
HOUSE BILL 1299

State of Washington

56th Legislature

1999 Regular Session

By Representatives Ballasiotes, O'Brien, Lambert, Kastama, Esser and Schual-Berke; by request of Sentencing Guidelines Commission

Read first time 01/21/1999. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to extraordinary medical releases for offenders;
2 amending RCW 9.94A.150, 9.94A.120, and 69.50.410; reenacting and
3 amending RCW 9.94A.310, 9.95.040, and 46.61.5055; and adding a new
4 section to chapter 72.09 RCW.

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

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

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

12 (1) Except as otherwise provided for in subsection (2) of this
13 section, the term of the sentence of an offender committed to a
14 correctional facility operated by the department, may be reduced by
15 earned early release time in accordance with procedures that shall be
16 developed and promulgated by the correctional agency having
17 jurisdiction in which the offender is confined. The earned early
18 release time shall be for good behavior and good performance, as
19 determined by the correctional agency having jurisdiction. The

1 correctional agency shall not credit the offender with earned early
2 release credits in advance of the offender actually earning the
3 credits. Any program established pursuant to this section shall allow
4 an offender to earn early release credits for presentence
5 incarceration. If an offender is transferred from a county jail to the
6 department of corrections, the county jail facility shall certify to
7 the department the amount of time spent in custody at the facility and
8 the amount of earned early release time. In the case of an offender
9 who has been convicted of a felony committed after July 23, 1995, that
10 involves any applicable deadly weapon enhancements under RCW 9.94A.310
11 (3) or (4), or both, shall not receive any good time credits or earned
12 early release time for that portion of his or her sentence that results
13 from any deadly weapon enhancements. In the case of an offender
14 convicted of a serious violent offense or a sex offense that is a class
15 A felony committed on or after July 1, 1990, the aggregate earned early
16 release time may not exceed fifteen percent of the sentence. In no
17 other case shall the aggregate earned early release time exceed one-
18 third of the total sentence;

19 (2) A person convicted of a sex offense or an offense categorized
20 as a serious violent offense, assault in the second degree, vehicular
21 homicide, vehicular assault, assault of a child in the second degree,
22 any crime against a person where it is determined in accordance with
23 RCW 9.94A.125 that the defendant or an accomplice was armed with a
24 deadly weapon at the time of commission, or any felony offense under
25 chapter 69.50 or 69.52 RCW may become eligible, in accordance with a
26 program developed by the department, for transfer to community custody
27 status in lieu of earned early release time pursuant to subsection (1)
28 of this section;

29 (3) An offender may leave a correctional facility pursuant to an
30 authorized furlough or leave of absence. In addition, offenders may
31 leave a correctional facility when in the custody of a corrections
32 officer or officers;

33 (4)(a) The secretary of corrections may authorize an extraordinary
34 medical release for an offender when all of the following conditions
35 exist:

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

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

4 (iii) Granting the extraordinary medical release will result in a
5 cost savings to the state.

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

9 (c) The secretary may revoke an extraordinary medical release under
10 this subsection at any time.

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

15 ~~((+5))~~ (6) No more than the final six months of the sentence may
16 be served in partial confinement designed to aid the offender in
17 finding work and reestablishing himself or herself in the community;

18 ~~((+6))~~ (7) The governor may pardon any offender;

19 ~~((+7))~~ (8) The department of corrections may release an offender
20 from confinement any time within ten days before a release date
21 calculated under this section; and

22 ~~((+8))~~ (9) An offender may leave a correctional facility prior to
23 completion of his or her sentence if the sentence has been reduced as
24 provided in RCW 9.94A.160.

25 Notwithstanding any other provisions of this section, an offender
26 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to
27 a mandatory minimum sentence of total confinement shall not be released
28 from total confinement before the completion of the listed mandatory
29 minimum sentence for that felony crime of conviction unless allowed
30 under RCW 9.94A.120(4).

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

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

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

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

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

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

36 (5) In sentencing a first-time offender the court may waive the
37 imposition of a sentence within the sentence range and impose a
38 sentence which may include up to ninety days of confinement in a
39 facility operated or utilized under contract by the county and a

1 requirement that the offender refrain from committing new offenses.
2 The sentence may also include up to two years of community supervision,
3 which, in addition to crime-related prohibitions, may include
4 requirements that the offender perform any one or more of the
5 following:

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

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

10 (c) Pursue a prescribed, secular course of study or vocational
11 training;

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

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

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

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

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

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

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

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

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

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

1 the original sentence, as a result of a sanction imposed by the
2 department, or as a result of a violation found by the court. The term
3 of community supervision shall be tolled by any period of time served
4 in total confinement as a result of a violation found by the court.

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

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

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

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

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

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

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

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

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

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

1 (I) Devote time to a specific employment or occupation;
2 (II) Remain within prescribed geographical boundaries and notify
3 the court or the community corrections officer prior to any change in
4 the offender's address or employment;

5 (III) Report as directed to the court and a community corrections
6 officer;

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

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

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

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

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

37 (v) If a violation of conditions occurs during community custody,
38 the department shall either impose sanctions as provided for in RCW
39 9.94A.205(2)(a) or refer the violation to the court and recommend

1 revocation of the suspended sentence as provided for in (a)(vi) of this
2 subsection.

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

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

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

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

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

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

38 Except for an offender who has been convicted of a violation of RCW
39 9A.44.040 or 9A.44.050, if the offender completes the treatment program

1 before the expiration of his or her term of confinement, the department
2 of corrections may request the court to convert the balance of
3 confinement to community supervision and to place conditions on the
4 offender including crime-related prohibitions and requirements that the
5 offender perform any one or more of the following:

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

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

10 (iii) Report as directed to the court and a community corrections
11 officer;

12 (iv) Undergo available outpatient treatment.

13 If the offender violates any of the terms of his or her community
14 supervision, the court may order the offender to serve out the balance
15 of his or her community supervision term in confinement in the custody
16 of the department of corrections.

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

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

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

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

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

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

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

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

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

1 (v) The residence location and living arrangements are subject to
2 the prior approval of the department of corrections during the period
3 of community placement; and

4 (vi) The offender shall submit to affirmative acts necessary to
5 monitor compliance with the orders of the court as required by the
6 department.

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

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

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

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

16 (iv) The offender shall not consume alcohol;

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

18 or

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

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

28 (10)(a) When a court sentences a person to the custody of the
29 department of corrections for an offense categorized as a sex offense
30 committed on or after June 6, 1996, the court shall, in addition to
31 other terms of the sentence, sentence the offender to community custody
32 for three years or up to the period of earned early release awarded
33 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
34 community custody shall begin either upon completion of the term of
35 confinement or at such time as the offender is transferred to community
36 custody in lieu of earned early release in accordance with RCW
37 9.94A.150 (1) and (2).

38 (b) Unless a condition is waived by the court, the terms of
39 community custody shall be the same as those provided for in subsection

1 (9)(b) of this section and may include those provided for in subsection
2 (9)(c) of this section. As part of any sentence that includes a term
3 of community custody imposed under this subsection, the court shall
4 also require the offender to comply with any conditions imposed by the
5 department of corrections under subsection (14) of this section.

6 (c) At any time prior to the completion of a sex offender's term of
7 community custody, if the court finds that public safety would be
8 enhanced, the court may impose and enforce an order extending any or
9 all of the conditions imposed pursuant to this section for a period up
10 to the maximum allowable sentence for the crime as it is classified in
11 chapter 9A.20 RCW, regardless of the expiration of the offender's term
12 of community custody. If a violation of a condition extended under
13 this subsection occurs after the expiration of the offender's term of
14 community custody, it shall be deemed a violation of the sentence for
15 the purposes of RCW 9.94A.195 and may be punishable as contempt of
16 court as provided for in RCW 7.21.040.

17 (11) If the court imposes a sentence requiring confinement of
18 thirty days or less, the court may, in its discretion, specify that the
19 sentence be served on consecutive or intermittent days. A sentence
20 requiring more than thirty days of confinement shall be served on
21 consecutive days. Local jail administrators may schedule court-ordered
22 intermittent sentences as space permits.

23 (12) If a sentence imposed includes payment of a legal financial
24 obligation, the sentence shall specify the total amount of the legal
25 financial obligation owed, and shall require the offender to pay a
26 specified monthly sum toward that legal financial obligation.
27 Restitution to victims shall be paid prior to any other payments of
28 monetary obligations. Any legal financial obligation that is imposed
29 by the court may be collected by the department, which shall deliver
30 the amount paid to the county clerk for credit. The offender's
31 compliance with payment of legal financial obligations shall be
32 supervised by the department for ten years following the entry of the
33 judgment and sentence or ten years following the offender's release
34 from total confinement. All monetary payments ordered shall be paid no
35 later than ten years after the last date of release from confinement
36 pursuant to a felony conviction or the date the sentence was entered
37 unless the superior court extends the criminal judgment an additional
38 ten years. If the legal financial obligations including crime victims'
39 assessments are not paid during the initial ten-year period, the

1 superior court may extend jurisdiction under the criminal judgment an
2 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
3 9.94A.145. If jurisdiction under the criminal judgment is extended,
4 the department is not responsible for supervision of the offender
5 during the subsequent period. Independent of the department, the party
6 or entity to whom the legal financial obligation is owed shall have the
7 authority to utilize any other remedies available to the party or
8 entity to collect the legal financial obligation. Nothing in this
9 section makes the department, the state, or any of its employees,
10 agents, or other persons acting on their behalf liable under any
11 circumstances for the payment of these legal financial obligations. If
12 an order includes restitution as one of the monetary assessments, the
13 county clerk shall make disbursements to victims named in the order.

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

18 (14) All offenders sentenced to terms involving community
19 supervision, community service, community placement, or legal financial
20 obligation shall be under the supervision of the department of
21 corrections and shall follow explicitly the instructions and conditions
22 of the department of corrections. The department may require an
23 offender to perform affirmative acts it deems appropriate to monitor
24 compliance with the conditions of the sentence imposed.

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

30 (b) For offenders sentenced to terms involving community custody
31 for crimes committed on or after June 6, 1996, the department may
32 include, in addition to the instructions in (a) of this subsection, any
33 appropriate conditions of supervision, including but not limited to,
34 prohibiting the offender from having contact with any other specified
35 individuals or specific class of individuals. The conditions
36 authorized under this subsection (14)(b) may be imposed by the
37 department prior to or during an offender's community custody term. If
38 a violation of conditions imposed by the court or the department
39 pursuant to subsection (10) of this section occurs during community

1 custody, it shall be deemed a violation of community placement for the
2 purposes of RCW 9.94A.207 and shall authorize the department to
3 transfer an offender to a more restrictive confinement status as
4 provided in RCW 9.94A.205. At any time prior to the completion of a
5 sex offender's term of community custody, the department may recommend
6 to the court that any or all of the conditions imposed by the court or
7 the department pursuant to subsection (10) of this section be continued
8 beyond the expiration of the offender's term of community custody as
9 authorized in subsection (10)(c) of this section.

10 The department may require offenders to pay for special services
11 rendered on or after July 25, 1993, including electronic monitoring,
12 day reporting, and telephone reporting, dependent upon the offender's
13 ability to pay. The department may pay for these services for
14 offenders who are not able to pay.

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

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

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

34 (18) The court shall order restitution whenever the offender is
35 convicted of a felony that results in injury to any person or damage to
36 or loss of property, whether the offender is sentenced to confinement
37 or placed under community supervision, unless extraordinary
38 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in
2 the record if it does not order restitution.

3 (19) As a part of any sentence, the court may impose and enforce an
4 order that relates directly to the circumstances of the crime for which
5 the offender has been convicted, prohibiting the offender from having
6 any contact with other specified individuals or a specific class of
7 individuals for a period not to exceed the maximum allowable sentence
8 for the crime, regardless of the expiration of the offender's term of
9 community supervision or community placement.

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

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

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

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

31 (1) TABLE 1

32 Sentencing Grid

33 SERIOUSNESS

34 SCORE

OFFENDER SCORE

35 9 or
36 0 1 2 3 4 5 6 7 8 more

37
38 XV Life Sentence without Parole/Death Penalty

1											
2	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m	36y	40y
3		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
4		320	333	347	361	374	388	416	450	493	548
5											
6	XIII	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
7		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
8		220	234	244	254	265	275	295	316	357	397
9											
10	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
11		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
12		123	136	147	160	171	184	216	236	277	318
13											
14	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
15		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
16		102	114	125	136	147	158	194	211	245	280
17											
18	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
19		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
20		68	75	82	89	96	102	130	144	171	198
21											
22	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
23		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
24		41	48	54	61	68	75	102	116	144	171
25											
26	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
27		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
28		27	34	41	48	54	61	89	102	116	144
29											
30	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
31		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
32		20	27	34	41	48	54	75	89	102	116
33											
34	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
35		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
36		14	20	27	34	41	48	61	75	89	102
37											

1	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
2		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
3		12	14	17	20	29	43	54	68	82	96
4	<hr/>										
5	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
6		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
7		9	12	14	17	20	29	43	57	70	84
8	<hr/>										
9	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
10		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
11		3	8	12	12	16	22	29	43	57	68
12	<hr/>										
13	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
14		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
15		Days	6	9	12	14	18	22	29	43	57
16	<hr/>										
17	I			3m	4m	5m	8m	13m	16m	20m	2y2m
18		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
19		Days	Days	5	6	8	12	14	18	22	29
20	<hr/>										

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

25 (2) For persons convicted of the anticipatory offenses of criminal
26 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
27 presumptive sentence is determined by locating the sentencing grid
28 sentence range defined by the appropriate offender score and the
29 seriousness level of the completed crime, and multiplying the range by
30 75 percent.

31 (3) The following additional times shall be added to the
32 presumptive sentence for felony crimes committed after July 23, 1995,
33 if the offender or an accomplice was armed with a firearm as defined in
34 RCW 9.41.010 and the offender is being sentenced for one of the crimes
35 listed in this subsection as eligible for any firearm enhancements
36 based on the classification of the completed felony crime. If the
37 offender is being sentenced for more than one offense, the firearm
38 enhancement or enhancements must be added to the total period of
39 confinement for all offenses, regardless of which underlying offense is

1 subject to a firearm enhancement. If the offender or an accomplice was
2 armed with a firearm as defined in RCW 9.41.010 and the offender is
3 being sentenced for an anticipatory offense under chapter 9A.28 RCW to
4 commit one of the crimes listed in this subsection as eligible for any
5 firearm enhancements, the following additional times shall be added to
6 the presumptive sentence determined under subsection (2) of this
7 section based on the felony crime of conviction as classified under RCW
8 9A.28.020:

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

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

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

18 (d) If the offender is being sentenced for any firearm
19 enhancements under (a), (b), and/or (c) of this subsection and the
20 offender has previously been sentenced for any deadly weapon
21 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
22 subsection or subsection (4)(a), (b), and/or (c) of this section, or
23 both, any and all firearm enhancements under this subsection shall be
24 twice the amount of the enhancement listed.

25 (e) Notwithstanding any other provision of law, any and all
26 firearm enhancements under this section are mandatory, shall be served
27 in total confinement, and shall run consecutively to all other
28 sentencing provisions, including other firearm or deadly weapon
29 enhancements, for all offenses sentenced under this chapter. However,
30 whether or not a mandatory minimum term has expired, an offender
31 serving a sentence under this subsection may be granted an
32 extraordinary medical release when authorized under RCW 9.94A.150(4).

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

38 (g) If the presumptive sentence under this section exceeds the
39 statutory maximum for the offense, the statutory maximum sentence shall

1 be the presumptive sentence unless the offender is a persistent
2 offender as defined in RCW 9.94A.030. If the addition of a firearm
3 enhancement increases the sentence so that it would exceed the
4 statutory maximum for the offense, the portion of the sentence
5 representing the enhancement may not be reduced.

6 (4) The following additional times shall be added to the
7 presumptive sentence for felony crimes committed after July 23, 1995,
8 if the offender or an accomplice was armed with a deadly weapon as
9 defined in this chapter other than a firearm as defined in RCW 9.41.010
10 and the offender is being sentenced for one of the crimes listed in
11 this subsection as eligible for any deadly weapon enhancements based on
12 the classification of the completed felony crime. If the offender is
13 being sentenced for more than one offense, the deadly weapon
14 enhancement or enhancements must be added to the total period of
15 confinement for all offenses, regardless of which underlying offense is
16 subject to a deadly weapon enhancement. If the offender or an
17 accomplice was armed with a deadly weapon other than a firearm as
18 defined in RCW 9.41.010 and the offender is being sentenced for an
19 anticipatory offense under chapter 9A.28 RCW to commit one of the
20 crimes listed in this subsection as eligible for any deadly weapon
21 enhancements, the following additional times shall be added to the
22 presumptive sentence determined under subsection (2) of this section
23 based on the felony crime of conviction as classified under RCW
24 9A.28.020:

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

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

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

34 (d) If the offender is being sentenced under (a), (b), and/or (c)
35 of this subsection for any deadly weapon enhancements and the offender
36 has previously been sentenced for any deadly weapon enhancements after
37 July 23, 1995, under (a), (b), and/or (c) of this subsection or
38 subsection (3)(a), (b), and/or (c) of this section, or both, any and

1 all deadly weapon enhancements under this subsection shall be twice the
2 amount of the enhancement listed.

3 (e) Notwithstanding any other provision of law, any and all deadly
4 weapon enhancements under this section are mandatory, shall be served
5 in total confinement, and shall run consecutively to all other
6 sentencing provisions, including other firearm or deadly weapon
7 enhancements, for all offenses sentenced under this chapter. However,
8 whether or not a mandatory minimum term has expired, an offender
9 serving a sentence under this subsection may be granted an
10 extraordinary medical release when authorized under RCW 9.94A.150(4).

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

16 (g) If the presumptive sentence under this section exceeds the
17 statutory maximum for the offense, the statutory maximum sentence shall
18 be the presumptive sentence unless the offender is a persistent
19 offender as defined in RCW 9.94A.030. If the addition of a deadly
20 weapon enhancement increases the sentence so that it would exceed the
21 statutory maximum for the offense, the portion of the sentence
22 representing the enhancement may not be reduced.

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

35 (a) Eighteen months for offenses committed under RCW
36 69.50.401(a)(1) (i) or (ii) or 69.50.410;

37 (b) Fifteen months for offenses committed under RCW
38 69.50.401(a)(1) (iii), (iv), and (v);

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

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

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

7 (7) An additional two years shall be added to the presumptive
8 sentence for vehicular homicide committed while under the influence of
9 intoxicating liquor or any drug as defined by RCW 46.61.502 for each
10 prior offense as defined in RCW 46.61.5055.

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

13 The board shall fix the duration of confinement for persons
14 committed by the court before July 1, 1986, for crimes committed before
15 July 1, 1984. Within six months after the admission of the convicted
16 person to a state correctional facility, the board shall fix the
17 duration of confinement. The term of imprisonment so fixed shall not
18 exceed the maximum provided by law for the offense of which the person
19 was convicted or the maximum fixed by the court where the law does not
20 provide for a maximum term.

21 Subject to RCW 9.95.047, the following limitations are placed on
22 the board or the court for persons committed to a state correctional
23 facility on or after July 1, 1986, for crimes committed before July 1,
24 1984, with regard to fixing the duration of confinement in certain
25 cases, notwithstanding any provisions of law specifying a lesser
26 sentence:

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

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

34 The words "deadly weapon," as used in this section include, but
35 are not limited to, any instrument known as a blackjack, sling shot,
36 billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol,
37 revolver, or any other firearm, any knife having a blade longer than
38 three inches, any razor with an unguarded blade, any metal pipe or bar

1 used or intended to be used as a club, any explosive, and any weapon
2 containing poisonous or injurious gas.

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

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

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

20 An inmate serving a sentence fixed under this chapter, whether or
21 not a mandatory minimum term has expired, may be granted an
22 extraordinary medical release by the secretary of corrections when
23 authorized under RCW 9.94A.150(4).

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

27 (1) A person who is convicted of a violation of RCW 46.61.502 or
28 46.61.504 and who has no prior offense within seven years shall be
29 punished as follows:

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

34 (i) By imprisonment for not less than one day nor more than one
35 year. Twenty-four consecutive hours of the imprisonment may not be
36 suspended or deferred unless the court finds that the imposition of
37 this mandatory minimum sentence would impose a substantial risk to the
38 offender's physical or mental well-being. Whenever the mandatory

1 minimum sentence is suspended or deferred, the court shall state in
2 writing the reason for granting the suspension or deferral and the
3 facts upon which the suspension or deferral is based. In lieu of the
4 mandatory minimum term of imprisonment required under this subsection
5 (1)(a)(i), the court may order not less than fifteen days of electronic
6 home monitoring. The offender shall pay the cost of electronic home
7 monitoring. The county or municipality in which the penalty is being
8 imposed shall determine the cost. The court may also require the
9 offender's electronic home monitoring device to include an alcohol
10 detection breathalyzer, and the court may restrict the amount of
11 alcohol the offender may consume during the time the offender is on
12 electronic home monitoring; and

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

17 (iii) By suspension of the offender's license or permit to drive,
18 or suspension of any nonresident privilege to drive, for a period of
19 ninety days. The period of license, permit, or privilege suspension
20 may not be suspended. The court shall notify the department of
21 licensing of the conviction, and upon receiving notification of the
22 conviction the department shall suspend the offender's license, permit,
23 or privilege; or

24 (b) In the case of a person whose alcohol concentration was at
25 least 0.15, or for whom by reason of the person's refusal to take a
26 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 two days nor more than one
29 year. Two consecutive days of the imprisonment may not be suspended or
30 deferred unless the court finds that the imposition of this mandatory
31 minimum sentence would impose a substantial risk to the offender's
32 physical or mental well-being. Whenever the mandatory minimum sentence
33 is suspended or deferred, the court shall state in writing the reason
34 for granting the suspension or deferral and the facts upon which the
35 suspension or deferral is based. In lieu of the mandatory minimum term
36 of imprisonment required under this subsection (1)(b)(i), the court may
37 order not less than thirty days of electronic home monitoring. The
38 offender shall pay the cost of electronic home monitoring. The county
39 or municipality in which the penalty is being imposed shall determine

1 the cost. The court may also require the offender's electronic home
2 monitoring device to include an alcohol detection breathalyzer, and the
3 court may restrict the amount of alcohol the offender may consume
4 during the time the offender is on electronic home monitoring; and

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

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

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

17 (2) A person who is convicted of a violation of RCW 46.61.502 or
18 46.61.504 and who has one prior offense within seven years shall be
19 punished as follows:

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

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

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

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

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

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

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

33 (ii) By a fine of not less than seven hundred fifty dollars nor
34 more than five thousand dollars. Seven hundred fifty dollars of the
35 fine may not be suspended or deferred unless the court finds the
36 offender to be 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 nine hundred days. The period of license, permit, or privilege

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

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

6 (3) A person who is convicted of a violation of RCW 46.61.502 or
7 46.61.504 and who has two or more prior offenses within seven years
8 shall be punished as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (6) After expiration of any period of suspension or revocation of
6 the offender's license, permit, or privilege to drive required by this
7 section, the department shall place the offender's driving privilege in
8 probationary status pursuant to RCW 46.20.355.

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

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

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

1 notify the department of any suspension, revocation, or denial or any
2 extension of a suspension, revocation, or denial imposed under this
3 subsection.

4 (8) An offender serving a sentence under this section, whether or
5 not a mandatory minimum term has expired, may be granted an
6 extraordinary medical release by the jail administrator subject to the
7 standards and limitations set forth in RCW 9.94A.150(4).

8 (9) For purposes of this section:

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

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

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

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

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

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

20 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
21 9A.36.050 or an equivalent local ordinance, if the conviction is the
22 result of a charge that was originally filed as a violation of RCW
23 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
24 46.61.520 or 46.61.522;

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

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

31 (viii) A deferred prosecution under chapter 10.05 RCW granted in
32 a prosecution for a violation of RCW 46.61.5249, or an equivalent local
33 ordinance, if the charge under which the deferred prosecution was
34 granted was originally filed as a violation of RCW 46.61.502 or
35 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
36 46.61.522; and

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

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

3 (1) Except as authorized by this chapter it shall be unlawful for
4 any person to sell for profit any controlled substance or counterfeit
5 substance classified in Schedule I, RCW 69.50.204, except leaves and
6 flowering tops of marihuana.

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

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

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

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

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

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

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

4 (5) In addition to the sentences provided in subsection (2) of
5 this section, any person convicted of a violation of subsection (1) of
6 this section shall be fined in an amount calculated to at least
7 eliminate any and all proceeds or profits directly or indirectly gained
8 by such person as a result of sales of controlled substances in
9 violation of the laws of this or other states, or the United States, up
10 to the amount of five hundred thousand dollars on each count.

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

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

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

28 The secretary shall report annually to the legislature on the
29 number of offenders considered for an extraordinary medical release,
30 the number of offenders who were granted such a release, the number of
31 offenders who were denied such a release, the length of time between
32 initial consideration and the decision to release for each offender who
33 was released, the number of offenders granted an extraordinary medical
34 release who were later returned to total confinement, and the cost
35 savings realized by the state.

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