

2 HB 1299 - S COMM AMD

3 By Committee on Human Services & Corrections

4 ADOPTED 4/6/99

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

7 "Sec. 1. RCW 9.94A.150 and 1996 c 199 s 2 are each amended to read  
8 as follows:

9 No person serving a sentence imposed pursuant to this chapter and  
10 committed to the custody of the department shall leave the confines of  
11 the correctional facility or be released prior to the expiration of the  
12 sentence except as follows:

13 (1) Except as otherwise provided for in subsection (2) of this  
14 section, the term of the sentence of an offender committed to a  
15 correctional facility operated by the department, may be reduced by  
16 earned early release time in accordance with procedures that shall be  
17 developed and promulgated by the correctional agency having  
18 jurisdiction in which the offender is confined. The earned early  
19 release time shall be for good behavior and good performance, as  
20 determined by the correctional agency having jurisdiction. The  
21 correctional agency shall not credit the offender with earned early  
22 release credits in advance of the offender actually earning the  
23 credits. Any program established pursuant to this section shall allow  
24 an offender to earn early release credits for presentence  
25 incarceration. If an offender is transferred from a county jail to the  
26 department of corrections, the county jail facility shall certify to  
27 the department the amount of time spent in custody at the facility and  
28 the amount of earned early release time. In the case of an offender  
29 who has been convicted of a felony committed after July 23, 1995, that  
30 involves any applicable deadly weapon enhancements under RCW 9.94A.310  
31 (3) or (4), or both, shall not receive any good time credits or earned  
32 early release time for that portion of his or her sentence that results  
33 from any deadly weapon enhancements. In the case of an offender  
34 convicted of a serious violent offense or a sex offense that is a class  
35 A felony committed on or after July 1, 1990, the aggregate earned early  
36 release time may not exceed fifteen percent of the sentence. In no

1 other case shall the aggregate earned early release time exceed one-  
2 third of the total sentence;

3 (2) A person convicted of a sex offense or an offense categorized  
4 as a serious violent offense, assault in the second degree, vehicular  
5 homicide, vehicular assault, assault of a child in the second degree,  
6 any crime against a person where it is determined in accordance with  
7 RCW 9.94A.125 that the defendant or an accomplice was armed with a  
8 deadly weapon at the time of commission, or any felony offense under  
9 chapter 69.50 or 69.52 RCW may become eligible, in accordance with a  
10 program developed by the department, for transfer to community custody  
11 status in lieu of earned early release time pursuant to subsection (1)  
12 of this section;

13 (3) An offender may leave a correctional facility pursuant to an  
14 authorized furlough or leave of absence. In addition, offenders may  
15 leave a correctional facility when in the custody of a corrections  
16 officer or officers;

17 (4)(a) The secretary of corrections may authorize an extraordinary  
18 medical placement for an offender when all of the following conditions  
19 exist:

20 (i) The offender has a medical condition that is serious enough to  
21 require costly care or treatment;

22 (ii) The offender poses a low risk to the community because he or  
23 she is physically incapacitated due to age or the medical condition;  
24 and

25 (iii) Granting the extraordinary medical placement will result in  
26 a cost savings to the state.

27 (b) An offender sentenced to death or to life imprisonment without  
28 the possibility of release or parole is not eligible for an  
29 extraordinary medical placement under this subsection.

30 (c) The secretary shall require electronic monitoring for all  
31 offenders in extraordinary medical placement unless the electronic  
32 monitoring equipment interferes with the function of the offender's  
33 medical equipment or results in the loss of funding for the offender's  
34 medical care. The secretary shall specify who shall provide the  
35 monitoring services and the terms under which the monitoring shall be  
36 performed.

37 (d) The secretary may revoke an extraordinary medical placement  
38 under this subsection at any time.

1       (5) The governor, upon recommendation from the clemency and pardons  
2 board, may grant an extraordinary release for reasons of serious health  
3 problems, senility, advanced age, extraordinary meritorious acts, or  
4 other extraordinary circumstances;

5       (~~(5)~~) (6) No more than the final six months of the sentence may  
6 be served in partial confinement designed to aid the offender in  
7 finding work and reestablishing himself or herself in the community;

8       (~~(6)~~) (7) The governor may pardon any offender;

9       (~~(7)~~) (8) The department of corrections may release an offender  
10 from confinement any time within ten days before a release date  
11 calculated under this section; and

12       (~~(8)~~) (9) An offender may leave a correctional facility prior to  
13 completion of his or her sentence if the sentence has been reduced as  
14 provided in RCW 9.94A.160.

15       Notwithstanding any other provisions of this section, an offender  
16 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to  
17 a mandatory minimum sentence of total confinement shall not be released  
18 from total confinement before the completion of the listed mandatory  
19 minimum sentence for that felony crime of conviction unless allowed  
20 under RCW 9.94A.120(4).

21       **Sec. 2.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read  
22 as follows:

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

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

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

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

36       (4) A persistent offender shall be sentenced to a term of total  
37 confinement for life without the possibility of parole or, when  
38 authorized by RCW 10.95.030 for the crime of aggravated murder in the

1 first degree, sentenced to death, notwithstanding the maximum sentence  
2 under any other law. An offender convicted of the crime of murder in  
3 the first degree shall be sentenced to a term of total confinement not  
4 less than twenty years. An offender convicted of the crime of assault  
5 in the first degree or assault of a child in the first degree where the  
6 offender used force or means likely to result in death or intended to  
7 kill the victim shall be sentenced to a term of total confinement not  
8 less than five years. An offender convicted of the crime of rape in  
9 the first degree shall be sentenced to a term of total confinement not  
10 less than five years. The foregoing minimum terms of total confinement  
11 are mandatory and shall not be varied or modified as provided in  
12 subsection (2) of this section. In addition, all offenders subject to  
13 the provisions of this subsection shall not be eligible for community  
14 custody, earned early release time, furlough, home detention, partial  
15 confinement, work crew, work release, or any other form of early  
16 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
17 or any other form of authorized leave of absence from the correctional  
18 facility while not in the direct custody of a corrections officer or  
19 officers during such minimum terms of total confinement except: (a) In  
20 the case of an offender in need of emergency medical treatment ((or));  
21 (b) for the purpose of commitment to an inpatient treatment facility in  
22 the case of an offender convicted of the crime of rape in the first  
23 degree; or (c) for an extraordinary medical placement when authorized  
24 under RCW 9.94A.150(4).

25 (5) In sentencing a first-time offender the court may waive the  
26 imposition of a sentence within the sentence range and impose a  
27 sentence which may include up to ninety days of confinement in a  
28 facility operated or utilized under contract by the county and a  
29 requirement that the offender refrain from committing new offenses.  
30 The sentence may also include up to two years of community supervision,  
31 which, in addition to crime-related prohibitions, may include  
32 requirements that the offender perform any one or more of the  
33 following:

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

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

38 (c) Pursue a prescribed, secular course of study or vocational  
39 training;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (C) Monitoring plans, including any requirements regarding living  
30 conditions, lifestyle requirements, and monitoring by family members  
31 and others;

32 (D) Anticipated length of treatment; and

33 (E) Recommended crime-related prohibitions.

34 The court on its own motion may order, or on a motion by the state  
35 shall order, a second examination regarding the offender's amenability  
36 to treatment. The evaluator shall be selected by the party making the  
37 motion. The defendant shall pay the cost of any second examination  
38 ordered unless the court finds the defendant to be indigent in which  
39 case the state shall pay the cost.

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

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

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

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

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

33 (III) Report as directed to the court and a community corrections  
34 officer;

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

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



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

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

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

26 (v) If a violation of conditions occurs during community custody,  
27 the department shall either impose sanctions as provided for in RCW  
28 9.94A.205(2)(a) or refer the violation to the court and recommend  
29 revocation of the suspended sentence as provided for in (a)(vi) of this  
30 subsection.

31 (vi) The court may revoke the suspended sentence at any time during  
32 the period of community custody and order execution of the sentence if:  
33 (A) The defendant violates the conditions of the suspended sentence, or  
34 (B) the court finds that the defendant is failing to make satisfactory  
35 progress in treatment. All confinement time served during the period  
36 of community custody shall be credited to the offender if the suspended  
37 sentence is revoked.

38 (vii) Except as provided in (a)(viii) of this subsection, after  
39 July 1, 1991, examinations and treatment ordered pursuant to this

1 subsection shall only be conducted by sex offender treatment providers  
2 certified by the department of health pursuant to chapter 18.155 RCW.

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

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

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

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

27 Except for an offender who has been convicted of a violation of RCW  
28 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
29 before the expiration of his or her term of confinement, the department  
30 of corrections may request the court to convert the balance of  
31 confinement to community supervision and to place conditions on the  
32 offender including crime-related prohibitions and requirements that the  
33 offender perform any one or more of the following:

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

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

38 (iii) Report as directed to the court and a community corrections  
39 officer;

1 (iv) Undergo available outpatient treatment.

2 If the offender violates any of the terms of his or her community  
3 supervision, the court may order the offender to serve out the balance  
4 of his or her community supervision term in confinement in the custody  
5 of the department of corrections.

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

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

18 (9)(a) When a court sentences a person to a term of total  
19 confinement to the custody of the department of corrections for an  
20 offense categorized as a sex offense or a serious violent offense  
21 committed after July 1, 1988, but before July 1, 1990, assault in the  
22 second degree, assault of a child in the second degree, any crime  
23 against a person where it is determined in accordance with RCW  
24 9.94A.125 that the defendant or an accomplice was armed with a deadly  
25 weapon at the time of commission, or any felony offense under chapter  
26 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
27 committed on or after July 1, 1988, the court shall in addition to the  
28 other terms of the sentence, sentence the offender to a one-year term  
29 of community placement beginning either upon completion of the term of  
30 confinement or at such time as the offender is transferred to community  
31 custody in lieu of earned early release in accordance with RCW  
32 9.94A.150 (1) and (2). When the court sentences an offender under this  
33 subsection to the statutory maximum period of confinement then the  
34 community placement portion of the sentence shall consist entirely of  
35 such community custody to which the offender may become eligible, in  
36 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
37 custody actually served shall be credited against the community  
38 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, a serious violent offense, vehicular homicide, or  
5 vehicular assault, committed on or after July 1, 1990, the court shall  
6 in addition to other terms of the sentence, sentence the offender to  
7 community placement for two years or up to the period of earned early  
8 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
9 longer. The community placement shall begin either upon completion of  
10 the term of confinement or at such time as the offender is transferred  
11 to community custody in lieu of earned early release in accordance with  
12 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
13 this subsection to the statutory maximum period of confinement then the  
14 community placement portion of the sentence shall consist entirely of  
15 the community custody to which the offender may become eligible, in  
16 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
17 custody actually served shall be credited against the community  
18 placement portion of the sentence. Unless a condition is waived by the  
19 court, the terms of community placement for offenders sentenced  
20 pursuant to this section shall include the following conditions:

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

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

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

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

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

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

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

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

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

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

5 (iv) The offender shall not consume alcohol;

6 (v) The offender shall comply with any crime-related prohibitions;  
7 or

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

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

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

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

34 (c) At any time prior to the completion of a sex offender's term of  
35 community custody, if the court finds that public safety would be  
36 enhanced, the court may impose and enforce an order extending any or  
37 all of the conditions imposed pursuant to this section for a period up  
38 to the maximum allowable sentence for the crime as it is classified in  
39 chapter 9A.20 RCW, regardless of the expiration of the offender's term

1 of community custody. If a violation of a condition extended under  
2 this subsection occurs after the expiration of the offender's term of  
3 community custody, it shall be deemed a violation of the sentence for  
4 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
5 court as provided for in RCW 7.21.040.

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

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

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

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

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

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

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

38 The department may require offenders to pay for special services  
39 rendered on or after July 25, 1993, including electronic monitoring,

1 day reporting, and telephone reporting, dependent upon the offender's  
2 ability to pay. The department may pay for these services for  
3 offenders who are not able to pay.

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

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

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

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

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

37 (20) The court may order an offender whose sentence includes  
38 community placement or community supervision to undergo a mental status  
39 evaluation and to participate in available outpatient mental health



1 treatment, if the court finds that reasonable grounds exist to believe  
 2 that the offender is a mentally ill person as defined in RCW 71.24.025,  
 3 and that this condition is likely to have influenced the offense. An  
 4 order requiring mental status evaluation or treatment must be based on  
 5 a presentence report and, if applicable, mental status evaluations that  
 6 have been filed with the court to determine the offender's competency  
 7 or eligibility for a defense of insanity. The court may order  
 8 additional evaluations at a later date if deemed appropriate.

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

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

17 **Sec. 3.** RCW 9.94A.310 and 1998 c 235 s 1 and 1998 c 211 s 3 are  
 18 each reenacted and amended to read as follows:

19 (1) TABLE 1

20 Sentencing Grid

21 SERIOUSNESS		22 OFFENDER SCORE									
23 SCORE		24									
		0	1	2	3	4	5	6	7	8	9 or more
25	<hr/>										
26	XV	Life Sentence without Parole/Death Penalty									
27	<hr/>										
28	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m36y	40y	
29		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
30		320	333	347	361	374	388	416	450	493	548
31	<hr/>										
32	XIII	14y4m	15y4m	16y2m	17y	17y11m18y9m	20y5m	22y2m	25y7m	29y	
33		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
34		220	234	244	254	265	275	295	316	357	397
35	<hr/>										

1	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
2		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
3		123	136	147	160	171	184	216	236	277	318
4											
5	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
6		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
7		102	114	125	136	147	158	194	211	245	280
8											
9	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
10		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
11		68	75	82	89	96	102	130	144	171	198
12											
13	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
14		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
15		41	48	54	61	68	75	102	116	144	171
16											
17	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
18		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
19		27	34	41	48	54	61	89	102	116	144
20											
21	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
22		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
23		20	27	34	41	48	54	75	89	102	116
24											
25	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
26		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
27		14	20	27	34	41	48	61	75	89	102
28											
29	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
30		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
31		12	14	17	20	29	43	54	68	82	96
32											
33	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
34		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
35		9	12	14	17	20	29	43	57	70	84
36											
37	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
38		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
39		3	8	12	12	16	22	29	43	57	68

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II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
	0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
	Days	6	9	12	14	18	22	29	43	57

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I			3m	4m	5m	8m	13m	16m	20m	2y2m
	0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
	Days	Days	5	6	8	12	14	18	22	29

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10 NOTE: Numbers in the first horizontal row of each seriousness category  
11 represent sentencing midpoints in years(y) and months(m). Numbers in  
12 the second and third rows represent presumptive sentencing ranges in  
13 months, or in days if so designated. 12+ equals one year and one day.

14 (2) For persons convicted of the anticipatory offenses of criminal  
15 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
16 presumptive sentence is determined by locating the sentencing grid  
17 sentence range defined by the appropriate offender score and the  
18 seriousness level of the completed crime, and multiplying the range by  
19 75 percent.

20 (3) The following additional times shall be added to the  
21 presumptive sentence for felony crimes committed after July 23, 1995,  
22 if the offender or an accomplice was armed with a firearm as defined in  
23 RCW 9.41.010 and the offender is being sentenced for one of the crimes  
24 listed in this subsection as eligible for any firearm enhancements  
25 based on the classification of the completed felony crime. If the  
26 offender is being sentenced for more than one offense, the firearm  
27 enhancement or enhancements must be added to the total period of  
28 confinement for all offenses, regardless of which underlying offense is  
29 subject to a firearm enhancement. If the offender or an accomplice was  
30 armed with a firearm as defined in RCW 9.41.010 and the offender is  
31 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
32 commit one of the crimes listed in this subsection as eligible for any  
33 firearm enhancements, the following additional times shall be added to  
34 the presumptive sentence determined under subsection (2) of this  
35 section based on the felony crime of conviction as classified under RCW  
36 9A.28.020:

1 (a) Five years for any felony defined under any law as a class A  
2 felony or with a maximum sentence of at least twenty years, or both,  
3 and not covered under (f) of this subsection.

4 (b) Three years for any felony defined under any law as a class B  
5 felony or with a maximum sentence of ten years, or both, and not  
6 covered under (f) of this subsection.

7 (c) Eighteen months for any felony defined under any law as a  
8 class C felony or with a maximum sentence of five years, or both, and  
9 not covered under (f) of this subsection.

10 (d) If the offender is being sentenced for any firearm  
11 enhancements under (a), (b), and/or (c) of this subsection and the  
12 offender has previously been sentenced for any deadly weapon  
13 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
14 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
15 both, any and all firearm enhancements under this subsection shall be  
16 twice the amount of the enhancement listed.

17 (e) Notwithstanding any other provision of law, any and all  
18 firearm enhancements under this section are mandatory, shall be served  
19 in total confinement, and shall run consecutively to all other  
20 sentencing provisions, including other firearm or deadly weapon  
21 enhancements, for all offenses sentenced under this chapter. However,  
22 whether or not a mandatory minimum term has expired, an offender  
23 serving a sentence under this subsection may be granted an  
24 extraordinary medical placement when authorized under RCW 9.94A.150(4).

25 (f) The firearm enhancements in this section shall apply to all  
26 felony crimes except the following: Possession of a machine gun,  
27 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
28 unlawful possession of a firearm in the first and second degree, and  
29 use of a machine gun in a felony.

30 (g) If the presumptive sentence under this section exceeds the  
31 statutory maximum for the offense, the statutory maximum sentence shall  
32 be the presumptive sentence unless the offender is a persistent  
33 offender as defined in RCW 9.94A.030. If the addition of a firearm  
34 enhancement increases the sentence so that it would exceed the  
35 statutory maximum for the offense, the portion of the sentence  
36 representing the enhancement may not be reduced.

37 (4) The following additional times shall be added to the  
38 presumptive sentence for felony crimes committed after July 23, 1995,  
39 if the offender or an accomplice was armed with a deadly weapon as

1 defined in this chapter other than a firearm as defined in RCW 9.41.010  
2 and the offender is being sentenced for one of the crimes listed in  
3 this subsection as eligible for any deadly weapon enhancements based on  
4 the classification of the completed felony crime. If the offender is  
5 being sentenced for more than one offense, the deadly weapon  
6 enhancement or enhancements must be added to the total period of  
7 confinement for all offenses, regardless of which underlying offense is  
8 subject to a deadly weapon enhancement. If the offender or an  
9 accomplice was armed with a deadly weapon other than a firearm as  
10 defined in RCW 9.41.010 and the offender is being sentenced for an  
11 anticipatory offense under chapter 9A.28 RCW to commit one of the  
12 crimes listed in this subsection as eligible for any deadly weapon  
13 enhancements, the following additional times shall be added to the  
14 presumptive sentence determined under subsection (2) of this section  
15 based on the felony crime of conviction as classified under RCW  
16 9A.28.020:

17 (a) Two years for any felony defined under any law as a class A  
18 felony or with a maximum sentence of at least twenty years, or both,  
19 and not covered under (f) of this subsection.

20 (b) One year for any felony defined under any law as a class B  
21 felony or with a maximum sentence of ten years, or both, and not  
22 covered under (f) of this subsection.

23 (c) Six months for any felony defined under any law as a class C  
24 felony or with a maximum sentence of five years, or both, and not  
25 covered under (f) of this subsection.

26 (d) If the offender is being sentenced under (a), (b), and/or (c)  
27 of this subsection for any deadly weapon enhancements and the offender  
28 has previously been sentenced for any deadly weapon enhancements after  
29 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
30 subsection (3)(a), (b), and/or (c) of this section, or both, any and  
31 all deadly weapon enhancements under this subsection shall be twice the  
32 amount of the enhancement listed.

33 (e) Notwithstanding any other provision of law, any and all deadly  
34 weapon enhancements under this section are mandatory, shall be served  
35 in total confinement, and shall run consecutively to all other  
36 sentencing provisions, including other firearm or deadly weapon  
37 enhancements, for all offenses sentenced under this chapter. However,  
38 whether or not a mandatory minimum term has expired, an offender

1 servicing a sentence under this subsection may be granted an  
2 extraordinary medical placement when authorized under RCW 9.94A.150(4).

3 (f) The deadly weapon enhancements in this section shall apply to  
4 all felony crimes except the following: Possession of a machine gun,  
5 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
6 unlawful possession of a firearm in the first and second degree, and  
7 use of a machine gun in a felony.

8 (g) If the presumptive sentence under this section exceeds the  
9 statutory maximum for the offense, the statutory maximum sentence shall  
10 be the presumptive sentence unless the offender is a persistent  
11 offender as defined in RCW 9.94A.030. If the addition of a deadly  
12 weapon enhancement increases the sentence so that it would exceed the  
13 statutory maximum for the offense, the portion of the sentence  
14 representing the enhancement may not be reduced.

15 (5) The following additional times shall be added to the  
16 presumptive sentence if the offender or an accomplice committed the  
17 offense while in a county jail or state correctional facility as that  
18 term is defined in this chapter and the offender is being sentenced for  
19 one of the crimes listed in this subsection. If the offender or an  
20 accomplice committed one of the crimes listed in this subsection while  
21 in a county jail or state correctional facility as that term is defined  
22 in this chapter, and the offender is being sentenced for an  
23 anticipatory offense under chapter 9A.28 RCW to commit one of the  
24 crimes listed in this subsection, the following additional times shall  
25 be added to the presumptive sentence determined under subsection (2) of  
26 this section:

27 (a) Eighteen months for offenses committed under RCW  
28 69.50.401(a)(1) (i) or (ii) or 69.50.410;

29 (b) Fifteen months for offenses committed under RCW  
30 69.50.401(a)(1) (iii), (iv), and (v);

31 (c) Twelve months for offenses committed under RCW 69.50.401(d).

32 For the purposes of this subsection, all of the real property of  
33 a state correctional facility or county jail shall be deemed to be part  
34 of that facility or county jail.

35 (6) An additional twenty-four months shall be added to the  
36 presumptive sentence for any ranked offense involving a violation of  
37 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

38 (7) An additional two years shall be added to the presumptive  
39 sentence for vehicular homicide committed while under the influence of

1 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
2 prior offense as defined in RCW 46.61.5055.

3       **Sec. 4.** RCW 9.95.040 and 1993 c 144 s 4 and 1993 c 140 s 1 are  
4 each reenacted and amended to read as follows:

5       The board shall fix the duration of confinement for persons  
6 committed by the court before July 1, 1986, for crimes committed before  
7 July 1, 1984. Within six months after the admission of the convicted  
8 person to a state correctional facility, the board shall fix the  
9 duration of confinement. The term of imprisonment so fixed shall not  
10 exceed the maximum provided by law for the offense of which the person  
11 was convicted or the maximum fixed by the court where the law does not  
12 provide for a maximum term.

13       Subject to RCW 9.95.047, the following limitations are placed on  
14 the board or the court for persons committed to a state correctional  
15 facility on or after July 1, 1986, for crimes committed before July 1,  
16 1984, with regard to fixing the duration of confinement in certain  
17 cases, notwithstanding any provisions of law specifying a lesser  
18 sentence:

19       (1) For a person not previously convicted of a felony but armed  
20 with a deadly weapon at the time of the commission of the offense, the  
21 duration of confinement shall not be fixed at less than five years.

22       (2) For a person previously convicted of a felony either in this  
23 state or elsewhere and who was armed with a deadly weapon at the time  
24 of the commission of the offense, the duration of confinement shall not  
25 be fixed at less than seven and one-half years.

26       The words "deadly weapon," as used in this section include, but  
27 are not limited to, any instrument known as a blackjack, sling shot,  
28 billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol,  
29 revolver, or any other firearm, any knife having a blade longer than  
30 three inches, any razor with an unguarded blade, any metal pipe or bar  
31 used or intended to be used as a club, any explosive, and any weapon  
32 containing poisonous or injurious gas.

33       (3) For a person convicted of being an habitual criminal within  
34 the meaning of the statute which provides for mandatory life  
35 imprisonment for such habitual criminals, the duration of confinement  
36 shall not be fixed at less than fifteen years.

1 (4) Any person convicted of embezzling funds from any institution  
2 of public deposit of which the person was an officer or stockholder,  
3 the duration of confinement shall be fixed at not less than five years.

4 Except when an inmate of a state correctional facility has been  
5 convicted of murder in the first or second degree, the board may parole  
6 an inmate prior to the expiration of a mandatory minimum term, provided  
7 such inmate has demonstrated a meritorious effort in rehabilitation and  
8 at least two-thirds of the board members concur in such action:  
9 PROVIDED, That any inmate who has a mandatory minimum term and is  
10 paroled prior to the expiration of such term according to the  
11 provisions of this chapter shall not receive a conditional release from  
12 supervision while on parole until after the mandatory minimum term has  
13 expired.

14 An inmate serving a sentence fixed under this chapter, whether or  
15 not a mandatory minimum term has expired, may be granted an  
16 extraordinary medical placement by the secretary of corrections when  
17 authorized under RCW 9.94A.150(4).

18 **Sec. 5.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998  
19 c 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1 and 1998 c 206 s 1 are each  
20 reenacted and amended to read as follows:

21 (1) A person who is convicted of a violation of RCW 46.61.502 or  
22 46.61.504 and who has no prior offense within seven years shall be  
23 punished as follows:

24 (a) In the case of a person whose alcohol concentration was less  
25 than 0.15, or for whom for reasons other than the person's refusal to  
26 take a test offered pursuant to RCW 46.20.308 there is no test result  
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than one day nor more than one  
29 year. Twenty-four consecutive hours of the imprisonment may not be  
30 suspended or deferred unless the court finds that the imposition of  
31 this mandatory minimum sentence would impose a substantial risk to the  
32 offender's physical or mental well-being. Whenever the mandatory  
33 minimum sentence is suspended or deferred, the court shall state in  
34 writing the reason for granting the suspension or deferral and the  
35 facts upon which the suspension or deferral is based. In lieu of the  
36 mandatory minimum term of imprisonment required under this subsection  
37 (1)(a)(i), the court may order not less than fifteen days of electronic  
38 home monitoring. The offender shall pay the cost of electronic home



1 monitoring. The county or municipality in which the penalty is being  
2 imposed shall determine the cost. The court may also require the  
3 offender's electronic home monitoring device to include an alcohol  
4 detection breathalyzer, and the court may restrict the amount of  
5 alcohol the offender may consume during the time the offender is on  
6 electronic home monitoring; and

7 (ii) By a fine of not less than three hundred fifty dollars nor  
8 more than five thousand dollars. Three hundred fifty dollars of the  
9 fine may not be suspended or deferred unless the court finds the  
10 offender to be indigent; and

11 (iii) By suspension of the offender's license or permit to drive,  
12 or suspension of any nonresident privilege to drive, for a period of  
13 ninety days. The period of license, permit, or privilege suspension  
14 may not be suspended. The court shall notify the department of  
15 licensing of the conviction, and upon receiving notification of the  
16 conviction the department shall suspend the offender's license, permit,  
17 or privilege; or

18 (b) In the case of a person whose alcohol concentration was at  
19 least 0.15, or for whom by reason of the person's refusal to take a  
20 test offered pursuant to RCW 46.20.308 there is no test result  
21 indicating the person's alcohol concentration:

22 (i) By imprisonment for not less than two days nor more than one  
23 year. Two consecutive days of the imprisonment may not be suspended or  
24 deferred unless the court finds that the imposition of this mandatory  
25 minimum sentence would impose a substantial risk to the offender's  
26 physical or mental well-being. Whenever the mandatory minimum sentence  
27 is suspended or deferred, the court shall state in writing the reason  
28 for granting the suspension or deferral and the facts upon which the  
29 suspension or deferral is based. In lieu of the mandatory minimum term  
30 of imprisonment required under this subsection (1)(b)(i), the court may  
31 order not less than thirty days of electronic home monitoring. The  
32 offender shall pay the cost of electronic home monitoring. The county  
33 or municipality in which the penalty is being imposed shall determine  
34 the cost. The court may also require the offender's electronic home  
35 monitoring device to include an alcohol detection breathalyzer, and the  
36 court may restrict the amount of alcohol the offender may consume  
37 during the time the offender is on electronic home monitoring; and

38 (ii) By a fine of not less than five hundred dollars nor more than  
39 five thousand dollars. Five hundred dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be  
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,  
4 or suspension of any nonresident privilege to drive, for a period of  
5 one year. The period of license, permit, or privilege suspension may  
6 not be suspended. The court shall notify the department of licensing  
7 of the conviction, and upon receiving notification of the conviction  
8 the department shall suspend the offender's license, permit, or  
9 privilege; and

10 (iv) By a court-ordered restriction under RCW 46.20.720.

11 (2) A person who is convicted of a violation of RCW 46.61.502 or  
12 46.61.504 and who has one prior offense within seven years shall be  
13 punished as follows:

14 (a) In the case of a person whose alcohol concentration was less  
15 than 0.15, or for whom for reasons other than the person's refusal to  
16 take a test offered pursuant to RCW 46.20.308 there is no test result  
17 indicating the person's alcohol concentration:

18 (i) By imprisonment for not less than thirty days nor more than  
19 one year and sixty days of electronic home monitoring. The offender  
20 shall pay for the cost of the electronic monitoring. The county or  
21 municipality where the penalty is being imposed shall determine the  
22 cost. The court may also require the offender's electronic home  
23 monitoring device include an alcohol detection breathalyzer, and may  
24 restrict the amount of alcohol the offender may consume during the time  
25 the offender is on electronic home monitoring. Thirty days of  
26 imprisonment and sixty days of electronic home monitoring may not be  
27 suspended or deferred unless the court finds that the imposition of  
28 this mandatory minimum sentence would impose a substantial risk to the  
29 offender's physical or mental well-being. Whenever the mandatory  
30 minimum sentence is suspended or deferred, the court shall state in  
31 writing the reason for granting the suspension or deferral and the  
32 facts upon which the suspension or deferral is based; and

33 (ii) By a fine of not less than five hundred dollars nor more than  
34 five thousand dollars. Five hundred dollars of the fine may not be  
35 suspended or deferred unless the court finds the offender to be  
36 indigent; and

37 (iii) By revocation of the offender's license or permit to drive,  
38 or suspension of any nonresident privilege to drive, for a period of  
39 two years. The period of license, permit, or privilege revocation may

1 not be suspended. The court shall notify the department of licensing  
2 of the conviction, and upon receiving notification of the conviction  
3 the department shall revoke the offender's license, permit, or  
4 privilege; and

5 (iv) By a court-ordered restriction under RCW 46.20.720; or

6 (b) In the case of a person whose alcohol concentration was at  
7 least 0.15, or for whom by reason of the person's refusal to take a  
8 test offered pursuant to RCW 46.20.308 there is no test result  
9 indicating the person's alcohol concentration:

10 (i) By imprisonment for not less than forty-five days nor more  
11 than one year and ninety days of electronic home monitoring. The  
12 offender shall pay for the cost of the electronic monitoring. The  
13 county or municipality where the penalty is being imposed shall  
14 determine the cost. The court may also require the offender's  
15 electronic home monitoring device include an alcohol detection  
16 breathalyzer, and may restrict the amount of alcohol the offender may  
17 consume during the time the offender is on electronic home monitoring.  
18 Forty-five days of imprisonment and ninety days of electronic home  
19 monitoring may not be suspended or deferred unless the court finds that  
20 the imposition of this mandatory minimum sentence would impose a  
21 substantial risk to the offender's physical or mental well-being.  
22 Whenever the mandatory minimum sentence is suspended or deferred, the  
23 court shall state in writing the reason for granting the suspension or  
24 deferral and the facts upon which the suspension or deferral is based;  
25 and

26 (ii) By a fine of not less than seven hundred fifty dollars nor  
27 more than five thousand dollars. Seven hundred fifty dollars of the  
28 fine may not be suspended or deferred unless the court finds the  
29 offender to be indigent; and

30 (iii) By revocation of the offender's license or permit to drive,  
31 or suspension of any nonresident privilege to drive, for a period of  
32 nine hundred days. The period of license, permit, or privilege  
33 revocation may not be suspended. The court shall notify the department  
34 of licensing of the conviction, and upon receiving notification of the  
35 conviction the department shall revoke the offender's license, permit,  
36 or privilege; and

37 (iv) By a court-ordered restriction under RCW 46.20.720.

1 (3) A person who is convicted of a violation of RCW 46.61.502 or  
2 46.61.504 and who has two or more prior offenses within seven years  
3 shall be punished as follows:

4 (a) In the case of a person whose alcohol concentration was less  
5 than 0.15, or for whom for reasons other than the person's refusal to  
6 take a test offered pursuant to RCW 46.20.308 there is no test result  
7 indicating the person's alcohol concentration:

8 (i) By imprisonment for not less than ninety days nor more than  
9 one year and one hundred twenty days of electronic home monitoring.  
10 The offender shall pay for the cost of the electronic monitoring. The  
11 county or municipality where the penalty is being imposed shall  
12 determine the cost. The court may also require the offender's  
13 electronic home monitoring device include an alcohol detection  
14 breathalyzer, and may restrict the amount of alcohol the offender may  
15 consume during the time the offender is on electronic home monitoring.  
16 Ninety days of imprisonment and one hundred twenty days of electronic  
17 home monitoring may not be suspended or deferred unless the court finds  
18 that the imposition of this mandatory minimum sentence would impose a  
19 substantial risk to the offender's physical or mental well-being.  
20 Whenever the mandatory minimum sentence is suspended or deferred, the  
21 court shall state in writing the reason for granting the suspension or  
22 deferral and the facts upon which the suspension or deferral is based;  
23 and

24 (ii) By a fine of not less than one thousand dollars nor more than  
25 five thousand dollars. One thousand dollars of the fine may not be  
26 suspended or deferred unless the court finds the offender to be  
27 indigent; and

28 (iii) By revocation of the offender's license or permit to drive,  
29 or suspension of any nonresident privilege to drive, for a period of  
30 three years. The period of license, permit, or privilege revocation  
31 may not be suspended. The court shall notify the department of  
32 licensing of the conviction, and upon receiving notification of the  
33 conviction the department shall revoke the offender's license, permit,  
34 or privilege; and

35 (iv) By a court-ordered restriction under RCW 46.20.720; or

36 (b) In the case of a person whose alcohol concentration was at  
37 least 0.15, or for whom by reason of the person's refusal to take a  
38 test offered pursuant to RCW 46.20.308 there is no test result  
39 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than one hundred twenty days nor  
2 more than one year and one hundred fifty days of electronic home  
3 monitoring. The offender shall pay for the cost of the electronic  
4 monitoring. The county or municipality where the penalty is being  
5 imposed shall determine the cost. The court may also require the  
6 offender's electronic home monitoring device include an alcohol  
7 detection breathalyzer, and may restrict the amount of alcohol the  
8 offender may consume during the time the offender is on electronic home  
9 monitoring. One hundred twenty days of imprisonment and one hundred  
10 fifty days of electronic home monitoring may not be suspended or  
11 deferred unless the court finds that the imposition of this mandatory  
12 minimum sentence would impose a substantial risk to the offender's  
13 physical or mental well-being. Whenever the mandatory minimum sentence  
14 is suspended or deferred, the court shall state in writing the reason  
15 for granting the suspension or deferral and the facts upon which the  
16 suspension or deferral is based; and

17 (ii) By a fine of not less than one thousand five hundred dollars  
18 nor more than five thousand dollars. One thousand five hundred dollars  
19 of the fine may not be suspended or deferred unless the court finds the  
20 offender to be indigent; and

21 (iii) By revocation of the offender's license or permit to drive,  
22 or suspension of any nonresident privilege to drive, for a period of  
23 four years. The period of license, permit, or privilege revocation may  
24 not be suspended. The court shall notify the department of licensing  
25 of the conviction, and upon receiving notification of the conviction  
26 the department shall revoke the offender's license, permit, or  
27 privilege; and

28 (iv) By a court-ordered restriction under RCW 46.20.720.

29 (4) In exercising its discretion in setting penalties within the  
30 limits allowed by this section, the court shall particularly consider  
31 the following:

32 (a) Whether the person's driving at the time of the offense was  
33 responsible for injury or damage to another or another's property; and

34 (b) Whether the person was driving or in physical control of a  
35 vehicle with one or more passengers at the time of the offense.

36 (5) An offender punishable under this section is subject to the  
37 alcohol assessment and treatment provisions of RCW 46.61.5056.

38 (6) After expiration of any period of suspension or revocation of  
39 the offender's license, permit, or privilege to drive required by this

1 section, the department shall place the offender's driving privilege in  
2 probationary status pursuant to RCW 46.20.355.

3 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
4 sentence required by this section, whenever the court imposes less than  
5 one year in jail, the court shall also suspend but shall not defer a  
6 period of confinement for a period not exceeding five years. The court  
7 shall impose conditions of probation that include: (i) Not driving a  
8 motor vehicle within this state without a valid license to drive and  
9 proof of financial responsibility for the future; (ii) not driving a  
10 motor vehicle within this state while having an alcohol concentration  
11 of 0.08 or more within two hours after driving; and (iii) not refusing  
12 to submit to a test of his or her breath or blood to determine alcohol  
13 concentration upon request of a law enforcement officer who has  
14 reasonable grounds to believe the person was driving or was in actual  
15 physical control of a motor vehicle within this state while under the  
16 influence of intoxicating liquor. The court may impose conditions of  
17 probation that include nonrepetition, installation of an ignition  
18 interlock or other biological or technical device on the probationer's  
19 motor vehicle, alcohol or drug treatment, supervised probation, or  
20 other conditions that may be appropriate. The sentence may be imposed  
21 in whole or in part upon violation of a condition of probation during  
22 the suspension period.

23 (b) For each violation of mandatory conditions of probation under  
24 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall  
25 order the convicted person to be confined for thirty days, which shall  
26 not be suspended or deferred.

27 (c) For each incident involving a violation of a mandatory  
28 condition of probation imposed under this subsection, the license,  
29 permit, or privilege to drive of the person shall be suspended by the  
30 court for thirty days or, if such license, permit, or privilege to  
31 drive already is suspended, revoked, or denied at the time the finding  
32 of probation violation is made, the suspension, revocation, or denial  
33 then in effect shall be extended by thirty days. The court shall  
34 notify the department of any suspension, revocation, or denial or any  
35 extension of a suspension, revocation, or denial imposed under this  
36 subsection.

37 (8) An offender serving a sentence under this section, whether or  
38 not a mandatory minimum term has expired, may be granted an

1 extraordinary medical placement by the jail administrator subject to  
2 the standards and limitations set forth in RCW 9.94A.150(4).

3 (9) For purposes of this section:

4 (a) "Electronic home monitoring" shall not be considered  
5 confinement as defined in RCW 9.94A.030;

6 (b) A "prior offense" means any of the following:

7 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
8 local ordinance;

9 (ii) A conviction for a violation of RCW 46.61.504 or an  
10 equivalent local ordinance;

11 (iii) A conviction for a violation of RCW 46.61.520 committed  
12 while under the influence of intoxicating liquor or any drug;

13 (iv) A conviction for a violation of RCW 46.61.522 committed while  
14 under the influence of intoxicating liquor or any drug;

15 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
16 9A.36.050 or an equivalent local ordinance, if the conviction is the  
17 result of a charge that was originally filed as a violation of RCW  
18 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
19 46.61.520 or 46.61.522;

20 (vi) An out-of-state conviction for a violation that would have  
21 been a violation of (b)(i), (ii), (iii), (iv), or (v) of this  
22 subsection if committed in this state;

23 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
24 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
25 equivalent local ordinance; or

26 (viii) A deferred prosecution under chapter 10.05 RCW granted in  
27 a prosecution for a violation of RCW 46.61.5249, or an equivalent local  
28 ordinance, if the charge under which the deferred prosecution was  
29 granted was originally filed as a violation of RCW 46.61.502 or  
30 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
31 46.61.522; and

32 (c) "Within seven years" means that the arrest for a prior offense  
33 occurred within seven years of the arrest for the current offense.

34 **Sec. 6.** RCW 69.50.410 and 1975-'76 2nd ex.s. c 103 s 1 are each  
35 amended to read as follows:

36 (1) Except as authorized by this chapter it shall be unlawful for  
37 any person to sell for profit any controlled substance or counterfeit

1 substance classified in Schedule I, RCW 69.50.204, except leaves and  
2 flowering tops of marihuana.

3 For the purposes of this section only, the following words and  
4 phrases shall have the following meanings:

5 (a) "To sell" means the passing of title and possession of a  
6 controlled substance from the seller to the buyer for a price whether  
7 or not the price is paid immediately or at a future date.

8 (b) "For profit" means the obtaining of anything of value in  
9 exchange for a controlled substance.

10 (c) "Price" means anything of value.

11 (2) Any person convicted of a violation of subsection (1) of this  
12 section shall receive a sentence of not more than five years in a  
13 correctional facility of the department of social and health services  
14 for the first offense. Any person convicted on a second or subsequent  
15 cause, the sale having transpired after prosecution and conviction on  
16 the first cause, of subsection (1) of this section shall receive a  
17 mandatory sentence of five years in a correctional facility of the  
18 department of social and health services and no judge of any court  
19 shall suspend or defer the sentence imposed for the second or  
20 subsequent violation of subsection (1) of this section.

21 (3) Any person convicted of a violation of subsection (1) of this  
22 section by selling heroin shall receive a mandatory sentence of two  
23 years in a correctional facility of the department of social and health  
24 services and no judge of any court shall suspend or defer the sentence  
25 imposed for such violation. Any person convicted on a second or  
26 subsequent sale of heroin, the sale having transpired after prosecution  
27 and conviction on the first cause of the sale of heroin shall receive  
28 a mandatory sentence of ten years in a correctional facility of the  
29 department of social and health services and no judge of any court  
30 shall suspend or defer the sentence imposed for this second or  
31 subsequent violation: PROVIDED, That the indeterminate sentence review  
32 board ((of prison terms and paroles)) under RCW 9.95.040 shall not  
33 reduce the minimum term imposed for a violation under this subsection.

34 (4) Whether or not a mandatory minimum term has expired, an  
35 offender serving a sentence under this section may be granted an  
36 extraordinary medical placement when authorized under RCW 9.94A.150(4).

37 (5) In addition to the sentences provided in subsection (2) of  
38 this section, any person convicted of a violation of subsection (1) of  
39 this section shall be fined in an amount calculated to at least



1 eliminate any and all proceeds or profits directly or indirectly gained  
2 by such person as a result of sales of controlled substances in  
3 violation of the laws of this or other states, or the United States, up  
4 to the amount of five hundred thousand dollars on each count.

5 ~~((+5))~~ (6) Any person, addicted to the use of controlled  
6 substances, who voluntarily applies to the department of social and  
7 health services for the purpose of participating in a rehabilitation  
8 program approved by the department for addicts of controlled substances  
9 shall be immune from prosecution for subsection (1) offenses unless a  
10 filing of an information or indictment against such person for a  
11 violation of subsection (1) of this section is made prior to his or her  
12 voluntary participation in the program of the department of social and  
13 health services. All applications for immunity under this section  
14 shall be sent to the department of social and health services in  
15 Olympia. It shall be the duty of the department to stamp each  
16 application received pursuant to this section with the date and time of  
17 receipt.

18 This section shall not apply to offenses defined and punishable  
19 under the provisions of RCW 69.50.401 (~~as now or hereafter amended~~).

20 NEW SECTION. Sec. 7. A new section is added to chapter 72.09 RCW  
21 to read as follows:

22 The secretary shall report annually to the legislature on the  
23 number of offenders considered for an extraordinary medical placement,  
24 the number of offenders who were granted such a placement, the number  
25 of offenders who were denied such a placement, the length of time  
26 between initial consideration and the placement decision for each  
27 offender who was granted an extraordinary medical placement, the number  
28 of offenders granted an extraordinary medical placement who were later  
29 returned to total confinement, and the cost savings realized by the  
30 state."

31 **HB 1299** - S COMM AMD  
32 By Committee on Human Services & Corrections

33 ADOPTED 4/6/99

34 On page 1, line 1 of the title, after "offenders;" strike the  
35 remainder of the title and insert "amending RCW 9.94A.150, 9.94A.120,

1 and 69.50.410; reenacting and amending RCW 9.94A.310, 9.95.040, and  
2 46.61.5055; and adding a new section to chapter 72.09 RCW."

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