

2 **E2SHB 1252** - S COMM AMD
3 By Committee on Ways & Means

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 9.94A.120
22 (11), as established by the sentencing guidelines commission or the
23 legislature under RCW 9.94A.040, for crimes committed on or after July
24 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (b) Assault in the second degree;

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

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

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

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (33) "Serious traffic offense" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 When the sentencing guidelines commission proposes modifications to
38 ranges pursuant to this subsection, the legislature may, by enactment
39 of a bill, adopt or modify the ranges proposed by the commission for

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

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

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

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

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

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

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

37 If the court is satisfied by a preponderance of the evidence that
38 the defendant has a criminal history, the court shall specify the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of community supervision shall be tolled by any period of time served
2 in total confinement as a result of a violation found by the court.

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

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

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

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

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

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

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

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

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (iv) Undergo available outpatient treatment.

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

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

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

33 (d) Within the funds available for this purpose, the department
34 shall develop and monitor transition and relapse prevention strategies,
35 including risk assessment and release plans, to reduce risk to the
36 community after sex offenders' terms of confinement in the custody of
37 the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (iv) The offender shall not consume alcohol;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) Decision not to prosecute.

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

19 GUIDELINE/COMMENTARY:

20 Examples

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Notification

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

16 (2) Decision to prosecute.

17 (a) STANDARD:

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

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

33 See table below for the crimes within these categories.

34 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

35 CRIMES AGAINST PERSONS

36 Aggravated Murder

37 1st Degree Murder

38 2nd Degree Murder

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

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

7 CRIMES AGAINST PROPERTY/OTHER CRIMES

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

1 ALL OTHER UNCLASSIFIED FELONIES

2 Selection of Charges/Degree of Charge

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

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

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

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

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

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

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

19 (b) GUIDELINES/COMMENTARY:

20 (i) Police Investigation

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

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

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

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

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

35 (ii) Exceptions

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

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

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

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

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

10 (iii) Investigation Techniques

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

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

14 (~~(+2)~~) (B) Hypnosis;

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

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

17 (iv) Pre-Filing Discussions with Defendant

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

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

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

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

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

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

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

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

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

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

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

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

22 (a) Each year the county sheriff shall send by certified mail, with
23 return receipt requested, a nonforwardable verification form to the
24 offender at the offender's last registered address.

25 (b) The offender must sign the verification form, state on the form
26 whether he or she still resides at the last registered address, and
27 return the form to the county sheriff within ten days after receipt of
28 the form.

29 (2) The sheriff, chief of police, or town marshal shall make
30 reasonable attempts to locate any sex offender who fails to return the
31 verification form or who cannot be located at the registered address.
32 If the offender fails to return the verification form or the offender
33 is not at the last registered address, the county sheriff shall
34 promptly forward this information to the Washington state patrol for
35 inclusion in the central registry of sex offenders.

1 NEW SECTION. **Sec. 16.** A new section is added to chapter 72.09 RCW
2 to read as follows:

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

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

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

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

11 (d) Unauthorized absences from supervision;

12 (e) Payment of legal financial obligations;

13 (f) Unlawful use of controlled substances;

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

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

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

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

20 (2) By January 1, 2000, the institute shall report to the
21 legislature on the design for the study. By January 1st of each year
22 thereafter, the institute shall report to the legislature on the
23 progress and findings of the study and make recommendations based on
24 its findings. By January 1, 2010, the institute shall provide to the
25 legislature a final report on the findings of the study.

26 (3) Subsections (1) and (2) of this section expire December 31,
27 2010.

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

30 NEW SECTION. **Sec. 18.** Section 10 of this act takes effect July 1,
31 2000, and applies only to offenses committed on or after July 1, 2000.

32 NEW SECTION. **Sec. 19.** If any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 remainder of the act or the application of the provision to other
35 persons or circumstances is not affected."

1 **E2SHB 1252** - S COMM AMD
2 By Committee on Ways & Means

3

4 On page 1, line 1 of the title, after "community;" strike the
5 remainder of the title and insert "amending RCW 9.94A.010, 9.94A.030,
6 9.94A.110, 9.94A.120, 9.94A.170, 9.94A.205, 9.94A.207, 9.94A.383,
7 9.94A.440, and 9A.44.135; reenacting and amending RCW 9.94A.040 and
8 9.94A.145; adding new sections to chapter 72.09 RCW; creating new
9 sections; prescribing penalties; providing an effective date; and
10 providing an expiration date."

--- END ---