenile  
21 sentencing standards and guidelines for potential adverse impacts on  
22 the sentencing outcomes of racial and ethnic minority youth;
- 23 (g) Solicit the comments and suggestions of the juvenile justice  
24 community concerning disposition standards, and make recommendations to  
25 the legislature regarding revisions or modifications of the standards.  
26 The evaluations shall be submitted to the legislature on December 1 of  
27 each odd-numbered year. The department of social and health services  
28 shall provide the commission with available data concerning the  
29 implementation of the disposition standards and related statutes and  
30 their effect on the performance of the department's responsibilities  
31 relating to juvenile offenders, and with recommendations for  
32 modification of the disposition standards. The office of the  
33 administrator for the courts shall provide the commission with  
34 available data on diversion and dispositions of juvenile offenders  
35 under chapter 13.40 RCW; and
- 36 (h) Not later than December 1, 1997, and at least every two years  
37 thereafter, based on available information, report to the governor and  
38 the legislature on:
- 39 (i) Racial disproportionality in juvenile and adult sentencing;

1 (ii) The capacity of state and local juvenile and adult facilities  
2 and resources; and

3 (iii) Recidivism information on adult and juvenile offenders.

4 (3) Each of the commission's recommended standard sentence ranges  
5 shall include one or more of the following: Total confinement, partial  
6 confinement, community supervision, community service, and a fine.

7 (4) The standard sentence ranges of total and partial confinement  
8 under this chapter are subject to the following limitations:

9 (a) If the maximum term in the range is one year or less, the  
10 minimum term in the range shall be no less than one-third of the  
11 maximum term in the range, except that if the maximum term in the range  
12 is ninety days or less, the minimum term may be less than one-third of  
13 the maximum;

14 (b) If the maximum term in the range is greater than one year, the  
15 minimum term in the range shall be no less than seventy-five percent of  
16 the maximum term in the range, except that for murder in the second  
17 degree in seriousness category XIII under RCW 9.94A.310, the minimum  
18 term in the range shall be no less than fifty percent of the maximum  
19 term in the range; and

20 (c) The maximum term of confinement in a range may not exceed the  
21 statutory maximum for the crime as provided in RCW 9A.20.021.

22 (5)(a) Not later than December 31, 1999, the commission shall  
23 propose to the legislature the initial community custody ranges to be  
24 included in sentences under RCW 9.94A.120(11) for crimes committed on  
25 or after July 1, 2000. Not later than December 31 of each year, the  
26 commission may propose modifications to the ranges. The ranges shall  
27 be based on the principles in RCW 9.94A.010, and shall take into  
28 account the funds available to the department for community custody.  
29 The minimum term in each range shall not be less than one-half of the  
30 maximum term.

31 (b) The legislature may, by enactment of a legislative bill, adopt  
32 or modify the community custody ranges proposed by the commission. If  
33 the legislature fails to adopt or modify the initial ranges in its next  
34 regular session after they are proposed, the proposed ranges shall take  
35 effect without legislative approval for crimes committed on or after  
36 July 1, 2000.

37 (c) When the commission proposes modifications to ranges pursuant  
38 to this subsection, the legislature may, by enactment of a bill, adopt  
39 or modify the ranges proposed by the commission for crimes committed on

1 or after July 1 of the year after they were proposed. Unless the  
2 legislature adopts or modifies the commission's proposal in its next  
3 regular session, the proposed ranges shall not take effect.

4 (6) The commission shall exercise its duties under this section in  
5 conformity with chapter 34.05 RCW.

6 **Sec. 4.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read  
7 as follows:

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

13 Except in cases where the defendant shall be sentenced to a term of  
14 total confinement for life without the possibility of release or, when  
15 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
16 first degree, sentenced to death, the court may order the department to  
17 complete a risk assessment report. If available before sentencing, the  
18 report shall be provided to the court.

19 The court shall, at the time of plea or conviction, order the  
20 department to complete a presentence report before imposing a sentence  
21 upon a defendant who has been convicted of a felony sexual offense.  
22 The department of corrections shall give priority to presentence  
23 investigations for sexual offenders. If the court determines that the  
24 defendant may be a mentally ill person as defined in RCW 71.24.025,  
25 although the defendant has not established that at the time of the  
26 crime he or she lacked the capacity to commit the crime, was  
27 incompetent to commit the crime, or was insane at the time of the  
28 crime, the court shall order the department to complete a presentence  
29 report before imposing a sentence.

30 The court shall consider the risk assessment report and presentence  
31 reports, if any, including any victim impact statement and criminal  
32 history, and allow arguments from the prosecutor, the defense counsel,  
33 the offender, the victim, the survivor of the victim, or a  
34 representative of the victim or survivor, and an investigative law  
35 enforcement officer as to the sentence to be imposed.

36 If the court is satisfied by a preponderance of the evidence that  
37 the defendant has a criminal history, the court shall specify the  
38 convictions it has found to exist. All of this information shall be

1 part of the record. Copies of all risk assessment reports and  
2 presentence reports presented to the sentencing court and all written  
3 findings of facts and conclusions of law as to sentencing entered by  
4 the court shall be sent to the department by the clerk of the court at  
5 the conclusion of the sentencing and shall accompany the offender if  
6 the offender is committed to the custody of the department. Court  
7 clerks shall provide, without charge, certified copies of documents  
8 relating to criminal convictions requested by prosecuting attorneys.

9 **Sec. 5.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read  
10 as follows:

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

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

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

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

24 (4) A persistent offender shall be sentenced to a term of total  
25 confinement for life without the possibility of parole or, when  
26 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
27 first degree, sentenced to death, notwithstanding the maximum sentence  
28 under any other law. An offender convicted of the crime of murder in  
29 the first degree shall be sentenced to a term of total confinement not  
30 less than twenty years. An offender convicted of the crime of assault  
31 in the first degree or assault of a child in the first degree where the  
32 offender used force or means likely to result in death or intended to  
33 kill the victim shall be sentenced to a term of total confinement not  
34 less than five years. An offender convicted of the crime of rape in  
35 the first degree shall be sentenced to a term of total confinement not  
36 less than five years. The foregoing minimum terms of total confinement  
37 are mandatory and shall not be varied or modified as provided in  
38 subsection (2) of this section. In addition, all offenders subject to

1 the provisions of this subsection shall not be eligible for community  
2 custody, earned (~~early~~) release time, furlough, home detention,  
3 partial confinement, work crew, work release, or any other form of  
4 early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7),  
5 or (8), or any other form of authorized leave of absence from the  
6 correctional facility while not in the direct custody of a corrections  
7 officer or officers during such minimum terms of total confinement  
8 except in the case of an offender in need of emergency medical  
9 treatment or for the purpose of commitment to an inpatient treatment  
10 facility in the case of an offender convicted of the crime of rape in  
11 the first degree.

12 (5)(a) In sentencing a first-time offender the court may waive the  
13 imposition of a sentence within the sentence range and impose a  
14 sentence which may include up to ninety days of confinement in a  
15 facility operated or utilized under contract by the county and a  
16 requirement that the offender refrain from committing new offenses.  
17 The sentence may also include (~~up to two years of community~~  
18 ~~supervision~~) a term of community supervision or community custody as  
19 specified in (b) of this subsection, which, in addition to crime-  
20 related prohibitions, may include requirements that the offender  
21 perform any one or more of the following:

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

23 (~~(b)~~) (ii) Undergo available outpatient treatment for up to (~~two~~  
24 ~~years~~) the period specified in (b) of this subsection, or inpatient  
25 treatment not to exceed the standard range of confinement for that  
26 offense;

27 (~~(c)~~) (iii) Pursue a prescribed, secular course of study or  
28 vocational training;

29 (~~(d)~~) (iv) Remain within prescribed geographical boundaries and  
30 notify (~~the court or~~) the community corrections officer prior to any  
31 change in the offender's address or employment;

32 (~~(e)~~) (v) Report as directed to (~~the court and~~) a community  
33 corrections officer; or

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

36 (b) The terms and statuses applicable to sentences under (a) of  
37 this subsection are:

38 (i) For sentences imposed on or after the effective date of this  
39 section, for crimes committed before July 1, 2000, up to one year of



1 community supervision. If treatment is ordered, the period of  
2 community supervision may include up to the period of treatment, but  
3 shall not exceed two years; and

4 (ii) For crimes committed on or after July 1, 2000, up to one year  
5 of community custody unless treatment is ordered, in which case the  
6 period of community custody may include up to the period of treatment,  
7 but shall not exceed two years. Any term of community custody imposed  
8 under this subsection (5) is subject to conditions and sanctions as  
9 authorized in this subsection (5) and in subsection (11)(b) and (c) of  
10 this section.

11 (c) The department shall discharge from community supervision any  
12 offender sentenced under this subsection (5) before the effective date  
13 of this section who has served at least one year of community  
14 supervision and has completed any treatment ordered by the court.

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

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

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

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

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

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

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

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

7 (7) If a sentence range has not been established for the  
8 defendant's crime, the court shall impose a determinate sentence which  
9 may include not more than one year of confinement((7)); community  
10 service work; until July 1, 2000, a term of community supervision not  
11 to exceed one year((7)) and on and after July 1, 2000, a term of  
12 community custody not to exceed one year, subject to conditions and  
13 sanctions as authorized in subsection (11)(b) and (c) of this section;  
14 and/or other legal financial obligations. The court may impose a  
15 sentence which provides more than one year of confinement if the court  
16 finds, considering the purpose of this chapter, that there are  
17 substantial and compelling reasons justifying an exceptional sentence.

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

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

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

- 35 (A) Frequency and type of contact between offender and therapist;  
36 (B) Specific issues to be addressed in the treatment and  
37 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 sex offender sentencing alternative and consider the victim's opinion  
15 whether the offender should receive a treatment disposition under this  
16 subsection. If the court determines that this special sex offender  
17 sentencing alternative is appropriate, the court shall then impose a  
18 sentence within the sentence range. If this sentence is less than  
19 eleven years of confinement, the court may suspend the execution of the  
20 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)~~) (15) of this  
25 section;

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; and

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

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

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

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

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

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

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

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

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

34 (b) When an offender commits any felony sex offense on or after  
35 July 1, 1987, and is sentenced to a term of confinement of more than  
36 one year but less than six years, the sentencing court may, on its own  
37 motion or on the motion of the offender or the state, request the  
38 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 (d) Within the funds available for this purpose, the department  
34 shall develop and monitor transition and relapse prevention strategies,  
35 including risk assessment and release plans, to reduce risk to the  
36 community after sex offenders' terms of confinement in the custody of  
37 the department.

38 (9)(a)(i) When a court sentences a person to a term of total  
39 confinement to the custody of the department of corrections for an

1 offense categorized as a sex offense or a serious violent offense  
2 committed after July 1, 1988, but before July 1, 1990, assault in the  
3 second degree, assault of a child in the second degree, any crime  
4 against a person where it is determined in accordance with RCW  
5 9.94A.125 that the defendant or an accomplice was armed with a deadly  
6 weapon at the time of commission, or any felony offense under chapter  
7 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
8 committed on or after July 1, 1988, but before the effective date of  
9 this section, the court shall in addition to the other terms of the  
10 sentence, sentence the offender to a one-year term of community  
11 placement beginning either upon completion of the term of confinement  
12 or at such time as the offender is transferred to community custody in  
13 lieu of earned ((early)) release in accordance with RCW 9.94A.150 (1)  
14 and (2). When the court sentences an offender under this subsection to  
15 the statutory maximum period of confinement then the community  
16 placement portion of the sentence shall consist entirely of such  
17 community custody to which the offender may become eligible, in  
18 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
19 custody actually served shall be credited against the community  
20 placement portion of the sentence.

21 (ii) Except for persons sentenced under (b) of this subsection or  
22 subsection (10)(a) of this section, when a court sentences a person to  
23 a term of total confinement to the custody of the department of  
24 corrections for a violent offense, any crime against a person under RCW  
25 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW  
26 not sentenced under subsection (6) of this section, committed on or  
27 after the effective date of this section but before July 1, 2000, the  
28 court shall in addition to the other terms of the sentence, sentence  
29 the offender to a one-year term of community placement beginning either  
30 upon completion of the term of confinement or at such time as the  
31 offender is transferred to community custody in lieu of earned release  
32 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
33 the offender under this subsection (9)(a)(ii) to the statutory maximum  
34 period of confinement, then the community placement portion of the  
35 sentence shall consist entirely of such community custody to which the  
36 offender may become eligible, in accordance with RCW 9.94A.150 (1) and  
37 (2). Any period of community custody actually served shall be credited  
38 against the community placement portion of the sentence.



1 (b) When a court sentences a person to a term of total confinement  
2 to the custody of the department of corrections for an offense  
3 categorized as a sex offense committed on or after July 1, 1990, but  
4 before June 6, 1996, or a serious violent offense, vehicular homicide,  
5 or vehicular assault, committed on or after July 1, 1990, but before  
6 July 1, 2000, the court shall in addition to other terms of the  
7 sentence, sentence the offender to community placement for two years or  
8 up to the period of earned ((early)) release awarded pursuant to RCW  
9 9.94A.150 (1) and (2), whichever is longer. The community placement  
10 shall begin either upon completion of the term of confinement or at  
11 such time as the offender is transferred to community custody in lieu  
12 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and  
13 (2). When the court sentences an offender under this subsection to the  
14 statutory maximum period of confinement then the community placement  
15 portion of the sentence shall consist entirely of the community custody  
16 to which the offender may become eligible, in accordance with RCW  
17 9.94A.150 (1) and (2). Any period of community custody actually served  
18 shall be credited against the community placement portion of the  
19 sentence. Unless a condition is waived by the court, the terms of  
20 community placement for offenders sentenced pursuant to this section  
21 shall include the following conditions:

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

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

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

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

30 (v) The residence location and living arrangements are subject to  
31 the prior approval of the department of corrections during the period  
32 of community placement; and

33 (vi) The offender shall submit to affirmative acts necessary to  
34 monitor compliance with the orders of the court as required by the  
35 department.

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

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

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

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

7 (iv) The offender shall not consume alcohol;

8 (v) The offender shall comply with any crime-related prohibitions;  
9 or

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

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

19 (10)(a) When a court sentences a person to the custody of the  
20 department of corrections for an offense categorized as a sex offense  
21 committed on or after June 6, 1996, but before July 1, 2000, the court  
22 shall, in addition to other terms of the sentence, sentence the  
23 offender to community custody for three years or up to the period of  
24 earned ((early)) release awarded pursuant to RCW 9.94A.150 (1) and (2),  
25 whichever is longer. The community custody shall begin either upon  
26 completion of the term of confinement or at such time as the offender  
27 is transferred to community custody in lieu of earned ((early)) release  
28 in accordance with RCW 9.94A.150 (1) and (2).

29 (b) Unless a condition is waived by the court, the terms of  
30 community custody shall be the same as those provided for in subsection  
31 (9)(b) of this section and may include those provided for in subsection  
32 (9)(c) of this section. As part of any sentence that includes a term  
33 of community custody imposed under this subsection, the court shall  
34 also require the offender to comply with any conditions imposed by the  
35 department of corrections under subsection ((14)) (15) of this  
36 section.

37 (c) At any time prior to the completion of a sex offender's term of  
38 community custody, if the court finds that public safety would be  
39 enhanced, the court may impose and enforce an order extending any or

1 all of the conditions imposed pursuant to this section for a period up  
2 to the maximum allowable sentence for the crime as it is classified in  
3 chapter 9A.20 RCW, regardless of the expiration of the offender's term  
4 of community custody. If a violation of a condition extended under  
5 this subsection occurs after the expiration of the offender's term of  
6 community custody, it shall be deemed a violation of the sentence for  
7 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
8 court as provided for in RCW 7.21.040.

9 (11)(a) When a court sentences a person to the custody of the  
10 department of corrections for a sex offense, a violent offense, any  
11 crime against a person under RCW 9.94A.440(2), or a felony offense  
12 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of  
13 this section, committed on or after July 1, 2000, the court shall in  
14 addition to the other terms of the sentence, sentence the offender to  
15 community custody for the community custody range or up to the period  
16 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),  
17 whichever is longer. The community custody shall begin either upon  
18 completion of the term of confinement or at such time as the offender  
19 is transferred to community custody in lieu of earned release in  
20 accordance with RCW 9.94A.150 (1) and (2).

21 (b) Unless a condition is waived by the court, the conditions of  
22 community custody shall include those provided for in subsection  
23 (9)(b)(i) through (vi) of this section. The conditions may also  
24 include those provided for in subsection (9)(c)(i) through (vi) of this  
25 section. The court may also order the offender to participate in  
26 rehabilitative programs or otherwise perform affirmative conduct  
27 reasonably related to the circumstances of the offense, the offender's  
28 risk of reoffending, or the safety of the community, and the department  
29 shall enforce such conditions pursuant to (f) of this subsection. As  
30 part of any sentence that includes a term of community custody imposed  
31 under this subsection, the court shall also require the offender to  
32 comply with any conditions imposed by the department of corrections  
33 under subsection (15) of this section. The department shall assess the  
34 offender's risk of reoffense and may establish and modify additional  
35 conditions of the offender's community custody based upon the risk to  
36 community safety. The department may not impose conditions that are  
37 contrary to those ordered by the court and may not contravene or  
38 decrease court imposed conditions. The department shall notify the  
39 offender in writing of any such conditions or modifications. In

1 setting, modifying, and enforcing conditions of community custody, the  
2 department shall be deemed to be performing a quasi-judicial function.

3 (c) If an offender violates conditions imposed by the court or the  
4 department pursuant to this subsection during community custody, the  
5 department may transfer the offender to a more restrictive confinement  
6 status and impose other available sanctions as provided in RCW  
7 9.94A.205 and 9.94A.207.

8 (d) Except for terms of community custody under subsection (8) of  
9 this section, the department shall discharge the offender from  
10 community custody on a date determined by the department, which the  
11 department may modify, based on risk and performance of the offender,  
12 within the range or at the end of the period of earned release,  
13 whichever is later.

14 (e) At any time prior to the completion or termination of a sex  
15 offender's term of community custody, if the court finds that public  
16 safety would be enhanced, the court may impose and enforce an order  
17 extending any or all of the conditions imposed pursuant to this section  
18 for a period up to the maximum allowable sentence for the crime as it  
19 is classified in chapter 9A.20 RCW, regardless of the expiration of the  
20 offender's term of community custody. If a violation of a condition  
21 extended under this subsection occurs after the expiration of the  
22 offender's term of community custody, it shall be deemed a violation of  
23 the sentence for the purposes of RCW 9.94A.195 and may be punishable as  
24 contempt of court as provided for in RCW 7.21.040. If the court  
25 extends a condition beyond the expiration of the term of community  
26 custody, the department is not responsible for supervision of the  
27 offender's compliance with the condition.

28 (f) Within the funds available for community custody, the  
29 department shall determine conditions and duration of community custody  
30 on the basis of risk to community safety, and shall supervise offenders  
31 during community custody on the basis of risk to community safety and  
32 conditions imposed by the court. The secretary shall adopt rules to  
33 implement the provisions of this subsection (11)(f).

34 (g) By the close of the next business day after receiving notice of  
35 a condition imposed or modified by the department, an offender may  
36 request an administrative review under rules adopted by the department.  
37 The condition shall remain in effect unless the reviewing officer finds  
38 that it is not reasonably related to any of the following: (i) The

1 crime of conviction; (ii) the offender's risk of reoffending; or (iii)  
2 the safety of the community.

3 (12) If the court imposes a sentence requiring confinement of  
4 thirty days or less, the court may, in its discretion, specify that the  
5 sentence be served on consecutive or intermittent days. A sentence  
6 requiring more than thirty days of confinement shall be served on  
7 consecutive days. Local jail administrators may schedule court-ordered  
8 intermittent sentences as space permits.

9 (~~(12)~~) (13) If a sentence imposed includes payment of a legal  
10 financial obligation, the sentence shall specify the total amount of  
11 the legal financial obligation owed, and shall require the offender to  
12 pay a specified monthly sum toward that legal financial obligation.  
13 Restitution to victims shall be paid prior to any other payments of  
14 monetary obligations. Any legal financial obligation that is imposed  
15 by the court may be collected by the department, which shall deliver  
16 the amount paid to the county clerk for credit. The offender's  
17 compliance with payment of legal financial obligations shall be  
18 supervised by the department for ten years following the entry of the  
19 judgment and sentence or ten years following the offender's release  
20 from total confinement. All monetary payments ordered shall be paid no  
21 later than ten years after the last date of release from confinement  
22 pursuant to a felony conviction or the date the sentence was entered  
23 unless the superior court extends the criminal judgment an additional  
24 ten years. If the legal financial obligations including crime victims'  
25 assessments are not paid during the initial ten-year period, the  
26 superior court may extend jurisdiction under the criminal judgment an  
27 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
28 9.94A.145. If jurisdiction under the criminal judgment is extended,  
29 the department is not responsible for supervision of the offender  
30 during the subsequent period. Independent of the department, the party  
31 or entity to whom the legal financial obligation is owed shall have the  
32 authority to utilize any other remedies available to the party or  
33 entity to collect the legal financial obligation. Nothing in this  
34 section makes the department, the state, or any of its employees,  
35 agents, or other persons acting on their behalf liable under any  
36 circumstances for the payment of these legal financial obligations. If  
37 an order includes restitution as one of the monetary assessments, the  
38 county clerk shall make disbursements to victims named in the order.

1       (~~(13)~~) (14) Except as provided under RCW 9.94A.140(1) and  
2 9.94A.142(1), a court may not impose a sentence providing for a term of  
3 confinement or community supervision (~~(or)~~), community placement, or  
4 community custody which exceeds the statutory maximum for the crime as  
5 provided in chapter 9A.20 RCW.

6       (~~(14)~~) (15) All offenders sentenced to terms involving community  
7 supervision, community service, community placement, community custody,  
8 or legal financial obligation shall be under the supervision of the  
9 department of corrections and shall follow explicitly the instructions  
10 and conditions of the department of corrections. The department may  
11 require an offender to perform affirmative acts it deems appropriate to  
12 monitor compliance with the conditions of the sentence imposed.

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

18       (b) For offenders sentenced to terms involving community custody  
19 for crimes committed on or after June 6, 1996, the department may  
20 include, in addition to the instructions in (a) of this subsection, any  
21 appropriate conditions of supervision, including but not limited to,  
22 prohibiting the offender from having contact with any other specified  
23 individuals or specific class of individuals. For offenders sentenced  
24 to terms of community custody for crimes committed on or after July 1,  
25 2000, the department may additionally require the offender to  
26 participate in rehabilitative programs or otherwise perform affirmative  
27 conduct, and to obey all laws.

28       The conditions authorized under this subsection (~~(14)~~) (15)(b)  
29 may be imposed by the department prior to or during an offender's  
30 community custody term. If a violation of conditions imposed by the  
31 court or the department pursuant to subsection (10) of this section  
32 occurs during community custody, it shall be deemed a violation of  
33 community placement for the purposes of RCW 9.94A.207 and shall  
34 authorize the department to transfer an offender to a more restrictive  
35 confinement status as provided in RCW 9.94A.205. At any time prior to  
36 the completion of (~~a sex~~) an offender's term of community custody,  
37 the department may recommend to the court that any or all of the  
38 conditions imposed by the court or the department pursuant to  
39 subsection (10) or (11) of this section be continued beyond the

1 expiration of the offender's term of community custody as authorized in  
2 subsection (10)(c) or (11)(e) of this section.

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

8 ~~((15))~~ (16) All offenders sentenced to terms involving community  
9 supervision, community service, community custody, or community  
10 placement under the supervision of the department of corrections shall  
11 not own, use, or possess firearms or ammunition. Offenders who own,  
12 use, or are found to be in actual or constructive possession of  
13 firearms or ammunition shall be subject to the appropriate violation  
14 process and sanctions. "Constructive possession" as used in this  
15 subsection means the power and intent to control the firearm or  
16 ammunition. "Firearm" as used in this subsection means a weapon or  
17 device from which a projectile may be fired by an explosive such as  
18 gunpowder.

19 ~~((16))~~ (17) The sentencing court shall give the offender credit  
20 for all confinement time served before the sentencing if that  
21 confinement was solely in regard to the offense for which the offender  
22 is being sentenced.

23 ~~((17))~~ (18) A departure from the standards in RCW 9.94A.400 (1)  
24 and (2) governing whether sentences are to be served consecutively or  
25 concurrently is an exceptional sentence subject to the limitations in  
26 subsections (2) and (3) of this section, and may be appealed by the  
27 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

28 ~~((18))~~ (19) The court shall order restitution whenever the  
29 offender is convicted of a felony that results in injury to any person  
30 or damage to or loss of property, whether the offender is sentenced to  
31 confinement or placed under community supervision, unless extraordinary  
32 circumstances exist that make restitution inappropriate in the court's  
33 judgment. The court shall set forth the extraordinary circumstances in  
34 the record if it does not order restitution.

35 ~~((19))~~ (20) As a part of any sentence, the court may impose and  
36 enforce an order that relates directly to the circumstances of the  
37 crime for which the offender has been convicted, prohibiting the  
38 offender from having any contact with other specified individuals or a  
39 specific class of individuals for a period not to exceed the maximum

1 allowable sentence for the crime, regardless of the expiration of the  
2 offender's term of community supervision or community placement.

3 ~~((20))~~ (21) The court may order an offender whose sentence  
4 includes community placement or community supervision to undergo a  
5 mental status evaluation and to participate in available outpatient  
6 mental health treatment, if the court finds that reasonable grounds  
7 exist to believe that the offender is a mentally ill person as defined  
8 in RCW 71.24.025, and that this condition is likely to have influenced  
9 the offense. An order requiring mental status evaluation or treatment  
10 must be based on a presentence report and, if applicable, mental status  
11 evaluations that have been filed with the court to determine the  
12 offender's competency or eligibility for a defense of insanity. The  
13 court may order additional evaluations at a later date if deemed  
14 appropriate.

15 ~~((21))~~ (22) In any sentence of partial confinement, the court may  
16 require the defendant to serve the partial confinement in work release,  
17 in a program of home detention, on work crew, or in a combined program  
18 of work crew and home detention.

19 ~~((22))~~ (23) All court-ordered legal financial obligations  
20 collected by the department and remitted to the county clerk shall be  
21 credited and paid where restitution is ordered. Restitution shall be  
22 paid prior to any other payments of monetary obligations.

23 (24)(a) Sex offender examinations and treatment ordered as a  
24 special condition of community placement or community custody under  
25 this section shall be conducted only by sex offender treatment  
26 providers certified by the department of health under chapter 18.155  
27 RCW unless the court finds that: (i) The offender has already moved to  
28 another state or plans to move to another state for reasons other than  
29 circumventing the certification requirements; (ii) no certified  
30 providers are available for treatment within a reasonable geographic  
31 distance of the offender's home, as determined in rules adopted by the  
32 secretary; (iii) the evaluation and treatment plan comply with the  
33 rules adopted by the department of health; or (iv) the treatment  
34 provider is employed by the department. A treatment provider selected  
35 by an offender who is not certified by the department of health shall  
36 consult with a certified provider during the offender's period of  
37 treatment to ensure compliance with the rules adopted by the department  
38 of health. The frequency and content of the consultation shall be  
39 based on the recommendation of the certified provider.



1       (b) A sex offender's failure to participate in treatment required  
2 as a condition of community placement or community custody is a  
3 violation that will not be excused on the basis that no treatment  
4 provider was located within a reasonable geographic distance of the  
5 offender's home.

6       **Sec. 6.** RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are  
7 each reenacted and amended to read as follows:

8       (1) Whenever a person is convicted of a felony, the court may order  
9 the payment of a legal financial obligation as part of the sentence.  
10 The court must on either the judgment and sentence or on a subsequent  
11 order to pay, designate the total amount of a legal financial  
12 obligation and segregate this amount among the separate assessments  
13 made for restitution, costs, fines, and other assessments required by  
14 law. On the same order, the court is also to set a sum that the  
15 offender is required to pay on a monthly basis towards satisfying the  
16 legal financial obligation. If the court fails to set the offender  
17 monthly payment amount, the department shall set the amount. Upon  
18 receipt of an offender's monthly payment, after restitution is  
19 satisfied, the county clerk shall distribute the payment proportionally  
20 among all other fines, costs, and assessments imposed, unless otherwise  
21 ordered by the court.

22       (2) If the court determines that the offender, at the time of  
23 sentencing, has the means to pay for the cost of incarceration, the  
24 court may require the offender to pay for the cost of incarceration at  
25 a rate of fifty dollars per day of incarceration. Payment of other  
26 court-ordered financial obligations, including all legal financial  
27 obligations and costs of supervision shall take precedence over the  
28 payment of the cost of incarceration ordered by the court. All funds  
29 recovered from offenders for the cost of incarceration in the county  
30 jail shall be remitted to the county and the costs of incarceration in  
31 a prison shall be remitted to the department of corrections.

32       (3) The court may add to the judgment and sentence or subsequent  
33 order to pay a statement that a notice of payroll deduction is to be  
34 immediately issued. If the court chooses not to order the immediate  
35 issuance of a notice of payroll deduction at sentencing, the court  
36 shall add to the judgment and sentence or subsequent order to pay a  
37 statement that a notice of payroll deduction may be issued or other  
38 income-withholding action may be taken, without further notice to the

1 offender if a monthly court-ordered legal financial obligation payment  
2 is not paid when due, and an amount equal to or greater than the amount  
3 payable for one month is owed.

4 If a judgment and sentence or subsequent order to pay does not  
5 include the statement that a notice of payroll deduction may be issued  
6 or other income-withholding action may be taken if a monthly legal  
7 financial obligation payment is past due, the department may serve a  
8 notice on the offender stating such requirements and authorizations.  
9 Service shall be by personal service or any form of mail requiring a  
10 return receipt.

11 (4) All legal financial obligations that are ordered as a result of  
12 a conviction for a felony, may also be enforced in the same manner as  
13 a judgment in a civil action by the party or entity to whom the legal  
14 financial obligation is owed. Restitution collected through civil  
15 enforcement must be paid through the registry of the court and must be  
16 distributed proportionately according to each victim's loss when there  
17 is more than one victim. The judgment and sentence shall identify the  
18 party or entity to whom restitution is owed so that the state, party,  
19 or entity may enforce the judgment. If restitution is ordered pursuant  
20 to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and  
21 the victim's child born from the rape, the Washington state child  
22 support registry shall be identified as the party to whom payments must  
23 be made. Restitution obligations arising from the rape of a child in  
24 the first, second, or third degree that result in the pregnancy of the  
25 victim may be enforced for the time periods provided under RCW  
26 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations  
27 may be enforced at any time during the ten-year period following the  
28 offender's release from total confinement or within ten years of entry  
29 of the judgment and sentence, whichever period is longer. Prior to the  
30 expiration of the initial ten-year period, the superior court may  
31 extend the criminal judgment an additional ten years for payment of  
32 legal financial obligations including crime victims' assessments. If  
33 jurisdiction under the criminal judgment is extended, the department is  
34 not responsible for supervision of the offender during the subsequent  
35 period. Independent of the department, the party or entity to whom the  
36 legal financial obligation is owed shall have the authority to utilize  
37 any other remedies available to the party or entity to collect the  
38 legal financial obligation.

1 (5) In order to assist the court in setting a monthly sum that the  
2 offender must pay during the period of supervision, the offender is  
3 required to report to the department for purposes of preparing a  
4 recommendation to the court. When reporting, the offender is required,  
5 under oath, to truthfully and honestly respond to all questions  
6 concerning present, past, and future earning capabilities and the  
7 location and nature of all property or financial assets. The offender  
8 is further required to bring any and all documents as requested by the  
9 department.

10 (6) After completing the investigation, the department shall make  
11 a report to the court on the amount of the monthly payment that the  
12 offender should be required to make towards a satisfied legal financial  
13 obligation.

14 (7) During the period of supervision, the department may make a  
15 recommendation to the court that the offender's monthly payment  
16 schedule be modified so as to reflect a change in financial  
17 circumstances. If the department sets the monthly payment amount, the  
18 department may modify the monthly payment amount without the matter  
19 being returned to the court. Also, during the period of supervision,  
20 the offender may be required at the request of the department to report  
21 to the department for the purposes of reviewing the appropriateness of  
22 the collection schedule for the legal financial obligation. During  
23 this reporting, the offender is required under oath to truthfully and  
24 honestly respond to all questions concerning earning capabilities and  
25 the location and nature of all property or financial assets. Also, the  
26 offender is required to bring any and all documents as requested by the  
27 department in order to prepare the collection schedule.

28 (8) After the judgment and sentence or payment order is entered,  
29 the department shall for any period of supervision be authorized to  
30 collect the legal financial obligation from the offender. Any amount  
31 collected by the department shall be remitted daily to the county clerk  
32 for the purposes of disbursements. The department is authorized to  
33 accept credit cards as payment for a legal financial obligation, and  
34 any costs incurred related to accepting credit card payments shall be  
35 the responsibility of the offender.

36 (9) The department or any obligee of the legal financial obligation  
37 may seek a mandatory wage assignment for the purposes of obtaining  
38 satisfaction for the legal financial obligation pursuant to RCW  
39 9.94A.2001.

1 (10) The requirement that the offender pay a monthly sum towards a  
2 legal financial obligation constitutes a condition or requirement of a  
3 sentence and the offender is subject to the penalties as provided in  
4 RCW 9.94A.200 for noncompliance.

5 (11) The county clerk shall provide the department with  
6 individualized monthly billings for each offender with an unsatisfied  
7 legal financial obligation and shall provide the department with notice  
8 of payments by such offenders no less frequently than weekly.

9 (12) The department may arrange for the collection of unpaid legal  
10 financial obligations through the county clerk, or through another  
11 entity if the clerk does not assume responsibility for collection. The  
12 costs for collection services shall be paid by the offender.

13 **Sec. 7.** RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read  
14 as follows:

15 (1) A term of confinement(~~(, including community custody,)~~) ordered  
16 in a sentence pursuant to this chapter shall be tolled by any period of  
17 time during which the offender has absented (~~(him)~~) himself or herself  
18 from confinement without the prior approval of the entity in whose  
19 custody the offender has been placed. A term of partial confinement  
20 shall be tolled during any period of time spent in total confinement  
21 pursuant to a new conviction or pursuant to sanctions for violation of  
22 sentence conditions on a separate felony conviction.

23 (2) A term of (~~supervision, including postrelease supervision~~)  
24 community custody ordered in a sentence pursuant to this chapter shall  
25 be tolled by any period of time during which the offender has absented  
26 himself or herself from supervision without prior approval of the  
27 entity under whose (~~supervision~~) community custody the offender has  
28 been placed.

29 (3) Any period of (~~supervision~~) community custody shall be tolled  
30 during any period of time the offender is in confinement for any  
31 reason. However, if an offender is detained pursuant to RCW 9.94A.207  
32 or 9.94A.195 and is later found not to have violated a condition or  
33 requirement of (~~supervision~~) community custody, time spent in  
34 confinement due to such detention shall not toll (~~(to [the])~~) the  
35 period of (~~supervision~~) community custody.

36 (4) For confinement or (~~supervision~~) community custody sentences,  
37 the date for the tolling of the sentence shall be established by the

1 entity responsible for the confinement or (~~supervision~~) community  
2 custody.

3 **Sec. 8.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read  
4 as follows:

5 (1) If an (~~inmate~~) offender violates any condition or requirement  
6 of community custody, the department may transfer the (~~inmate~~)  
7 offender to a more restrictive confinement status to serve up to the  
8 remaining portion of the sentence, less credit for any period actually  
9 spent in community custody or in detention awaiting disposition of an  
10 alleged violation and subject to the limitations of subsection (2) of  
11 this section.

12 (2)(a) For a sex offender sentenced to a term of community custody  
13 under RCW 9.94A.120(8) who violates any condition of community custody,  
14 the department may impose a sanction of up to sixty days' confinement  
15 in a local correctional facility for each violation. If the department  
16 imposes a sanction, the department shall submit within seventy-two  
17 hours a report to the court and the prosecuting attorney outlining the  
18 violation or violations and the sanctions imposed.

19 (b) For a sex offender sentenced to a term of community custody  
20 under RCW 9.94A.120(10) who violates any condition of community custody  
21 after having completed his or her maximum term of total confinement,  
22 including time served on community custody in lieu of earned (~~early~~)  
23 release, the department may impose a sanction of up to sixty days in a  
24 local correctional facility for each violation.

25 (c) For an offender sentenced to a term of community custody under  
26 RCW 9.94A.120 (5), (7), or (11), or under RCW 9.94A.383, for a crime  
27 committed on or after July 1, 2000, who violates any condition of  
28 community custody after having completed his or her maximum term of  
29 total confinement, including time served on community custody in lieu  
30 of earned release, the department may impose a sanction of up to sixty  
31 days in total confinement for each violation. The department may  
32 impose sanctions such as work release, home detention with electronic  
33 monitoring, work crew, community service, inpatient treatment, daily  
34 reporting, curfew, educational or counseling sessions, supervision  
35 enhanced through electronic monitoring, or any other sanctions  
36 available in the community.

37 (d) For an offender sentenced to a term of community placement  
38 under RCW 9.94A.120(9)(a)(ii) who violates any condition of community

1 placement after having completed his or her maximum term of total  
2 confinement, including time served on community custody in lieu of  
3 earned release, the department may impose a sanction of up to sixty  
4 days in total confinement for each violation. The department may  
5 impose sanctions such as work release, home detention with electronic  
6 monitoring, work crew, community service, inpatient treatment, daily  
7 reporting, curfew, educational or counseling sessions, supervision  
8 enhanced through electronic monitoring, or any other sanctions  
9 available in the community.

10 (3) If an ((inmate)) offender is accused of violating any condition  
11 or requirement of community custody, he or she is entitled to a hearing  
12 before the department prior to the imposition of sanctions. The  
13 hearing shall be considered as ((inmate)) offender disciplinary  
14 proceedings and shall not be subject to chapter 34.05 RCW. The  
15 department shall develop hearing procedures and a structure of  
16 graduated sanctions.

17 (4) The hearing procedures required under subsection (3) of this  
18 section shall be developed by rule and include the following:

19 (a) Hearing officers shall report through a chain of command  
20 separate from that of community corrections officers;

21 (b) The department shall provide the offender with written notice  
22 of the violation, the evidence relied upon, and the reasons the  
23 particular sanction was imposed. The notice shall include a statement  
24 of the rights specified in this subsection, and the offender's right to  
25 file a personal restraint petition under court rules after the final  
26 decision of the department;

27 (c) The hearing shall be held unless waived by the offender, and  
28 shall be electronically recorded. For offenders not in total  
29 confinement, the hearing shall be held within fifteen working days, but  
30 not less than twenty-four hours, after notice of the violation. For  
31 offenders in total confinement, the hearing shall be held within five  
32 working days, but not less than twenty-four hours, after notice of the  
33 violation;

34 (d) The offender shall have the right to: (i) Be present at the  
35 hearing; (ii) have the assistance of a person qualified to assist the  
36 offender in the hearing, appointed by the hearing officer if the  
37 offender has a language or communications barrier; (iii) testify or  
38 remain silent; (iv) call witnesses and present documentary evidence;  
39 and (v) question witnesses who appear and testify; and

1       (e) The sanction shall take effect if affirmed by the hearing  
2 officer. Within seven days after the hearing officer's decision, the  
3 offender may appeal the decision to a panel of three reviewing officers  
4 designated by the secretary or by the secretary's designee. The  
5 sanction shall be reversed or modified if a majority of the panel finds  
6 that the sanction was not reasonably related to any of the following:  
7 (i) The crime of conviction; (ii) the violation committed; (iii) the  
8 offender's risk of reoffending; or (iv) the safety of the community.

9       (5) For purposes of this section, no finding of a violation of  
10 conditions may be based on unconfirmed or unconfirmable allegations.

11       **Sec. 9.** RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read  
12 as follows:

13       (1) The secretary may issue warrants for the arrest of any offender  
14 who violates a condition of community placement or community custody.  
15 The arrest warrants shall authorize any law enforcement or peace  
16 officer or community corrections officer of this state or any other  
17 state where such offender may be located, to arrest the offender and  
18 place him or her in total confinement pending disposition of the  
19 alleged violation. The department shall compensate the local  
20 jurisdiction at the office of financial management's adjudicated rate,  
21 in accordance with RCW 70.48.440. A community corrections officer, if  
22 he or she has reasonable cause to believe an offender in community  
23 placement or community custody has violated a condition of community  
24 placement or community custody, may suspend the person's community  
25 placement or community custody status and arrest or cause the arrest  
26 and detention in total confinement of the offender, pending the  
27 determination of the secretary as to whether the violation has  
28 occurred. The community corrections officer shall report to the  
29 secretary all facts and circumstances and the reasons for the action of  
30 suspending community placement or community custody status. A  
31 violation of a condition of community placement or community custody  
32 shall be deemed a violation of the sentence for purposes of RCW  
33 9.94A.195. The authority granted to community corrections officers  
34 under this section shall be in addition to that set forth in RCW  
35 9.94A.195.

36       (2) Inmates, as defined in RCW 72.09.015, who have been transferred  
37 to community custody and who are detained in a local correctional  
38 facility are the financial responsibility of the department of

1 corrections, except as provided in subsection (3) of this section. The  
2 community custody inmate shall be removed from the local correctional  
3 facility, except as provided in subsection (3) of this section, not  
4 later than eight days, excluding weekends and holidays, following  
5 admittance to the local correctional facility and notification that the  
6 inmate is available for movement to a state correctional institution.

7 (3) The department may negotiate with local correctional  
8 authorities for an additional period of detention; however, sex  
9 offenders sanctioned for community custody violations under RCW  
10 9.94A.205(2) to a term of confinement shall remain in the local  
11 correctional facility for the complete term of the sanction. For  
12 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local  
13 correctional facility shall be financially responsible. For  
14 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department  
15 of corrections shall be financially responsible for that portion of the  
16 sanction served during the time in which the sex offender is on  
17 community custody in lieu of earned ((early)) release, and the local  
18 correctional facility shall be financially responsible for that portion  
19 of the sanction served by the sex offender after the time in which the  
20 sex offender is on community custody in lieu of earned ((early))  
21 release. The department, in consultation with the Washington  
22 association of sheriffs and police chiefs and those counties in which  
23 the sheriff does not operate a correctional facility, shall establish  
24 a methodology for determining the department's local correctional  
25 facilities bed utilization rate, for each county in calendar year 1998,  
26 for offenders being held for violations of conditions of community  
27 custody, community placement, or community supervision. For  
28 confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the  
29 local correctional facility shall continue to be financially  
30 responsible to the extent of the calendar year 1998 bed utilization  
31 rate. If the department's use of bed space in local correctional  
32 facilities of any county for confinement sanctions imposed on offenders  
33 sentenced to a term of community custody under RCW 9.94A.205(2) (c) or  
34 (d) exceeds the 1998 bed utilization rate for the county, the  
35 department shall compensate the county for the excess use at the per  
36 diem rate equal to the lowest rate charged by the county under its  
37 contract with a municipal government during the year in which the use  
38 occurs.



1       **Sec. 10.** RCW 9.94A.383 and 1988 c 143 s 23 are each amended to  
2 read as follows:

3       On all sentences of confinement for one year or less, the court may  
4 impose up to one year of community ((supervision)) custody, subject to  
5 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and  
6 (c). An offender shall be on community ((supervision)) custody as of  
7 the date of sentencing. However, during the time for which the  
8 offender is in total or partial confinement pursuant to the sentence or  
9 a violation of the sentence, the period of community ((supervision))  
10 custody shall toll.

11       **Sec. 11.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read  
12 as follows:

13       (1) Decision not to prosecute.

14       STANDARD: A prosecuting attorney may decline to prosecute, even  
15 though technically sufficient evidence to prosecute exists, in  
16 situations where prosecution would serve no public purpose, would  
17 defeat the underlying purpose of the law in question or would result in  
18 decreased respect for the law.

19       GUIDELINE/COMMENTARY:

20       Examples

21       The following are examples of reasons not to prosecute which could  
22 satisfy the standard.

23       (a) Contrary to Legislative Intent - It may be proper to decline to  
24 charge where the application of criminal sanctions would be clearly  
25 contrary to the intent of the legislature in enacting the particular  
26 statute.

27       (b) Antiquated Statute - It may be proper to decline to charge  
28 where the statute in question is antiquated in that:

29       (i) It has not been enforced for many years; and

30       (ii) Most members of society act as if it were no longer in  
31 existence; and

32       (iii) It serves no deterrent or protective purpose in today's  
33 society; and

34       (iv) The statute has not been recently reconsidered by the  
35 legislature.

36       This reason is not to be construed as the basis for declining cases  
37 because the law in question is unpopular or because it is difficult to  
38 enforce.

1 (c) De Minimus Violation - It may be proper to decline to charge  
2 where the violation of law is only technical or insubstantial and where  
3 no public interest or deterrent purpose would be served by prosecution.

4 (d) Confinement on Other Charges - It may be proper to decline to  
5 charge because the accused has been sentenced on another charge to a  
6 lengthy period of confinement; and

7 (i) Conviction of the new offense would not merit any additional  
8 direct or collateral punishment;

9 (ii) The new offense is either a misdemeanor or a felony which is  
10 not particularly aggravated; and

11 (iii) Conviction of the new offense would not serve any significant  
12 deterrent purpose.

13 (e) Pending Conviction on Another Charge - It may be proper to  
14 decline to charge because the accused is facing a pending prosecution  
15 in the same or another county; and

16 (i) Conviction of the new offense would not merit any additional  
17 direct or collateral punishment;

18 (ii) Conviction in the pending prosecution is imminent;

19 (iii) The new offense is either a misdemeanor or a felony which is  
20 not particularly aggravated; and

21 (iv) Conviction of the new offense would not serve any significant  
22 deterrent purpose.

23 (f) High Disproportionate Cost of Prosecution - It may be proper to  
24 decline to charge where the cost of locating or transporting, or the  
25 burden on, prosecution witnesses is highly disproportionate to the  
26 importance of prosecuting the offense in question. This reason should  
27 be limited to minor cases and should not be relied upon in serious  
28 cases.

29 (g) Improper Motives of Complainant - It may be proper to decline  
30 charges because the motives of the complainant are improper and  
31 prosecution would serve no public purpose, would defeat the underlying  
32 purpose of the law in question or would result in decreased respect for  
33 the law.

34 (h) Immunity - It may be proper to decline to charge where immunity  
35 is to be given to an accused in order to prosecute another where the  
36 accused's information or testimony will reasonably lead to the  
37 conviction of others who are responsible for more serious criminal  
38 conduct or who represent a greater danger to the public interest.

1 (i) Victim Request - It may be proper to decline to charge because  
2 the victim requests that no criminal charges be filed and the case  
3 involves the following crimes or situations:

4 (i) Assault cases where the victim has suffered little or no  
5 injury;

6 (ii) Crimes against property, not involving violence, where no  
7 major loss was suffered;

8 (iii) Where doing so would not jeopardize the safety of society.

9 Care should be taken to insure that the victim's request is freely  
10 made and is not the product of threats or pressure by the accused.

11 The presence of these factors may also justify the decision to  
12 dismiss a prosecution which has been commenced.

### 13 Notification

14 The prosecutor is encouraged to notify the victim, when practical,  
15 and the law enforcement personnel, of the decision not to prosecute.

16 (2) Decision to prosecute.

### 17 (a) STANDARD:

18 Crimes against persons will be filed if sufficient admissible  
19 evidence exists, which, when considered with the most plausible,  
20 reasonably foreseeable defense that could be raised under the evidence,  
21 would justify conviction by a reasonable and objective fact-finder.  
22 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
23 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
24 9A.64.020 the prosecutor should avoid prefiling agreements or  
25 diversions intended to place the accused in a program of treatment or  
26 counseling, so that treatment, if determined to be beneficial, can be  
27 provided pursuant to RCW 9.94A.120(8).

28 Crimes against property/other crimes will be filed if the  
29 admissible evidence is of such convincing force as to make it probable  
30 that a reasonable and objective fact-finder would convict after hearing  
31 all the admissible evidence and the most plausible defense that could  
32 be raised.

33 See table below for the crimes within these categories.

## 34 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

### 35 CRIMES AGAINST PERSONS

36 Aggravated Murder

37 1st Degree Murder

38 2nd Degree Murder

1 1st Degree Kidnaping  
2 1st Degree Assault  
3 1st Degree Assault of a Child  
4 1st Degree Rape  
5 1st Degree Robbery  
6 1st Degree Rape of a Child  
7 1st Degree Arson  
8 2nd Degree Kidnaping  
9 2nd Degree Assault  
10 2nd Degree Assault of a Child  
11 2nd Degree Rape  
12 2nd Degree Robbery  
13 1st Degree Burglary  
14 1st Degree Manslaughter  
15 2nd Degree Manslaughter  
16 1st Degree Extortion  
17 Indecent Liberties  
18 Incest  
19 2nd Degree Rape of a Child  
20 Vehicular Homicide  
21 Vehicular Assault  
22 3rd Degree Rape  
23 3rd Degree Rape of a Child  
24 1st Degree Child Molestation  
25 2nd Degree Child Molestation  
26 3rd Degree Child Molestation  
27 2nd Degree Extortion  
28 1st Degree Promoting Prostitution  
29 Intimidating a Juror  
30 Communication with a Minor  
31 Intimidating a Witness  
32 Intimidating a Public Servant  
33 Bomb Threat (if against person)  
34 3rd Degree Assault  
35 3rd Degree Assault of a Child  
36 Unlawful Imprisonment  
37 Promoting a Suicide Attempt  
38 Riot (if against person)  
39 Stalking

1 Custodial Assault  
2 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)  
3 and (c))  
4 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))  
5 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and  
6 (5))

7 CRIMES AGAINST PROPERTY/OTHER CRIMES

8 2nd Degree Arson  
9 1st Degree Escape  
10 2nd Degree Burglary  
11 1st Degree Theft  
12 1st Degree Perjury  
13 1st Degree Introducing Contraband  
14 1st Degree Possession of Stolen Property  
15 Bribery  
16 Bribing a Witness  
17 Bribe received by a Witness  
18 Bomb Threat (if against property)  
19 1st Degree Malicious Mischief  
20 2nd Degree Theft  
21 2nd Degree Escape  
22 2nd Degree Introducing Contraband  
23 2nd Degree Possession of Stolen Property  
24 2nd Degree Malicious Mischief  
25 1st Degree Reckless Burning  
26 Taking a Motor Vehicle without Authorization  
27 Forgery  
28 2nd Degree Perjury  
29 2nd Degree Promoting Prostitution  
30 Tampering with a Witness  
31 Trading in Public Office  
32 Trading in Special Influence  
33 Receiving/Granting Unlawful Compensation  
34 Bigamy  
35 Eluding a Pursuing Police Vehicle  
36 Willful Failure to Return from Furlough  
37 Escape from Community Custody  
38 Riot (if against property)  
39 Thefts of Livestock

1 ALL OTHER UNCLASSIFIED FELONIES

2 Selection of Charges/Degree of Charge

3 ~~((1))~~ (i) The prosecutor should file charges which adequately  
4 describe the nature of defendant's conduct. Other offenses may be  
5 charged only if they are necessary to ensure that the charges:

6 ~~((a))~~ (A) Will significantly enhance the strength of the state's  
7 case at trial; or

8 ~~((b))~~ (B) Will result in restitution to all victims.

9 ~~((2))~~ (ii) The prosecutor should not overcharge to obtain a  
10 guilty plea. Overcharging includes:

11 ~~((a))~~ (A) Charging a higher degree;

12 ~~((b))~~ (B) Charging additional counts.

13 This standard is intended to direct prosecutors to charge those  
14 crimes which demonstrate the nature and seriousness of a defendant's  
15 criminal conduct, but to decline to charge crimes which are not  
16 necessary to such an indication. Crimes which do not merge as a matter  
17 of law, but which arise from the same course of conduct, do not all  
18 have to be charged.

19 (b) GUIDELINES/COMMENTARY:

20 (i) Police Investigation

21 A prosecuting attorney is dependent upon law enforcement agencies  
22 to conduct the necessary factual investigation which must precede the  
23 decision to prosecute. The prosecuting attorney shall ensure that a  
24 thorough factual investigation has been conducted before a decision to  
25 prosecute is made. In ordinary circumstances the investigation should  
26 include the following:

27 ~~((1))~~ (A) The interviewing of all material witnesses, together  
28 with the obtaining of written statements whenever possible;

29 ~~((2))~~ (B) The completion of necessary laboratory tests; and

30 ~~((3))~~ (C) The obtaining, in accordance with constitutional  
31 requirements, of the suspect's version of the events.

32 If the initial investigation is incomplete, a prosecuting attorney  
33 should insist upon further investigation before a decision to prosecute  
34 is made, and specify what the investigation needs to include.

35 (ii) Exceptions

36 In certain situations, a prosecuting attorney may authorize filing  
37 of a criminal complaint before the investigation is complete if:

38 ~~((1))~~ (A) Probable cause exists to believe the suspect is guilty;  
39 and

1       (~~(+2)~~) (B) The suspect presents a danger to the community or is  
2 likely to flee if not apprehended; or

3       (~~(+3)~~) (C) The arrest of the suspect is necessary to complete the  
4 investigation of the crime.

5       In the event that the exception to the standard is applied, the  
6 prosecuting attorney shall obtain a commitment from the law enforcement  
7 agency involved to complete the investigation in a timely manner. If  
8 the subsequent investigation does not produce sufficient evidence to  
9 meet the normal charging standard, the complaint should be dismissed.

10       (iii) Investigation Techniques

11       The prosecutor should be fully advised of the investigatory  
12 techniques that were used in the case investigation including:

13       (~~(+1)~~) (A) Polygraph testing;

14       (~~(+2)~~) (B) Hypnosis;

15       (~~(+3)~~) (C) Electronic surveillance;

16       (~~(+4)~~) (D) Use of informants.

17       (iv) Pre-Filing Discussions with Defendant

18       Discussions with the defendant or his/her representative regarding  
19 the selection or disposition of charges may occur prior to the filing  
20 of charges, and potential agreements can be reached.

21       (v) Pre-Filing Discussions with Victim(s)

22       Discussions with the victim(s) or victims' representatives  
23 regarding the selection or disposition of charges may occur before the  
24 filing of charges. The discussions may be considered by the prosecutor  
25 in charging and disposition decisions, and should be considered before  
26 reaching any agreement with the defendant regarding these decisions.

27       NEW SECTION. Sec. 12. A new section is added to chapter 72.09 RCW  
28 to read as follows:

29       Except as specifically prohibited by other law, and for purposes of  
30 determining, modifying, or monitoring compliance with conditions of  
31 community custody, community placement, or community supervision as  
32 authorized under RCW 9.94A.120 and 9.94A.383, the department:

33       (1) Shall have access to all relevant records and information in  
34 the possession of public agencies relating to offenders, including  
35 police reports, prosecutors' statements of probable cause, complete  
36 criminal history information, psychological evaluations and psychiatric  
37 hospital reports, sex offender treatment program reports, and juvenile  
38 records; and

1 (2) May require periodic reports from providers of treatment or  
2 other services required by the court or the department, including  
3 progress reports, evaluations and assessments, and reports of  
4 violations of conditions imposed by the court or the department.

5 NEW SECTION. Sec. 13. A new section is added to chapter 72.09 RCW  
6 to read as follows:

7 To the extent practicable, the department shall deploy community  
8 corrections staff on the basis of geographic areas in which offenders  
9 under the department's jurisdiction are located, and shall establish a  
10 systematic means of assessing risk to the safety of those communities.

11 NEW SECTION. Sec. 14. The secretary of corrections may adopt  
12 rules to implement sections 1 through 13 of this act.

13 Sec. 15. RCW 9A.44.135 and 1998 c 220 s 2 are each amended to read  
14 as follows:

15 (1) When an offender registers with the county sheriff pursuant to  
16 RCW 9A.44.130, the county sheriff shall notify the police chief or town  
17 marshal of the jurisdiction in which the offender has registered to  
18 live. If the offender registers to live in an unincorporated area of  
19 the county, the sheriff shall make reasonable attempts to verify that  
20 the offender is residing at the registered address. If the offender  
21 registers to live in an incorporated city or town, the police chief or  
22 town marshal shall make reasonable attempts to verify that the offender  
23 is residing at the registered address. Reasonable attempts at  
24 verifying an address shall include at a minimum:

25 (a) Each year the ((~~county sheriff~~)) chief law enforcement officer  
26 of the jurisdiction where the offender is registered to live shall send  
27 by certified mail, with return receipt requested, a nonforwardable  
28 verification form to the offender at the offender's last registered  
29 address.

30 (b) The offender must sign the verification form, state on the form  
31 whether he or she still resides at the last registered address, and  
32 return the form to the ((~~county sheriff~~)) chief law enforcement officer  
33 of the jurisdiction where the offender is registered to live within ten  
34 days after receipt of the form.

35 (2) The ((~~sheriff~~)) chief law enforcement officer of the  
36 jurisdiction where the offender has registered to live shall make



1 reasonable attempts to locate any sex offender who fails to return the  
2 verification form or who cannot be located at the registered address.  
3 If the offender fails to return the verification form or the offender  
4 is not at the last registered address, the (~~county sheriff~~) chief law  
5 enforcement officer of the jurisdiction where the offender has  
6 registered to live shall promptly forward this information to the  
7 county sheriff and to the Washington state patrol for inclusion in the  
8 central registry of sex offenders.

9 (3) When an offender notifies the county sheriff of a change to his  
10 or her residence address pursuant to RCW 9A.44.130, and the new address  
11 is in a different law enforcement jurisdiction, the county sheriff  
12 shall notify the police chief or town marshal of the jurisdiction from  
13 which the offender has moved.

14 NEW SECTION. Sec. 16. A new section is added to chapter 72.09 RCW  
15 to read as follows:

16 (1) The Washington state institute for public policy shall conduct  
17 a study of the effect of the use of community custody under this act.  
18 The study shall include the effect of this act on recidivism and other  
19 outcomes. In its study the institute shall consider:

20 (a) Recidivism, according to the definition adopted by the  
21 institute pursuant to section 59, chapter 338, Laws of 1997;

22 (b) The number and seriousness level of violations of conditions;

23 (c) The application of the graduated sanctions by the department;

24 (d) Unauthorized absences from supervision;

25 (e) Payment of legal financial obligations;

26 (f) Unlawful use of controlled substances;

27 (g) Use of alcohol when abstention or treatment for alcoholism is  
28 a condition of supervision;

29 (h) Effects on the number of offenders who are employed or  
30 participate in vocational rehabilitation;

31 (i) Participation in vocational and education programs; and

32 (j) Impact on the receipt of public assistance.

33 (2) By January 1, 2000, the institute shall report to the  
34 legislature on the design for the study. By January 1st of each year  
35 thereafter, the institute shall report to the legislature on the  
36 progress and findings of the study and make recommendations based on  
37 its findings. By January 1, 2010, the institute shall provide to the  
38 legislature a final report on the findings of the study.

1 (3) Subsections (1) and (2) of this section expire December 31,  
2 2010.

3 NEW SECTION. **Sec. 17.** Nothing in this act shall be construed to  
4 create an immunity or defense from liability for personal injury or  
5 wrongful death based solely on availability of funds.

6 NEW SECTION. **Sec. 18.** This act may be known and cited as the  
7 offender accountability act.

8 NEW SECTION. **Sec. 19.** Section 10 of this act takes effect July 1,  
9 2000, and applies only to offenses committed on or after July 1, 2000.

10 NEW SECTION. **Sec. 20.** If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected."

14 Correct the title.

EFFECT: This striking amendment: (1) Adds a transition period for the changes to the first-time offender waiver provisions to take effect, and provides that offenders sentenced under this program before the effective date of the act who have served at least one year of supervision and have completed any treatment ordered are discharged from the remainder of their term of community supervision; (2) provides that sex offender treatment providers employed by the Department of Corrections are not required to be certified by the Department of Health; (3) adds a provision specifying that the police chief or town marshal is responsible for verifying the addresses of sex offenders registered to live in incorporated cities and towns, and the county sheriff is responsible for verifying the addresses of sex offenders registered to live in unincorporated areas; (4) specifies that the act does not create immunity or a defense from liability for personal injury or death based solely on availability of funds; and (5) makes technical and conforming changes.

--- END ---