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**SUBSTITUTE HOUSE BILL 1006**

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**State of Washington**

**56th Legislature**

**1999 Regular Session**

**By** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Ballasiotes, O'Brien, Benson, Radcliff, Quall, Mitchell, Dickerson, Cairnes, Hurst, Alexander and Lambert)

Read first time 02/19/1999.

1 AN ACT Relating to sentencing for crimes involving drugs or  
2 alcohol; amending RCW 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.137, and  
3 9.94A.390; reenacting and amending RCW 9.94A.380; adding a new section  
4 to chapter 9.94A RCW; adding a new section to chapter 10.01 RCW; adding  
5 a new section to chapter 2.28 RCW; adding a new section to chapter  
6 70.96A RCW; creating new sections; prescribing penalties; and making an  
7 appropriation.

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

9 **Sec. 1.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read  
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Collect," or any derivative thereof, "collect and remit," or  
14 "collect and deliver," when used with reference to the department of  
15 corrections, means that the department is responsible for monitoring  
16 and enforcing the offender's sentence with regard to the legal  
17 financial obligation, receiving payment thereof from the offender, and,  
18 consistent with current law, delivering daily the entire payment to the  
19 superior court clerk without depositing it in a departmental account.

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

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

5 (4) "Community custody" means that portion of an inmate's sentence  
6 of confinement in lieu of earned early release time or imposed pursuant  
7 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to  
8 controls placed on the inmate's movement and activities by the  
9 department of corrections.

10 (5) "Community placement" means that period during which the  
11 offender is subject to the conditions of community custody and/or  
12 postrelease supervision, which begins either upon completion of the  
13 term of confinement (postrelease supervision) or at such time as the  
14 offender is transferred to community custody in lieu of earned early  
15 release. Community placement may consist of entirely community  
16 custody, entirely postrelease supervision, or a combination of the two.

17 (6) "Community service" means compulsory service, without  
18 compensation, performed for the benefit of the community by the  
19 offender.

20 (7) "Community supervision" means a period of time during which a  
21 convicted offender is subject to crime-related prohibitions and other  
22 sentence conditions imposed by a court pursuant to this chapter or RCW  
23 16.52.200(6) or 46.61.524. For first-time offenders, the supervision  
24 may include crime-related prohibitions and other conditions imposed  
25 pursuant to RCW 9.94A.120(5). Where the court finds that any offender  
26 has a chemical dependency that has contributed to his or her offense,  
27 the conditions of supervision may include treatment. For purposes of  
28 the interstate compact for out-of-state supervision of parolees and  
29 probationers, RCW 9.95.270, community supervision is the functional  
30 equivalent of probation and should be considered the same as probation  
31 by other states.

32 (8) "Confinement" means total or partial confinement as defined in  
33 this section.

34 (9) "Conviction" means an adjudication of guilt pursuant to Titles  
35 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
36 acceptance of a plea of guilty.

37 (10) "Court-ordered legal financial obligation" means a sum of  
38 money that is ordered by a superior court of the state of Washington  
39 for legal financial obligations which may include restitution to the

1 victim, statutorily imposed crime victims' compensation fees as  
2 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
3 drug funds, court-appointed attorneys' fees, and costs of defense,  
4 fines, and any other financial obligation that is assessed to the  
5 offender as a result of a felony conviction. Upon conviction for  
6 vehicular assault while under the influence of intoxicating liquor or  
7 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
8 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
9 legal financial obligations may also include payment to a public agency  
10 of the expense of an emergency response to the incident resulting in  
11 the conviction, subject to the provisions in RCW 38.52.430.

12 (11) "Crime-related prohibition" means an order of a court  
13 prohibiting conduct that directly relates to the circumstances of the  
14 crime for which the offender has been convicted, and shall not be  
15 construed to mean orders directing an offender affirmatively to  
16 participate in rehabilitative programs or to otherwise perform  
17 affirmative conduct. However, affirmative acts necessary to monitor  
18 compliance with the order of a court may be required by the department.

19 (12) "Criminal history" means the list of a defendant's prior  
20 convictions and juvenile adjudications, whether in this state, in  
21 federal court, or elsewhere. The history shall include, where known,  
22 for each conviction (a) whether the defendant has been placed on  
23 probation and the length and terms thereof; and (b) whether the  
24 defendant has been incarcerated and the length of incarceration.

25 (13) "Day fine" means a fine imposed by the sentencing judge that  
26 equals the difference between the offender's net daily income and the  
27 reasonable obligations that the offender has for the support of the  
28 offender and any dependents.

29 (14) "Day reporting" means a program of enhanced supervision  
30 designed to monitor the defendant's daily activities and compliance  
31 with sentence conditions, and in which the defendant is required to  
32 report daily to a specific location designated by the department or the  
33 sentencing judge.

34 (15) "Department" means the department of corrections.

35 (16) "Determinate sentence" means a sentence that states with  
36 exactitude the number of actual years, months, or days of total  
37 confinement, of partial confinement, of community supervision, the  
38 number of actual hours or days of community service work, or dollars or  
39 terms of a legal financial obligation. The fact that an offender

1 through "earned early release" can reduce the actual period of  
2 confinement shall not affect the classification of the sentence as a  
3 determinate sentence.

4 (17) "Disposable earnings" means that part of the earnings of an  
5 individual remaining after the deduction from those earnings of any  
6 amount required by law to be withheld. For the purposes of this  
7 definition, "earnings" means compensation paid or payable for personal  
8 services, whether denominated as wages, salary, commission, bonuses, or  
9 otherwise, and, notwithstanding any other provision of law making the  
10 payments exempt from garnishment, attachment, or other process to  
11 satisfy a court-ordered legal financial obligation, specifically  
12 includes periodic payments pursuant to pension or retirement programs,  
13 or insurance policies of any type, but does not include payments made  
14 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
15 or Title 74 RCW.

16 (18) "Drug offense" means:

17 (a) Any felony violation of chapter 69.50 RCW except possession of  
18 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
19 controlled substance (RCW 69.50.403);

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

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

26 (19) "Escape" means:

27 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
28 second degree (RCW 9A.76.120), willful failure to return from furlough  
29 (RCW 72.66.060), willful failure to return from work release (RCW  
30 72.65.070), or willful failure to be available for supervision by the  
31 department while in community custody (RCW 72.09.310); or

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

35 (20) "Felony traffic offense" means:

36 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
37 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
38 and-run injury-accident (RCW 46.52.020(4)); or

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

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

6 (22) "First-time offender" means any person who is convicted of a  
7 felony (a) not classified as a violent offense or a sex offense under  
8 this chapter, or (b) that is not the manufacture, delivery, or  
9 possession with intent to manufacture or deliver a controlled substance  
10 classified in Schedule I or II that is a narcotic drug or flunitrazepam  
11 classified in Schedule IV, nor the manufacture, delivery, or possession  
12 with intent to deliver methamphetamine, its salts, isomers, and salts  
13 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for  
14 profit of any controlled substance or counterfeit substance classified  
15 in Schedule I, RCW 69.50.204, except leaves and flowering tops of  
16 marihuana, who previously has never been convicted of a felony in this  
17 state, federal court, or another state, and who has never participated  
18 in a program of deferred prosecution for a felony offense.

19 (23) "Most serious offense" means any of the following felonies or  
20 a felony attempt to commit any of the following felonies, as now  
21 existing or hereafter amended:

22 (a) Any felony defined under any law as a class A felony or  
23 criminal solicitation of or criminal conspiracy to commit a class A  
24 felony;

25 (b) Assault in the second degree;

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

27 (d) Child molestation in the second degree;

28 (e) Controlled substance homicide;

29 (f) Extortion in the first degree;

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

31 (h) Indecent liberties;

32 (i) Kidnapping in the second degree;

33 (j) Leading organized crime;

34 (k) Manslaughter in the first degree;

35 (l) Manslaughter in the second degree;

36 (m) Promoting prostitution in the first degree;

37 (n) Rape in the third degree;

38 (o) Robbery in the second degree;

39 (p) Sexual exploitation;

1 (q) Vehicular assault;

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

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

8 (t) Any other felony with a deadly weapon verdict under RCW  
9 9.94A.125;

10 (u) Any felony offense in effect at any time prior to December 2,  
11 1993, that is comparable to a most serious offense under this  
12 subsection, or any federal or out-of-state conviction for an offense  
13 that under the laws of this state would be a felony classified as a  
14 most serious offense under this subsection;

15 (v)(i) A prior conviction for indecent liberties under RCW  
16 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
17 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
18 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
19 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

20 (ii) A prior conviction for indecent liberties under RCW  
21 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
22 if: (A) The crime was committed against a child under the age of  
23 fourteen; or (B) the relationship between the victim and perpetrator is  
24 included in the definition of indecent liberties under RCW  
25 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
26 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
27 through July 27, 1997.

28 (24) "Nonviolent offense" means an offense which is not a violent  
29 offense.

30 (25) "Offender" means a person who has committed a felony  
31 established by state law and is eighteen years of age or older or is  
32 less than eighteen years of age but whose case is under superior court  
33 jurisdiction under RCW 13.04.030 or has been transferred by the  
34 appropriate juvenile court to a criminal court pursuant to RCW  
35 13.40.110. Throughout this chapter, the terms "offender" and  
36 "defendant" are used interchangeably.

37 (26) "Partial confinement" means confinement for no more than one  
38 year in a facility or institution operated or utilized under contract  
39 by the state or any other unit of government, or, if home detention or

1 work crew has been ordered by the court, in an approved residence, for  
2 a substantial portion of each day with the balance of the day spent in  
3 the community. Partial confinement includes work release, home  
4 detention, work crew, and a combination of work crew and home detention  
5 as defined in this section.

6 (27) "Persistent offender" is an offender who:

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

9 (ii) Has, before the commission of the offense under (a) of this  
10 subsection, been convicted as an offender on at least two separate  
11 occasions, whether in this state or elsewhere, of felonies that under  
12 the laws of this state would be considered most serious offenses and  
13 would be included in the offender score under RCW 9.94A.360; provided  
14 that of the two or more previous convictions, at least one conviction  
15 must have occurred before the commission of any of the other most  
16 serious offenses for which the offender was previously convicted; or

17 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
18 of a child in the first degree, child molestation in the first degree,  
19 rape in the second degree, rape of a child in the second degree, or  
20 indecent liberties by forcible compulsion; (B) murder in the first  
21 degree, murder in the second degree, homicide by abuse, kidnapping in  
22 the first degree, kidnapping in the second degree, assault in the first  
23 degree, assault in the second degree, assault of a child in the first  
24 degree, or burglary in the first degree, with a finding of sexual  
25 motivation; or (C) an attempt to commit any crime listed in this  
26 subsection (27)(b)(i); and

27 (ii) Has, before the commission of the offense under (b)(i) of this  
28 subsection, been convicted as an offender on at least one occasion,  
29 whether in this state or elsewhere, of an offense listed in (b)(i) of  
30 this subsection. A conviction for rape of a child in the first degree  
31 constitutes a conviction under subsection (27)(b)(i) only when the  
32 offender was sixteen years of age or older when the offender committed  
33 the offense. A conviction for rape of a child in the second degree  
34 constitutes a conviction under subsection (27)(b)(i) only when the  
35 offender was eighteen years of age or older when the offender committed  
36 the offense.

37 (28) "Postrelease supervision" is that portion of an offender's  
38 community placement that is not community custody.

1 (29) "Restitution" means the requirement that the offender pay a  
2 specific sum of money over a specific period of time to the court as  
3 payment of damages. The sum may include both public and private costs.  
4 The imposition of a restitution order does not preclude civil redress.

5 (30) "Serious traffic offense" means:

6 (a) Driving while under the influence of intoxicating liquor or any  
7 drug (RCW 46.61.502), actual physical control while under the influence  
8 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving  
9 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
10 or

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

14 (31) "Serious violent offense" is a subcategory of violent offense  
15 and means:

16 (a) Murder in the first degree, homicide by abuse, murder in the  
17 second degree, manslaughter in the first degree, assault in the first  
18 degree, kidnapping in the first degree, or rape in the first degree,  
19 assault of a child in the first degree, or an attempt, criminal  
20 solicitation, or criminal conspiracy to commit one of these felonies;  
21 or

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

25 (32) "Sentence range" means the sentencing court's discretionary  
26 range in imposing a nonappealable sentence.

27 (33) "Sex offense" means:

28 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
29 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
30 criminal attempt, criminal solicitation, or criminal conspiracy to  
31 commit such crimes;

32 (b) A felony with a finding of sexual motivation under RCW  
33 9.94A.127 or 13.40.135; or

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

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



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

5 (36) "Transition training" means written and verbal instructions  
6 and assistance provided by the department to the offender during the  
7 two weeks prior to the offender's successful completion of the work  
8 ethic camp program. The transition training shall include instructions  
9 in the offender's requirements and obligations during the offender's  
10 period of community custody.

11 (37) "Victim" means any person who has sustained emotional,  
12 psychological, physical, or financial injury to person or property as  
13 a direct result of the crime charged.

14 (38) "Violent offense" means:

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

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

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

34 (39) "Work crew" means a program of partial confinement consisting  
35 of civic improvement tasks for the benefit of the community of not less  
36 than thirty-five hours per week that complies with RCW 9.94A.135. The  
37 civic improvement tasks shall have minimal negative impact on existing  
38 private industries or the labor force in the county where the service  
39 or labor is performed. The civic improvement tasks shall not affect

1 employment opportunities for people with developmental disabilities  
2 contracted through sheltered workshops as defined in RCW 82.04.385.  
3 Only those offenders sentenced to a facility operated or utilized under  
4 contract by a county or the state are eligible to participate on a work  
5 crew. Offenders sentenced for a sex offense as defined in subsection  
6 (33) of this section are not eligible for the work crew program.

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

13 (41) "Work release" means a program of partial confinement  
14 available to offenders who are employed or engaged as a student in a  
15 regular course of study at school. Participation in work release shall  
16 be conditioned upon the offender attending work or school at regularly  
17 defined hours and abiding by the rules of the work release facility.

18 (42) "Home detention" means a program of partial confinement  
19 available to offenders wherein the offender is confined in a private  
20 residence subject to electronic surveillance.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW  
22 to read as follows:

23 (1) Where the court finds that the offender has a chemical  
24 dependency that has contributed to his or her offense, the court may,  
25 as a condition of the sentence, order the offender to participate in  
26 rehabilitative programs or otherwise to perform affirmative conduct  
27 reasonably related to the circumstances of the crime for which the  
28 offender has been convicted and reasonably necessary or beneficial to  
29 the offender and the community in rehabilitating the offender.

30 (2) This section applies to sentences which include any term other  
31 than, or in addition to, a term of total confinement, including  
32 suspended sentences.

33 **Sec. 3.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read  
34 as follows:

35 Before imposing a sentence upon a defendant, the court shall  
36 conduct a sentencing hearing. The sentencing hearing shall be held  
37 within forty court days following conviction. Upon the motion of

1 either party for good cause shown, or on its own motion, the court may  
2 extend the time period for conducting the sentencing hearing.

3 Unless specifically waived by the court, the court shall order the  
4 department to complete a chemical dependency screening report before  
5 imposing a sentence upon a defendant who has been convicted of a  
6 violation of the uniform controlled substances act under chapter 69.50  
7 RCW or where the court finds that the offender has a chemical  
8 dependency that has contributed to his or her offense. In addition,  
9 the court shall order the department to complete a presentence report  
10 before imposing a sentence upon a defendant who has been convicted of  
11 a felony sexual offense. The department of corrections shall give  
12 priority to presentence investigations for sexual offenders. If the  
13 court determines that the defendant may be a mentally ill person as  
14 defined in RCW 71.24.025, although the defendant has not established  
15 that at the time of the crime he or she lacked the capacity to commit  
16 the crime, was incompetent to commit the crime, or was insane at the  
17 time of the crime, the court shall order the department to complete a  
18 presentence report before imposing a sentence.

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

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

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

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

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

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

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

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

1 (5) In sentencing a first-time offender the court may waive the  
2 imposition of a sentence within the sentence range and impose a  
3 sentence which may include up to ninety days of confinement in a  
4 facility operated or utilized under contract by the county and a  
5 requirement that the offender refrain from committing new offenses.  
6 The sentence may also include up to two years of community supervision,  
7 which, in addition to crime-related prohibitions, may include  
8 requirements that the offender perform any one or more of the  
9 following:

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

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

14 (c) Pursue a prescribed, secular course of study or vocational  
15 training;

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

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

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

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

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

32 (ii) The offender has no current or prior convictions for a  
33 ~~((felony))~~ sex offense or violent offense in this state, another state,  
34 or the United States; ~~((and))~~

35 (iii) For violations of the uniform controlled substances act under  
36 chapter 69.50 RCW, the offense involved only a small quantity of the  
37 particular controlled substance as determined by the judge upon  
38 consideration of such factors as the weight, purity, packaging, sale  
39 price, and street value of the controlled substance; and

1 (iv) The offender has not been found by the United States attorney  
2 general to be subject to a deportation detainer or order.

3 (b) If the ~~((midpoint of the))~~ standard range is greater than one  
4 year and the sentencing judge determines that the offender is eligible  
5 for this option and that the offender and the community will benefit  
6 from the use of the special drug offender sentencing alternative, the  
7 judge may waive imposition of a sentence within the standard range and  
8 impose a sentence that must include a period of total confinement in a  
9 state facility for one-half of the midpoint of the standard range.  
10 During incarceration in the state facility, offenders sentenced under  
11 this subsection shall undergo a comprehensive substance abuse  
12 assessment and receive, within available resources, treatment services  
13 appropriate for the offender. The treatment services shall be designed  
14 by the division of alcohol and substance abuse of the department of  
15 social and health services, in cooperation with the department of  
16 corrections. ~~((If the midpoint of the standard range is twenty four  
17 months or less, no more than three months of the sentence may be served  
18 in a work release status.))~~

19 The court shall also impose ~~((one year of concurrent community  
20 custody and community supervision that))~~:

21 (i) The remainder of the midpoint of the standard range as a term  
22 of community custody which must include appropriate ~~((outpatient))~~  
23 substance abuse treatment((7)) in a program that has been approved by  
24 the division of alcohol and substance abuse of the department of social  
25 and health services;

26 (ii) Crime-related prohibitions including a condition not to use  
27 illegal controlled substances((7)); and

28 (iii) A requirement to submit to urinalysis or other testing to  
29 monitor that status.

30 The court may prohibit the offender from using alcohol or  
31 controlled substances and may require that the monitoring for  
32 controlled substances be conducted by the department or by a treatment  
33 alternatives to street crime program or a comparable court or agency-  
34 referred program. The offender may be required to pay thirty dollars  
35 per month while on community custody to offset the cost of monitoring.  
36 In addition, the court shall impose three or more of the following  
37 conditions:

38 ~~((+i))~~ (A) Devote time to a specific employment or training;

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

4        ~~((iii))~~ (C) Report as directed to a community corrections  
5 officer;

6        ~~((iv))~~ (D) Pay all court-ordered legal financial obligations;

7        ~~((v))~~ (E) Perform community service work;

8        ~~((vi))~~ (F) Stay out of areas designated by the sentencing judge;

9        (G) Such other conditions as the court may require such as  
10 affirmative conditions.

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

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

34        (e) An offender who fails to complete the special drug offender  
35 sentencing alternative program, who is administratively terminated from  
36 the program, or who otherwise violates any conditions of supervision as  
37 defined by the department, may be reclassified to serve the unexpired  
38 term of his or her sentence as ordered by the sentencing judge and  
39 shall be subject to all rules relating to earned early release time.

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. 5.** RCW 9.94A.137 and 1995 1st sp.s. c 19 s 20 are each  
18 amended to read as follows:

19 (1)(a) An offender is eligible to be sentenced to a work ethic camp  
20 if the offender:

21 (i) Is sentenced to a term of total confinement of not less than  
22 ~~((sixteen))~~ twelve months and one day or more than thirty-six months;  
23 ~~((and))~~

24 (ii) Has no current or prior convictions for any sex offenses or  
25 for violent offenses ~~((other than drug offenses for manufacturing,~~  
26 ~~possession, delivery, or intent to deliver a controlled substance))~~  
27 and

28 (iii) Has no current violations of the uniform controlled  
29 substances act under chapter 69.50 RCW.

30 (b) The length of the work ethic camp shall be at least one hundred  
31 twenty days and not more than one hundred eighty days. ~~((Because of~~  
32 ~~the conversion ratio, earned early release time shall not accrue to~~  
33 ~~offenders who successfully complete the program.))~~

34 (2) If the sentencing judge determines that the offender is  
35 eligible for the work ethic camp and is likely to qualify under  
36 subsection (3) of this section, the judge shall impose a sentence  
37 within the standard range and may recommend that the offender serve the  
38 sentence at a work ethic camp. ~~((The sentence shall provide that if~~

1 ~~the offender successfully completes the program, the department shall~~  
2 ~~convert the period of work ethic camp confinement at the rate of one~~  
3 ~~day of work ethic camp confinement to three days of total standard~~  
4 ~~confinement.)~~) In sentencing an offender to the work ethic camp, the  
5 court shall specify: (a) That upon completion of the work ethic camp  
6 the offender shall be released on community custody for any remaining  
7 time of total confinement; (b) the applicable conditions of supervision  
8 on community custody status as required by RCW 9.94A.120(9)(b) and  
9 authorized by RCW 9.94A.120(9)(c); and (c) that violation of the  
10 conditions may result in a return to total confinement for the balance  
11 of the offender's remaining time of confinement.

12 (3) The department shall place the offender in the work ethic camp  
13 program, subject to capacity, unless: (a) The department determines  
14 that the offender has physical or mental impairments that would prevent  
15 participation and completion of the program; (b) the department  
16 determines that the offender's custody level prevents placement in the  
17 program; ~~((or))~~ (c) the offender refuses to agree to the terms and  
18 conditions of the program; (d) the offender has been found by the  
19 United States attorney general to be subject to a deportation detainer  
20 or order; or (e) the offender has participated in the work ethic camp  
21 program in the past.

22 (4) An offender who fails to complete the work ethic camp program,  
23 who is administratively terminated from the program, or who otherwise  
24 violates any conditions of supervision, as defined by the department,  
25 shall be reclassified to serve the unexpired term of his or her  
26 sentence as ordered by the sentencing judge and shall be subject to all  
27 rules relating to earned early release time.

28 (5) During the last two weeks prior to release from the work ethic  
29 camp program the department shall provide the offender with  
30 comprehensive transition training.

31 **Sec. 6.** RCW 9.94A.380 and 1988 c 157 s 4 and 1988 c 155 s 3 are  
32 each reenacted and amended to read as follows:

33 Alternatives to total confinement are available for offenders with  
34 sentences of one year or less. These alternatives include the  
35 following sentence conditions that the court may order as substitutes  
36 for total confinement:

37 (1) One day of partial confinement may be substituted for one day  
38 of total confinement;

1 (2) In addition, for offenders convicted of nonviolent offenses  
2 only, eight hours of community service may be substituted for one day  
3 of total confinement, with a maximum conversion limit of two hundred  
4 forty hours or thirty days. Community service hours must be completed  
5 within the period of community supervision or a time period specified  
6 by the court, which shall not exceed twenty-four months, pursuant to a  
7 schedule determined by the department; and

8 (3) For offenders convicted of nonviolent and nonsex offenses, the  
9 court may authorize county jails to convert jail confinement to an  
10 available county supervised community option and may require the  
11 offender to perform affirmative conduct pursuant to section 2 of this  
12 act.

13 For sentences of nonviolent offenders for one year or less, the  
14 court shall consider and give priority to available alternatives to  
15 total confinement and shall state its reasons in writing on the  
16 judgment and sentence form if the alternatives are not used.

17 **Sec. 7.** RCW 9.94A.390 and 1997 c 52 s 4 are each amended to read  
18 as follows:

19 If the sentencing court finds that an exceptional sentence outside  
20 the standard range should be imposed in accordance with RCW  
21 9.94A.120(2), the sentence is subject to review only as provided for in  
22 RCW 9.94A.210(4).

23 The following are illustrative factors which the court may consider  
24 in the exercise of its discretion to impose an exceptional sentence.  
25 The following are illustrative only and are not intended to be  
26 exclusive reasons for exceptional sentences.

27 (1) Mitigating Circumstances

28 (a) To a significant degree, the victim was an initiator, willing  
29 participant, aggressor, or provoker of the incident.

30 (b) Before detection, the defendant compensated, or made a good  
31 faith effort to compensate, the victim of the criminal conduct for any  
32 damage or injury sustained.

33 (c) The defendant committed the crime under duress, coercion,  
34 threat, or compulsion insufficient to constitute a complete defense but  
35 which significantly affected his or her conduct.

36 (d) The defendant, with no apparent predisposition to do so, was  
37 induced by others to participate in the crime.

1 (e) The defendant's capacity to appreciate the wrongfulness of his  
2 or her conduct or to conform his or her conduct to the requirements of  
3 the law, was significantly impaired (voluntary use of drugs or alcohol  
4 is excluded).

5 (f) The offense was principally accomplished by another person and  
6 the defendant manifested extreme caution or sincere concern for the  
7 safety or well-being of the victim.

8 (g) The operation of the multiple offense policy of RCW 9.94A.400  
9 results in a presumptive sentence that is clearly excessive in light of  
10 the purpose of this chapter, as expressed in RCW 9.94A.010.

11 (h) The defendant or the defendant's children suffered a continuing  
12 pattern of physical or sexual abuse by the victim of the offense and  
13 the offense is a response to that abuse.

14 (i) The current offense was a violation of the uniform controlled  
15 substances act under chapter 69.50 RCW related to trafficking in  
16 controlled substances that was less onerous than the typical offense of  
17 its statutory definition. The presence of the following may identify  
18 a current offense as a less onerous violation of the uniform controlled  
19 substances act:

20 (i) The current offense involved an attempted or actual sale or  
21 transfer of controlled substances in a quantity substantially smaller  
22 than is typical for the offense; or

23 (ii) The circumstances of the current offense reveal the offender  
24 to have occupied a low position in the controlled substance  
25 distribution hierarchy and the motivation for the offense was primarily  
26 to obtain controlled substances for personal use.

27 (2) Aggravating Circumstances

28 (a) The defendant's conduct during the commission of the current  
29 offense manifested deliberate cruelty to the victim.

30 (b) The defendant knew or should have known that the victim of the  
31 current offense was particularly vulnerable or incapable of resistance  
32 due to extreme youth, advanced age, disability, or ill health.

33 (c) The current offense was a violent offense, and the defendant  
34 knew that the victim of the current offense was pregnant.

35 (d) The current offense was a major economic offense or series of  
36 offenses, so identified by a consideration of any of the following  
37 factors:

38 (i) The current offense involved multiple victims or multiple  
39 incidents per victim;

1 (ii) The current offense involved attempted or actual monetary loss  
2 substantially greater than typical for the offense;

3 (iii) The current offense involved a high degree of sophistication  
4 or planning or occurred over a lengthy period of time; or

5 (iv) The defendant used his or her position of trust, confidence,  
6 or fiduciary responsibility to facilitate the commission of the current  
7 offense.

8 (e) The current offense was a major violation of the Uniform  
9 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
10 trafficking in controlled substances, which was more onerous than the  
11 typical offense of its statutory definition: The presence of ANY of  
12 the following may identify a current offense as a major VUCSA:

13 (i) The current offense involved at least three separate  
14 transactions in which controlled substances were sold, transferred, or  
15 possessed with intent to do so;

16 (ii) The current offense involved an attempted or actual sale or  
17 transfer of controlled substances in quantities substantially larger  
18 than for personal use;

19 (iii) The current offense involved the manufacture of controlled  
20 substances for use by other parties;

21 (iv) The circumstances of the current offense reveal the offender  
22 to have occupied a high position in the drug distribution hierarchy;

23 (v) The current offense involved a high degree of sophistication or  
24 planning or occurred over a lengthy period of time or involved a broad  
25 geographic area of disbursement; or

26 (vi) The offender used his or her position or status to facilitate  
27 the commission of the current offense, including positions of trust,  
28 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
29 other medical professional).

30 (f) The current offense included a finding of sexual motivation  
31 pursuant to RCW 9.94A.127.

32 (g) The offense was part of an ongoing pattern of sexual abuse of  
33 the same victim under the age of eighteen years manifested by multiple  
34 incidents over a prolonged period of time.

35 (h) The current offense involved domestic violence, as defined in  
36 RCW 10.99.020 and one or more of the following was present:

37 (i) The offense was part of an ongoing pattern of psychological,  
38 physical, or sexual abuse of the victim manifested by multiple  
39 incidents over a prolonged period of time;

1 (ii) The offense occurred within sight or sound of the victim's or  
2 the offender's minor children under the age of eighteen years; or

3 (iii) The offender's conduct during the commission of the current  
4 offense manifested deliberate cruelty or intimidation of the victim.

5 (i) The operation of the multiple offense policy of RCW 9.94A.400  
6 results in a presumptive sentence that is clearly too lenient in light  
7 of the purpose of this chapter, as expressed in RCW 9.94A.010.

8 (j) The defendant's prior unscored misdemeanor or prior unscored  
9 foreign criminal history results in a presumptive sentence that is  
10 clearly too lenient in light of the purpose of this chapter as  
11 expressed in RCW 9.94A.010.

12 (k) The offense resulted in the pregnancy of a child victim of  
13 rape.

14 NEW SECTION. **Sec. 8.** The legislature recognizes the utility of  
15 drug court programs in reducing recidivism and assisting the courts by  
16 diverting potential offenders from the normal course of criminal trial  
17 proceedings.

18 NEW SECTION. **Sec. 9.** A new section is added to chapter 10.01 RCW  
19 to read as follows:

20 (1) The superior and district courts of Washington may establish  
21 drug court programs to accept offenders that have been diverted by the  
22 courts from the normal course of prosecution for drug offenses.

23 (2) Pursuant to this section, "drug court" is defined as a program  
24 that meets the criteria set forth in section 11 of this act.

25 NEW SECTION. **Sec. 10.** A new section is added to chapter 2.28 RCW  
26 to read as follows:

27 Counties may establish and operate drug courts, as defined in  
28 section 11 of this act.

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.96A  
30 RCW to read as follows:

31 (1) The department shall contract with counties operating drug  
32 courts and counties in the process of implementing new drug courts for  
33 the provision of drug and alcohol treatment services. At least eighty  
34 percent of funds provided pursuant to this section shall be used for  
35 direct services to clients, with not more than ten percent to be used

1 for administration and an outcome evaluation, including measures of  
2 recidivism and reoffense rates.

3 (2) For the purposes of this section, "drug court" means a court  
4 that has special calendars or dockets designed to achieve a reduction  
5 in recidivism and substance abuse among nonviolent, substance abusing  
6 offenders by increasing their likelihood for successful rehabilitation  
7 through early, continuous, and intense judicially supervised treatment;  
8 mandatory periodic drug testing; and the use of appropriate sanctions  
9 and other rehabilitation services.

10 NEW SECTION. **Sec. 12.** The sum of four million dollars, or as much  
11 thereof as may be necessary, is appropriated for the biennium ending  
12 June 30, 2001, from the general fund to the department of social and  
13 health services for the purposes of section 11 of this act.

14 NEW SECTION. **Sec. 13.** The department of corrections must develop  
15 criteria for successful completion of the special drug offender  
16 sentencing alternative program by December 31, 1999.

17 NEW SECTION. **Sec. 14.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

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