

2 **E2SSB 5421** - H COMM AMD NOT ADOPTED 04/16/99

3 By Committee on Criminal Justice & Corrections

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

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

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

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

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

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

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

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

31 If the court is satisfied by a preponderance of the evidence that
32 the defendant has a criminal history, the court shall specify the
33 convictions it has found to exist. All of this information shall be
34 part of the record. Copies of all risk assessment reports and
35 presentence reports presented to the sentencing court and all written
36 findings of facts and conclusions of law as to sentencing entered by
37 the court shall be sent to the department by the clerk of the court at
38 the conclusion of the sentencing and shall accompany the offender if
39 the offender is committed to the custody of the department. Court

1 clerks shall provide, without charge, certified copies of documents
2 relating to criminal convictions requested by prosecuting attorneys.

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

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

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

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

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

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

1 officer or officers during such minimum terms of total confinement
2 except in the case of an offender in need of emergency medical
3 treatment or for the purpose of commitment to an inpatient treatment
4 facility in the case of an offender convicted of the crime of rape in
5 the first degree.

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

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

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

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

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

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

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

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

32 (i) For sentences imposed on or after the effective date of this
33 section, for crimes committed before July 1, 2000, up to one year of
34 community supervision. If treatment is ordered, the period of
35 community supervision may include up to the period of treatment, but
36 shall not exceed two years; and

37 (ii) For crimes committed on or after July 1, 2000, up to one year
38 of community custody unless treatment is ordered, in which case the
39 period of community custody may include up to the period of treatment,

1 but shall not exceed two years. Any term of community custody imposed
2 under this subsection (5) is subject to conditions and sanctions as
3 authorized in this subsection (5) and in subsection (11)(b) and (c) of
4 this section.

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

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

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

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

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

24 (b) If the midpoint of the standard range is greater than one year
25 and the sentencing judge determines that the offender is eligible for
26 this option and that the offender and the community will benefit from
27 the use of the special drug offender sentencing alternative, the judge
28 may waive imposition of a sentence within the standard range and impose
29 a sentence that must include a period of total confinement in a state
30 facility for one-half of the midpoint of the standard range. During
31 incarceration in the state facility, offenders sentenced under this
32 subsection shall undergo a comprehensive substance abuse assessment and
33 receive, within available resources, treatment services appropriate for
34 the offender. The treatment services shall be designed by the division
35 of alcohol and substance abuse of the department of social and health
36 services, in cooperation with the department of corrections. If the
37 midpoint of the standard range is twenty-four months or less, no more
38 than three months of the sentence may be served in a work release
39 status. The court shall also impose one year of concurrent community

1 custody and community supervision that must include appropriate
2 outpatient substance abuse treatment, crime-related prohibitions
3 including a condition not to use illegal controlled substances, and a
4 requirement to submit to urinalysis or other testing to monitor that
5 status. The court may require that the monitoring for controlled
6 substances be conducted by the department or by a treatment
7 alternatives to street crime program or a comparable court or agency-
8 referred program. The offender may be required to pay thirty dollars
9 per month while on community custody to offset the cost of monitoring.
10 In addition, the court shall impose three or more of the following
11 conditions:

- 12 (i) Devote time to a specific employment or training;
- 13 (ii) Remain within prescribed geographical boundaries and notify
14 the court or the community corrections officer before any change in the
15 offender's address or employment;
- 16 (iii) Report as directed to a community corrections officer;
- 17 (iv) Pay all court-ordered legal financial obligations;
- 18 (v) Perform community service work;
- 19 (vi) Stay out of areas designated by the sentencing judge.

20 (c) If the offender violates any of the sentence conditions in (b)
21 of this subsection, the department shall impose sanctions
22 administratively, with notice to the prosecuting attorney and the
23 sentencing court. Upon motion of the court or the prosecuting
24 attorney, a violation hearing shall be held by the court. If the court
25 finds that conditions have been willfully violated, the court may
26 impose confinement consisting of up to the remaining one-half of the
27 midpoint of the standard range. All total confinement served during
28 the period of community custody shall be credited to the offender,
29 regardless of whether the total confinement is served as a result of
30 the original sentence, as a result of a sanction imposed by the
31 department, or as a result of a violation found by the court. The term
32 of community supervision shall be tolled by any period of time served
33 in total confinement as a result of a violation found by the court.

34 (d) The department shall determine the rules for calculating the
35 value of a day fine based on the offender's income and reasonable
36 obligations which the offender has for the support of the offender and
37 any dependents. These rules shall be developed in consultation with
38 the administrator for the courts, the office of financial management,
39 and the commission.

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

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

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

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

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

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

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

35 (D) Anticipated length of treatment; and

36 (E) Recommended crime-related prohibitions.

37 The court on its own motion may order, or on a motion by the state
38 shall order, a second examination regarding the offender's amenability
39 to treatment. The evaluator shall be selected by the party making the

1 motion. The defendant shall pay the cost of any second examination
2 ordered unless the court finds the defendant to be indigent in which
3 case the state shall pay the cost.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (iv) Undergo available outpatient treatment.

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

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

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

23 (d) Within the funds available for this purpose, the department
24 shall develop and monitor transition and relapse prevention strategies,
25 including risk assessment and release plans, to reduce risk to the
26 community after sex offenders' terms of confinement in the custody of
27 the department.

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

1 placement beginning either upon completion of the term of confinement
2 or at such time as the offender is transferred to community custody in
3 lieu of earned ((early)) release in accordance with RCW 9.94A.150 (1)
4 and (2). When the court sentences an offender under this subsection to
5 the statutory maximum period of confinement then the community
6 placement portion of the sentence shall consist entirely of such
7 community custody to which the offender may become eligible, in
8 accordance with RCW 9.94A.150 (1) and (2). Any period of community
9 custody actually served shall be credited against the community
10 placement portion of the sentence.

11 (ii) Except for persons sentenced under (b) of this subsection or
12 subsection (10)(a) of this section, when a court sentences a person to
13 a term of total confinement to the custody of the department of
14 corrections for a violent offense, any crime against a person under RCW
15 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW
16 not sentenced under subsection (6) of this section, committed on or
17 after the effective date of this section but before July 1, 2000, the
18 court shall in addition to the other terms of the sentence, sentence
19 the offender to a one-year term of community placement beginning either
20 upon completion of the term of confinement or at such time as the
21 offender is transferred to community custody in lieu of earned release
22 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
23 the offender under this subsection (9)(a)(ii) to the statutory maximum
24 period of confinement, then the community placement portion of the
25 sentence shall consist entirely of such community custody to which the
26 offender may become eligible, in accordance with RCW 9.94A.150 (1) and
27 (2). Any period of community custody actually served shall be credited
28 against the community placement portion of the sentence.

29 (b) When a court sentences a person to a term of total confinement
30 to the custody of the department of corrections for an offense
31 categorized as a sex offense committed on or after July 1, 1990, but
32 before June 6, 1996, or a serious violent offense, vehicular homicide,
33 or vehicular assault, committed on or after July 1, 1990, but before
34 July 1, 2000, the court shall in addition to other terms of the
35 sentence, sentence the offender to community placement for two years or
36 up to the period of earned ((early)) release awarded pursuant to RCW
37 9.94A.150 (1) and (2), whichever is longer. The community placement
38 shall begin either upon completion of the term of confinement or at
39 such time as the offender is transferred to community custody in lieu

1 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and
2 (2). When the court sentences an offender under this subsection to the
3 statutory maximum period of confinement then the community placement
4 portion of the sentence shall consist entirely of the community custody
5 to which the offender may become eligible, in accordance with RCW
6 9.94A.150 (1) and (2). Any period of community custody actually served
7 shall be credited against the community placement portion of the
8 sentence. Unless a condition is waived by the court, the terms of
9 community placement for offenders sentenced pursuant to this section
10 shall include the following conditions:

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

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

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

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

19 (v) The residence location and living arrangements are subject to
20 the prior approval of the department of corrections during the period
21 of community placement; and

22 (vi) The offender shall submit to affirmative acts necessary to
23 monitor compliance with the orders of the court as required by the
24 department.

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

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

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

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

34 (iv) The offender shall not consume alcohol;

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

36 or

37 (vi) For an offender convicted of a felony sex offense against a
38 minor victim after June 6, 1996, the offender shall comply with any
39 terms and conditions of community placement imposed by the department

1 of corrections relating to contact between the sex offender and a minor
2 victim or a child of similar age or circumstance as a previous victim.

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

7 (10)(a) When a court sentences a person to the custody of the
8 department of corrections for an offense categorized as a sex offense
9 committed on or after June 6, 1996, but before July 1, 2000, the court
10 shall, in addition to other terms of the sentence, sentence the
11 offender to community custody for three years or up to the period of
12 earned (~~early~~) release awarded pursuant to RCW 9.94A.150 (1) and (2),
13 whichever is longer. The community custody shall begin either upon
14 completion of the term of confinement or at such time as the offender
15 is transferred to community custody in lieu of earned (~~early~~) release
16 in accordance with RCW 9.94A.150 (1) and (2).

17 (b) Unless a condition is waived by the court, the terms of
18 community custody shall be the same as those provided for in subsection
19 (9)(b) of this section and may include those provided for in subsection
20 (9)(c) of this section. As part of any sentence that includes a term
21 of community custody imposed under this subsection, the court shall
22 also require the offender to comply with any conditions imposed by the
23 department of corrections under subsection (~~(14)~~) (15) of this
24 section.

25 (c) At any time prior to the completion of a sex offender's term of
26 community custody, if the court finds that public safety would be
27 enhanced, the court may impose and enforce an order extending any or
28 all of the conditions imposed pursuant to this section for a period up
29 to the maximum allowable sentence for the crime as it is classified in
30 chapter 9A.20 RCW, regardless of the expiration of the offender's term
31 of community custody. If a violation of a condition extended under
32 this subsection occurs after the expiration of the offender's term of
33 community custody, it shall be deemed a violation of the sentence for
34 the purposes of RCW 9.94A.195 and may be punishable as contempt of
35 court as provided for in RCW 7.21.040.

36 (11)(a) When a court sentences a person to the custody of the
37 department of corrections for a sex offense, a violent offense, any
38 crime against a person under RCW 9.94A.440(2), or a felony offense
39 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of

1 this section, committed on or after July 1, 2000, the court shall in
2 addition to the other terms of the sentence, sentence the offender to
3 community custody for the community custody range or up to the period
4 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),
5 whichever is longer. The community custody shall begin either upon
6 completion of the term of confinement or at such time as the offender
7 is transferred to community custody in lieu of earned release in
8 accordance with RCW 9.94A.150 (1) and (2).

9 (b) Unless a condition is waived by the court, the conditions of
10 community custody shall include those provided for in subsection
11 (9)(b)(i) through (vi) of this section. The conditions may also
12 include those provided for in subsection (9)(c)(i) through (vi) of this
13 section. The court may also order the offender to participate in
14 rehabilitative programs or otherwise perform affirmative conduct
15 reasonably related to the circumstances of the offense, the offender's
16 risk of reoffending, or the safety of the community, and the department
17 shall enforce such conditions pursuant to (f) of this subsection. As
18 part of any sentence that includes a term of community custody imposed
19 under this subsection, the court shall also require the offender to
20 comply with any conditions imposed by the department of corrections
21 under subsection (15) of this section. The department shall assess the
22 offender's risk of reoffense and may establish and modify additional
23 conditions of the offender's community custody based upon the risk to
24 community safety. The department may not impose conditions that are
25 contrary to those ordered by the court and may not contravene or
26 decrease court imposed conditions. The department shall notify the
27 offender in writing of any such conditions or modifications. In
28 setting, modifying, and enforcing conditions of community custody, the
29 department shall be deemed to be performing a quasi-judicial function.

30 (c) If an offender violates conditions imposed by the court or the
31 department pursuant to this subsection during community custody, the
32 department may transfer the offender to a more restrictive confinement
33 status and impose other available sanctions as provided in RCW
34 9.94A.205 and 9.94A.207.

35 (d) Except for terms of community custody under subsection (8) of
36 this section, the department shall discharge the offender from
37 community custody on a date determined by the department, which the
38 department may modify, based on risk and performance of the offender,

1 within the range or at the end of the period of earned release,
2 whichever is later.

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

17 (f) Within the funds available for community custody, the
18 department shall determine conditions and duration of community custody
19 on the basis of risk to community safety, and shall supervise offenders
20 during community custody on the basis of risk to community safety and
21 conditions imposed by the court. The secretary shall adopt rules to
22 implement the provisions of this subsection (11)(f).

23 (g) By the close of the next business day after receiving notice of
24 a condition imposed or modified by the department, an offender may
25 request an administrative review under rules adopted by the department.
26 The condition shall remain in effect unless the reviewing officer finds
27 that it is not reasonably related to any of the following: (i) The
28 crime of conviction; (ii) the offender's risk of reoffending; or (iii)
29 the safety of the community.

30 (12) If the court imposes a sentence requiring confinement of
31 thirty days or less, the court may, in its discretion, specify that the
32 sentence be served on consecutive or intermittent days. A sentence
33 requiring more than thirty days of confinement shall be served on
34 consecutive days. Local jail administrators may schedule court-ordered
35 intermittent sentences as space permits.

36 ((+12+)) (13) If a sentence imposed includes payment of a legal
37 financial obligation, the sentence shall specify the total amount of
38 the legal financial obligation owed, and shall require the offender to
39 pay a specified monthly sum toward that legal financial obligation.

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

27 ~~((13))~~ (14) Except as provided under RCW 9.94A.140(1) and
28 9.94A.142(1), a court may not impose a sentence providing for a term of
29 confinement or community supervision ~~((or))~~, community placement, or
30 community custody which exceeds the statutory maximum for the crime as
31 provided in chapter 9A.20 RCW.

32 ~~((14))~~ (15) All offenders sentenced to terms involving community
33 supervision, community service, community placement, community custody,
34 or legal financial obligation shall be under the supervision of the
35 department of corrections and shall follow explicitly the instructions
36 and conditions of the department of corrections. The department may
37 require an offender to perform affirmative acts it deems appropriate to
38 monitor compliance with the conditions of the sentence imposed.

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

6 (b) For offenders sentenced to terms involving community custody
7 for crimes committed on or after June 6, 1996, the department may
8 include, in addition to the instructions in (a) of this subsection, any
9 appropriate conditions of supervision, including but not limited to,
10 prohibiting the offender from having contact with any other specified
11 individuals or specific class of individuals. For offenders sentenced
12 to terms of community custody for crimes committed on or after July 1,
13 2000, the department may additionally require the offender to
14 participate in rehabilitative programs or otherwise perform affirmative
15 conduct, and to obey all laws.

16 The conditions authorized under this subsection (~~((14))~~) (15)(b)
17 may be imposed by the department prior to or during an offender's
18 community custody term. If a violation of conditions imposed by the
19 court or the department pursuant to subsection (10) of this section
20 occurs during community custody, it shall be deemed a violation of
21 community placement for the purposes of RCW 9.94A.207 and shall
22 authorize the department to transfer an offender to a more restrictive
23 confinement status as provided in RCW 9.94A.205. At any time prior to
24 the completion of (~~(a-sex)~~) an offender's term of community custody,
25 the department may recommend to the court that any or all of the
26 conditions imposed by the court or the department pursuant to
27 subsection (10) or (11) of this section be continued beyond the
28 expiration of the offender's term of community custody as authorized in
29 subsection (10)(c) or (11)(e) of this section.

30 The department may require offenders to pay for special services
31 rendered on or after July 25, 1993, including electronic monitoring,
32 day reporting, and telephone reporting, dependent upon the offender's
33 ability to pay. The department may pay for these services for
34 offenders who are not able to pay.

35 (~~((15))~~) (16) All offenders sentenced to terms involving community
36 supervision, community service, community custody, or community
37 placement under the supervision of the department of corrections shall
38 not own, use, or possess firearms or ammunition. Offenders who own,
39 use, or are found to be in actual or constructive possession of

1 firearms or ammunition shall be subject to the appropriate violation
2 process and sanctions. "Constructive possession" as used in this
3 subsection means the power and intent to control the firearm or
4 ammunition. "Firearm" as used in this subsection means a weapon or
5 device from which a projectile may be fired by an explosive such as
6 gunpowder.

7 ~~((16))~~ (17) The sentencing court shall give the offender credit
8 for all confinement time served before the sentencing if that
9 confinement was solely in regard to the offense for which the offender
10 is being sentenced.

11 ~~((17))~~ (18) A departure from the standards in RCW 9.94A.400 (1)
12 and (2) governing whether sentences are to be served consecutively or
13 concurrently is an exceptional sentence subject to the limitations in
14 subsections (2) and (3) of this section, and may be appealed by the
15 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

16 ~~((18))~~ (19) The court shall order restitution whenever the
17 offender is convicted of a felony that results in injury to any person
18 or damage to or loss of property, whether the offender is sentenced to
19 confinement or placed under community supervision, unless extraordinary
20 circumstances exist that make restitution inappropriate in the court's
21 judgment. The court shall set forth the extraordinary circumstances in
22 the record if it does not order restitution.

23 ~~((19))~~ (20) As a part of any sentence, the court may impose and
24 enforce an order that relates directly to the circumstances of the
25 crime for which the offender has been convicted, prohibiting the
26 offender from having any contact with other specified individuals or a
27 specific class of individuals for a period not to exceed the maximum
28 allowable sentence for the crime, regardless of the expiration of the
29 offender's term of community supervision or community placement.

30 ~~((20))~~ (21) The court may order an offender whose sentence
31 includes community placement or community supervision to undergo a
32 mental status evaluation and to participate in available outpatient
33 mental health treatment, if the court finds that reasonable grounds
34 exist to believe that the offender is a mentally ill person as defined
35 in RCW 71.24.025, and that this condition is likely to have influenced
36 the offense. An order requiring mental status evaluation or treatment
37 must be based on a presentence report and, if applicable, mental status
38 evaluations that have been filed with the court to determine the
39 offender's competency or eligibility for a defense of insanity. The

1 court may order additional evaluations at a later date if deemed
2 appropriate.

3 ~~((21))~~ (22) In any sentence of partial confinement, the court may
4 require the defendant to serve the partial confinement in work release,
5 in a program of home detention, on work crew, or in a combined program
6 of work crew and home detention.

7 ~~((22))~~ (23) All court-ordered legal financial obligations
8 collected by the department and remitted to the county clerk shall be
9 credited and paid where restitution is ordered. Restitution shall be
10 paid prior to any other payments of monetary obligations.

11 (24)(a) Sex offender examinations and treatment ordered as a
12 special condition of community placement or community custody under
13 this section shall be conducted only by sex offender treatment
14 providers certified by the department of health under chapter 18.155
15 RCW unless the court finds that: (i) The offender has already moved to
16 another state or plans to move to another state for reasons other than
17 circumventing the certification requirements; (ii) no certified
18 providers are available for treatment within a reasonable geographic
19 distance of the offender's home, as determined in rules adopted by the
20 secretary; or (iii) the treatment provider is employed by the
21 department. Any noncertified provider who provides treatment due to
22 the circumstances described in (a)(ii) of this subsection shall consult
23 with a certified provider during the offender's period of treatment to
24 ensure compliance with the rules adopted by the department of health.
25 The frequency and content of the consultation shall be based on the
26 recommendation of the certified provider.

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

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

34 (1) Whenever a person is convicted of a felony, the court may order
35 the payment of a legal financial obligation as part of the sentence.
36 The court must on either the judgment and sentence or on a subsequent
37 order to pay, designate the total amount of a legal financial
38 obligation and segregate this amount among the separate assessments

1 made for restitution, costs, fines, and other assessments required by
2 law. On the same order, the court is also to set a sum that the
3 offender is required to pay on a monthly basis towards satisfying the
4 legal financial obligation. If the court fails to set the offender
5 monthly payment amount, the department shall set the amount. Upon
6 receipt of an offender's monthly payment, after restitution is
7 satisfied, the county clerk shall distribute the payment proportionally
8 among all other fines, costs, and assessments imposed, unless otherwise
9 ordered by the court.

10 (2) If the court determines that the offender, at the time of
11 sentencing, has the means to pay for the cost of incarceration, the
12 court may require the offender to pay for the cost of incarceration at
13 a rate of fifty dollars per day of incarceration. Payment of other
14 court-ordered financial obligations, including all legal financial
15 obligations and costs of supervision shall take precedence over the
16 payment of the cost of incarceration ordered by the court. All funds
17 recovered from offenders for the cost of incarceration in the county
18 jail shall be remitted to the county and the costs of incarceration in
19 a prison shall be remitted to the department of corrections.

20 (3) The court may add to the judgment and sentence or subsequent
21 order to pay a statement that a notice of payroll deduction is to be
22 immediately issued. If the court chooses not to order the immediate
23 issuance of a notice of payroll deduction at sentencing, the court
24 shall add to the judgment and sentence or subsequent order to pay a
25 statement that a notice of payroll deduction may be issued or other
26 income-withholding action may be taken, without further notice to the
27 offender if a monthly court-ordered legal financial obligation payment
28 is not paid when due, and an amount equal to or greater than the amount
29 payable for one month is owed.

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

37 (4) All legal financial obligations that are ordered as a result of
38 a conviction for a felony, may also be enforced in the same manner as
39 a judgment in a civil action by the party or entity to whom the legal

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

26 (5) In order to assist the court in setting a monthly sum that the
27 offender must pay during the period of supervision, the offender is
28 required to report to the department for purposes of preparing a
29 recommendation to the court. When reporting, the offender is required,
30 under oath, to truthfully and honestly respond to all questions
31 concerning present, past, and future earning capabilities and the
32 location and nature of all property or financial assets. The offender
33 is further required to bring any and all documents as requested by the
34 department.

35 (6) After completing the investigation, the department shall make
36 a report to the court on the amount of the monthly payment that the
37 offender should be required to make towards a satisfied legal financial
38 obligation.

1 (7) During the period of supervision, the department may make a
2 recommendation to the court that the offender's monthly payment
3 schedule be modified so as to reflect a change in financial
4 circumstances. If the department sets the monthly payment amount, the
5 department may modify the monthly payment amount without the matter
6 being returned to the court. Also, during the period of supervision,
7 the offender may be required at the request of the department to report
8 to the department for the purposes of reviewing the appropriateness of
9 the collection schedule for the legal financial obligation. During
10 this reporting, the offender is required under oath to truthfully and
11 honestly respond to all questions concerning earning capabilities and
12 the location and nature of all property or financial assets. Also, the
13 offender is required to bring any and all documents as requested by the
14 department in order to prepare the collection schedule.

15 (8) After the judgment and sentence or payment order is entered,
16 the department shall for any period of supervision be authorized to
17 collect the legal financial obligation from the offender. Any amount
18 collected by the department shall be remitted daily to the county clerk
19 for the purposes of disbursements. The department is authorized to
20 accept credit cards as payment for a legal financial obligation, and
21 any costs incurred related to accepting credit card payments shall be
22 the responsibility of the offender.

23 (9) The department or any obligee of the legal financial obligation
24 may seek a mandatory wage assignment for the purposes of obtaining
25 satisfaction for the legal financial obligation pursuant to RCW
26 9.94A.2001.

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

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

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

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

3 (1) A term of confinement(~~(, including community custody,)~~) ordered
4 in a sentence pursuant to this chapter shall be tolled by any period of
5 time during which the offender has absented ((him)) himself or herself
6 from confinement without the prior approval of the entity in whose
7 custody the offender has been placed. A term of partial confinement
8 shall be tolled during any period of time spent in total confinement
9 pursuant to a new conviction or pursuant to sanctions for violation of
10 sentence conditions on a separate felony conviction.

11 (2) A term of ((~~supervision, including postrelease supervision~~))
12 community custody ordered in a sentence pursuant to this chapter shall
13 be tolled by any period of time during which the offender has absented
14 himself or herself from supervision without prior approval of the
15 entity under whose ((~~supervision~~)) community custody the offender has
16 been placed.

17 (3) Any period of ((~~supervision~~)) community custody shall be tolled
18 during any period of time the offender is in confinement for any
19 reason. However, if an offender is detained pursuant to RCW 9.94A.207
20 or 9.94A.195 and is later found not to have violated a condition or
21 requirement of ((~~supervision~~)) community custody, time spent in
22 confinement due to such detention shall not toll ((~~to {the}~~)) the
23 period of ((~~supervision~~)) community custody.

24 (4) For confinement or ((~~supervision~~)) community custody sentences,
25 the date for the tolling of the sentence shall be established by the
26 entity responsible for the confinement or ((~~supervision~~)) community
27 custody.

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

30 (1) If an ((~~inmate~~)) offender violates any condition or requirement
31 of community custody, the department may transfer the ((~~inmate~~))
32 offender to a more restrictive confinement status to serve up to the
33 remaining portion of the sentence, less credit for any period actually
34 spent in community custody or in detention awaiting disposition of an
35 alleged violation and subject to the limitations of subsection (2) of
36 this section.

37 (2)(a) For a sex offender sentenced to a term of community custody
38 under RCW 9.94A.120(8) who violates any condition of community custody,

1 the department may impose a sanction of up to sixty days' confinement
2 in a local correctional facility for each violation. If the department
3 imposes a sanction, the department shall submit within seventy-two
4 hours a report to the court and the prosecuting attorney outlining the
5 violation or violations and the sanctions imposed.

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

12 (c) For an offender sentenced to a term of community custody under
13 RCW 9.94A.120 (5), (7), or (11), or under RCW 9.94A.383, for a crime
14 committed on or after July 1, 2000, who violates any condition of
15 community custody after having completed his or her maximum term of
16 total confinement, including time served on community custody in lieu
17 of earned release, the department may impose a sanction of up to sixty
18 days in total confinement for each violation. The department may
19 impose sanctions such as work release, home detention with electronic
20 monitoring, work crew, community service, inpatient treatment, daily
21 reporting, curfew, educational or counseling sessions, supervision
22 enhanced through electronic monitoring, or any other sanctions
23 available in the community.

24 (d) For an offender sentenced to a term of community custody under
25 RCW 9.94A.120(9)(a)(ii) who violates any condition of community custody
26 after having completed his or her maximum term of total confinement,
27 including time served on community custody in lieu of earned release,
28 the department may impose a sanction of up to sixty days in total
29 confinement for each violation. The department may impose sanctions
30 such as work release, home detention with electronic monitoring, work
31 crew, community service, inpatient treatment, daily reporting, curfew,
32 educational or counseling sessions, supervision enhanced through
33 electronic monitoring, or any other sanctions available in the
34 community.

35 (3) If an ((inmate)) offender is accused of violating any condition
36 or requirement of community custody, he or she is entitled to a hearing
37 before the department prior to the imposition of sanctions. The
38 hearing shall be considered as ((inmate)) offender disciplinary
39 proceedings and shall not be subject to chapter 34.05 RCW. The

1 department shall develop hearing procedures and a structure of
2 graduated sanctions.

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

5 (a) Hearing officers shall report through a chain of command
6 separate from that of community corrections officers.

7 (b) The department shall provide the offender with written notice
8 of the violation, the evidence relied upon, and the reasons the
9 particular sanction was imposed. The notice shall include a statement
10 of the rights specified in this subsection, and the offender's right to
11 file a personal restraint petition under court rules after the final
12 decision of the department.

13 (c) The hearing shall be held unless waived by the offender, and
14 shall be electronically recorded. For offenders not in total
15 confinement, the hearing shall be held within fifteen working days, but
16 not less than twenty-four hours, after notice of the violation. For
17 offenders in total confinement, the hearing shall be held within five
18 working days, but not less than twenty-four hours, after notice of the
19 violation.

20 (d) The offender shall have the right to be present at the hearing,
21 to have the assistance of an advisor appointed by the hearing officer
22 if there is a language or communications barrier, to testify or remain
23 silent, to call witnesses and present documentary evidence, and to
24 question witnesses who appear and testify.

25 (e) The sanction shall take effect if affirmed by the hearing
26 officer. Within seven days after the hearing officer's decision, the
27 offender may appeal the decision to a panel of three reviewing officers
28 designated by the secretary or by the secretary's designee. The
29 sanction shall be reversed or modified if a majority of the panel finds
30 that the sanction was not reasonably related to any of the following:
31 (i) The crime of conviction; (ii) the violation committed; (iii) the
32 offender's risk of reoffending; or (iv) the safety of the community.

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

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

37 (1) The secretary may issue warrants for the arrest of any offender
38 who violates a condition of community placement or community custody.

1 The arrest warrants shall authorize any law enforcement or peace
2 officer or community corrections officer of this state or any other
3 state where such offender may be located, to arrest the offender and
4 place him or her in total confinement pending disposition of the
5 alleged violation. The department shall compensate the local
6 jurisdiction at the office of financial management's adjudicated rate,
7 in accordance with RCW 70.48.440. A community corrections officer, if
8 he or she has reasonable cause to believe an offender in community
9 placement or community custody has violated a condition of community
10 placement or community custody, may suspend the person's community
11 placement or community custody status and arrest or cause the arrest
12 and detention in total confinement of the offender, pending the
13 determination of the secretary as to whether the violation has
14 occurred. The community corrections officer shall report to the
15 secretary all facts and circumstances and the reasons for the action of
16 suspending community placement or community custody status. A
17 violation of a condition of community placement or community custody
18 shall be deemed a violation of the sentence for purposes of RCW
19 9.94A.195. The authority granted to community corrections officers
20 under this section shall be in addition to that set forth in RCW
21 9.94A.195.

22 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
23 to community custody and who are detained in a local correctional
24 facility are the financial responsibility of the department of
25 corrections, except as provided in subsection (3) of this section. The
26 community custody inmate shall be removed from the local correctional
27 facility, except as provided in subsection (3) of this section, not
28 later than eight days, excluding weekends and holidays, following
29 admittance to the local correctional facility and notification that the
30 inmate is available for movement to a state correctional institution.

31 (3) The department may negotiate with local correctional
32 authorities for an additional period of detention; however, sex
33 offenders sanctioned for community custody violations under RCW
34 9.94A.205(2) to a term of confinement shall remain in the local
35 correctional facility for the complete term of the sanction. For
36 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
37 correctional facility shall be financially responsible. For
38 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
39 of corrections shall be financially responsible for that portion of the

1 sanction served during the time in which the sex offender is on
2 community custody in lieu of earned ((early)) release, and the local
3 correctional facility shall be financially responsible for that portion
4 of the sanction served by the sex offender after the time in which the
5 sex offender is on community custody in lieu of earned ((early))
6 release. The department, in consultation with the Washington
7 association of sheriffs and police chiefs and those counties in which
8 the sheriff does not operate a correctional facility, shall establish
9 a methodology for determining the department's local correctional
10 facilities bed utilization rate, for each county in calendar year 1998,
11 for offenders being held for violations of conditions of community
12 custody, community placement, or community supervision. For
13 confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the
14 local correctional facility shall continue to be financially
15 responsible to the extent of the calendar year 1998 bed utilization
16 rate. If the department's use of bed space in local correctional
17 facilities of any county for confinement sanctions imposed on offenders
18 sentenced to a term of community custody under RCW 9.94A.205(2) (c) and
19 (d) exceeds the 1998 bed utilization rate for the county, the
20 department shall compensate the county for the excess use at the per
21 diem rate equal to the lowest rate charged by the county under its
22 contract with a municipal government during the year in which the use
23 occurs.

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

26 On all sentences of confinement for one year or less, the court may
27 impose up to one year of community ((supervision)) custody, subject to
28 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and
29 (c). An offender shall be on community ((supervision)) custody as of
30 the date of sentencing. However, during the time for which the
31 offender is in total or partial confinement pursuant to the sentence or
32 a violation of the sentence, the period of community ((supervision))
33 custody shall toll.

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

36 (1) Decision not to prosecute.

1 STANDARD: A prosecuting attorney may decline to prosecute, even
2 though technically sufficient evidence to prosecute exists, in
3 situations where prosecution would serve no public purpose, would
4 defeat the underlying purpose of the law in question or would result in
5 decreased respect for the law.

6 GUIDELINE/COMMENTARY:

7 Examples

8 The following are examples of reasons not to prosecute which could
9 satisfy the standard.

10 (a) Contrary to Legislative Intent - It may be proper to decline to
11 charge where the application of criminal sanctions would be clearly
12 contrary to the intent of the legislature in enacting the particular
13 statute.

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

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

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

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

21 (iv) The statute has not been recently reconsidered by the
22 legislature.

23 This reason is not to be construed as the basis for declining cases
24 because the law in question is unpopular or because it is difficult to
25 enforce.

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

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

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

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

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

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

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

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

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

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

11 (f) High Disproportionate Cost of Prosecution - It may be proper to
12 decline to charge where the cost of locating or transporting, or the
13 burden on, prosecution witnesses is highly disproportionate to the
14 importance of prosecuting the offense in question. This reason should
15 be limited to minor cases and should not be relied upon in serious
16 cases.

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

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

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

30 (i) Assault cases where the victim has suffered little or no
31 injury;

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

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

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

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

39 Notification

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

3 (2) Decision to prosecute.

4 (a) STANDARD:

5 Crimes against persons will be filed if sufficient admissible
6 evidence exists, which, when considered with the most plausible,
7 reasonably foreseeable defense that could be raised under the evidence,
8 would justify conviction by a reasonable and objective fact-finder.
9 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
10 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
11 9A.64.020 the prosecutor should avoid prefiling agreements or
12 diversions intended to place the accused in a program of treatment or
13 counseling, so that treatment, if determined to be beneficial, can be
14 provided pursuant to RCW 9.94A.120(8).

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

20 See table below for the crimes within these categories.

21 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

22 CRIMES AGAINST PERSONS

23 Aggravated Murder

24 1st Degree Murder

25 2nd Degree Murder

26 1st Degree Kidnaping

27 1st Degree Assault

28 1st Degree Assault of a Child

29 1st Degree Rape

30 1st Degree Robbery

31 1st Degree Rape of a Child

32 1st Degree Arson

33 2nd Degree Kidnaping

34 2nd Degree Assault

35 2nd Degree Assault of a Child

36 2nd Degree Rape

37 2nd Degree Robbery

38 1st Degree Burglary

1 1st Degree Manslaughter
2 2nd Degree Manslaughter
3 1st Degree Extortion
4 Indecent Liberties
5 Incest
6 2nd Degree Rape of a Child
7 Vehicular Homicide
8 Vehicular Assault
9 3rd Degree Rape
10 3rd Degree Rape of a Child
11 1st Degree Child Molestation
12 2nd Degree Child Molestation
13 3rd Degree Child Molestation
14 2nd Degree Extortion
15 1st Degree Promoting Prostitution
16 Intimidating a Juror
17 Communication with a Minor
18 Intimidating a Witness
19 Intimidating a Public Servant
20 Bomb Threat (if against person)
21 3rd Degree Assault
22 3rd Degree Assault of a Child
23 Unlawful Imprisonment
24 Promoting a Suicide Attempt
25 Riot (if against person)
26 Stalking
27 Custodial Assault
28 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
29 and (c))
30 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
31 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
32 (5))

33 CRIMES AGAINST PROPERTY/OTHER CRIMES
34 2nd Degree Arson
35 1st Degree Escape
36 2nd Degree Burglary
37 1st Degree Theft
38 1st Degree Perjury
39 1st Degree Introducing Contraband

1 1st Degree Possession of Stolen Property
2 Bribery
3 Bribing a Witness
4 Bribe received by a Witness
5 Bomb Threat (if against property)
6 1st Degree Malicious Mischief
7 2nd Degree Theft
8 2nd Degree Escape
9 2nd Degree Introducing Contraband
10 2nd Degree Possession of Stolen Property
11 2nd Degree Malicious Mischief
12 1st Degree Reckless Burning
13 Taking a Motor Vehicle without Authorization
14 Forgery
15 2nd Degree Perjury
16 2nd Degree Promoting Prostitution
17 Tampering with a Witness
18 Trading in Public Office
19 Trading in Special Influence
20 Receiving/Granting Unlawful Compensation
21 Bigamy
22 Eluding a Pursuing Police Vehicle
23 Willful Failure to Return from Furlough
24 Escape from Community Custody
25 Riot (if against property)
26 Thefts of Livestock

27 ALL OTHER UNCLASSIFIED FELONIES

28 Selection of Charges/Degree of Charge

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

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

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

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

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

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

1 This standard is intended to direct prosecutors to charge those
2 crimes which demonstrate the nature and seriousness of a defendant's
3 criminal conduct, but to decline to charge crimes which are not
4 necessary to such an indication. Crimes which do not merge as a matter
5 of law, but which arise from the same course of conduct, do not all
6 have to be charged.

7 (b) GUIDELINES/COMMENTARY:

8 (i) Police Investigation

9 A prosecuting attorney is dependent upon law enforcement agencies
10 to conduct the necessary factual investigation which must precede the
11 decision to prosecute. The prosecuting attorney shall ensure that a
12 thorough factual investigation has been conducted before a decision to
13 prosecute is made. In ordinary circumstances the investigation should
14 include the following:

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

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

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

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

23 (ii) Exceptions

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

26 ~~((+1))~~ (A) Probable cause exists to believe the suspect is guilty;
27 and

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

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

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

37 (iii) Investigation Techniques

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

- 1 ~~((1))~~ (A) Polygraph testing;
- 2 ~~((2))~~ (B) Hypnosis;
- 3 ~~((3))~~ (C) Electronic surveillance;
- 4 ~~((4))~~ (D) Use of informants.

5 (iv) Pre-Filing Discussions with Defendant

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

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

10 Discussions with the victim(s) or victims' representatives
11 regarding the selection or disposition of charges may occur before the
12 filing of charges. The discussions may be considered by the prosecutor
13 in charging and disposition decisions, and should be considered before
14 reaching any agreement with the defendant regarding these decisions.

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

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

21 (1) Shall have access to all relevant records and information in
22 the possession of public agencies relating to offenders, including
23 police reports, prosecutors' statements of probable cause, complete
24 criminal history information, psychological evaluations and psychiatric
25 hospital reports, sex offender treatment program reports, and juvenile
26 records; and

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

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

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

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

3 NEW SECTION. **Sec. 15.** The Washington state institute for public
4 policy shall, subject to available resources, conduct a study on the
5 effect of the use of community custody under this act on recidivism and
6 other relevant outcomes. By January 1, 2000, the institute shall,
7 subject to available resources, report to the legislature on the design
8 for the study. By January 1st of each year thereafter, the institute
9 shall, subject to available resources, report to the legislature on the
10 progress and findings of the study. By January 1, 2010, the institute
11 shall, subject to available resources, provide to the legislature a
12 final report on the findings of the study.

13 NEW SECTION. **Sec. 16.** Nothing in this act shall be construed to
14 create an immunity or defense from liability for personal injury or
15 wrongful death based solely on availability of funds.

16 NEW SECTION. **Sec. 17.** This act may be known and cited as the
17 offender accountability act.

18 NEW SECTION. **Sec. 18.** Section 10 of this act takes effect July 1,
19 2000, and applies only to offenses committed on or after July 1, 2000.

20 NEW SECTION. **Sec. 19.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

24 NEW SECTION. **Sec. 20.** If specific funding for the purposes of
25 this act, referencing this act by bill or chapter number, is not
26 provided by June 30, 1999, in the omnibus appropriations act, this act
27 is null and void."

28 Correct the title.

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