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ENGROSSED HOUSE BILL 2340

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State of Washington

56th Legislature

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By Representatives O'Brien, Ballasiotes, Carlson, Hurst and Talcott; by request of Sentencing Guidelines Commission

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1 AN ACT Relating to the termination of offenders from the special  
2 drug offender sentencing alternative; and reenacting and amending RCW  
3 9.94A.120.

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

5 **Sec. 1.** RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c  
6 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as  
7 follows:

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

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

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

17 (3) Whenever a sentence outside the standard range is imposed, the  
18 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range  
2 shall be a determinate sentence.

3 (4) A persistent offender shall be sentenced to a term of total  
4 confinement for life without the possibility of parole or, when  
5 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
6 first degree, sentenced to death, notwithstanding the maximum sentence  
7 under any other law. An offender convicted of the crime of murder in  
8 the first degree shall be sentenced to a term of total confinement not  
9 less than twenty years. An offender convicted of the crime of assault  
10 in the first degree or assault of a child in the first degree where the  
11 offender used force or means likely to result in death or intended to  
12 kill the victim shall be sentenced to a term of total confinement not  
13 less than five years. An offender convicted of the crime of rape in  
14 the first degree shall be sentenced to a term of total confinement not  
15 less than five years. The foregoing minimum terms of total confinement  
16 are mandatory and shall not be varied or modified as provided in  
17 subsection (2) of this section. In addition, all offenders subject to  
18 the provisions of this subsection shall not be eligible for community  
19 custody, earned release time, furlough, home detention, partial  
20 confinement, work crew, work release, or any other form of early  
21 release as defined under RCW 9.94A.150 (1), (2), (3), (~~(5), (7), or~~  
22 ~~(8))~~ (6), (8), or (9), or any other form of authorized leave of  
23 absence from the correctional facility while not in the direct custody  
24 of a corrections officer or officers during such minimum terms of total  
25 confinement except: (a) In the case of an offender in need of  
26 emergency medical treatment; (b) for the purpose of commitment to an  
27 inpatient treatment facility in the case of an offender convicted of  
28 the crime of rape in the first degree; or (c) for an extraordinary  
29 medical placement when authorized under RCW 9.94A.150(4).

30 (5)(a) In sentencing a first-time offender the court may waive the  
31 imposition of a sentence within the sentence range and impose a  
32 sentence which may include up to ninety days of confinement in a  
33 facility operated or utilized under contract by the county and a  
34 requirement that the offender refrain from committing new offenses.  
35 The sentence may also include a term of community supervision or  
36 community custody as specified in (b) of this subsection, which, in  
37 addition to crime-related prohibitions, may include requirements that  
38 the offender perform any one or more of the following:

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

1 (ii) Undergo available outpatient treatment for up to the period  
2 specified in (b) of this subsection, or inpatient treatment not to  
3 exceed the standard range of confinement for that offense;

4 (iii) Pursue a prescribed, secular course of study or vocational  
5 training;

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

9 (v) Report as directed to a community corrections officer; or

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

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

14 (i) For sentences imposed on or after July 25, 1999, for crimes  
15 committed before July 1, 2000, up to one year of community supervision.  
16 If treatment is ordered, the period of community supervision may  
17 include up to the period of treatment, but shall not exceed two years;  
18 and

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

26 (c) The department shall discharge from community supervision any  
27 offender sentenced under this subsection (5) before July 25, 1999, who  
28 has served at least one year of community supervision and has completed  
29 any treatment ordered by the court.

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

32 (i) The offender is convicted of a felony that is not a violent  
33 offense or sex offense and the violation does not involve a sentence  
34 enhancement under RCW 9.94A.310 (3) or (4);

35 (ii) The offender has no current or prior convictions for a sex  
36 offense or violent offense in this state, another state, or the United  
37 States;

38 (iii) For a violation of the uniform controlled substances act  
39 under chapter 69.50 RCW or a criminal solicitation to commit such a

1 violation under chapter 9A.28 RCW, the offense involved only a small  
2 quantity of the particular controlled substance as determined by the  
3 judge upon consideration of such factors as the weight, purity,  
4 packaging, sale price, and street value of the controlled substance;  
5 and

6 (iv) The offender has not been found by the United States attorney  
7 general to be subject to a deportation detainer or order and does not  
8 become subject to a deportation order during the period of the  
9 sentence.

10 (b) If the standard range is greater than one year and the  
11 sentencing judge determines that the offender is eligible for this  
12 option and that the offender and the community will benefit from the  
13 use of the special drug offender sentencing alternative, the judge may  
14 waive imposition of a sentence within the standard range and impose a  
15 sentence that must include a period of total confinement in a state  
16 facility for one-half of the midpoint of the standard range. During  
17 incarceration in the state facility, offenders sentenced under this  
18 subsection shall undergo a comprehensive substance abuse assessment and  
19 receive, within available resources, treatment services appropriate for  
20 the offender. The treatment services shall be designed by the division  
21 of alcohol and substance abuse of the department of social and health  
22 services, in cooperation with the department of corrections.

23 The court shall also impose:

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

29 (ii) Crime-related prohibitions including a condition not to use  
30 illegal controlled substances; ~~((and))~~

31 (iii) A requirement to submit to urinalysis or other testing to  
32 monitor that status; and

33 (iv) A term of community custody pursuant to subsection (11) of  
34 this section to be imposed upon failure to complete or administrative  
35 termination from the special drug offender sentencing alternative  
36 program.

37 The court may prohibit the offender from using alcohol or  
38 controlled substances and may require that the monitoring for  
39 controlled substances be conducted by the department or by a treatment

1 alternatives to street crime program or a comparable court or agency-  
2 referred program. The offender may be required to pay thirty dollars  
3 per month while on community custody to offset the cost of monitoring.  
4 In addition, the court shall impose three or more of the following  
5 conditions:

6 (A) Devote time to a specific employment or training;

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

10 (C) Report as directed to a community corrections officer;

11 (D) Pay all court-ordered legal financial obligations;

12 (E) Perform community service work;

13 (F) Stay out of areas designated by the sentencing judge;

14 (G) Such other conditions as the court may require such as  
15 affirmative conditions.

16 (c) If the offender violates any of the sentence conditions in (b)  
17 of this subsection or is found by the United States attorney general to  
18 be subject to a deportation order, a violation hearing shall be held by  
19 the department unless waived by the offender.

20 (i) If the department finds that conditions have been willfully  
21 violated, the offender may be reclassified to serve the remaining  
22 balance of the original sentence.

23 (ii) If the department finds that the offender is subject to a  
24 valid deportation order, the department may administratively terminate  
25 the offender from the program and reclassify the offender to serve the  
26 remaining balance of the original sentence.

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

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

1 include, but are not limited to, reclassifying the offender to serve  
2 the unexpired term of his or her sentence as ordered by the sentencing  
3 judge. If an offender is reclassified to serve the unexpired term of  
4 his or her sentence, the offender shall be subject to all rules  
5 relating to earned early release time.

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

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

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

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

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

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

37 (C) Monitoring plans, including any requirements regarding living  
38 conditions, lifestyle requirements, and monitoring by family members  
39 and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

36 (v) If a violation of conditions occurs during community custody,  
37 the department shall either impose sanctions as provided for in RCW  
38 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 (d) Within the funds available for this purpose, the department  
30 shall develop and monitor transition and relapse prevention strategies,  
31 including risk assessment and release plans, to reduce risk to the  
32 community after sex offenders' terms of confinement in the custody of  
33 the department.

34 (9)(a)(i) When a court sentences a person to a term of total  
35 confinement to the custody of the department of corrections for an  
36 offense categorized as a sex offense or a serious violent offense  
37 committed after July 1, 1988, but before July 1, 1990, assault in the  
38 second degree, assault of a child in the second degree, any crime  
39 against a person where it is determined in accordance with RCW

1 9.94A.125 that the defendant or an accomplice was armed with a deadly  
2 weapon at the time of commission, or any felony offense under chapter  
3 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
4 committed on or after July 1, 1988, but before July 25, 1999, the court  
5 shall in addition to the other terms of the sentence, sentence the  
6 offender to a one-year term of community placement beginning either  
7 upon completion of the term of confinement or at such time as the  
8 offender is transferred to community custody in lieu of earned release  
9 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
10 an offender under this subsection to the statutory maximum period of  
11 confinement then the community placement portion of the sentence shall  
12 consist entirely of such community custody to which the offender may  
13 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
14 period of community custody actually served shall be credited against  
15 the community placement portion of the sentence.

16 (ii) Except for persons sentenced under (b) of this subsection or  
17 subsection (10)(a) of this section, when a court sentences a person to  
18 a term of total confinement to the custody of the department of  
19 corrections for a violent offense, any crime against a person under RCW  
20 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW  
21 not sentenced under subsection (6) of this section, committed on or  
22 after July 25, 1999, but before July 1, 2000, the court shall in  
23 addition to the other terms of the sentence, sentence the offender to  
24 a one-year term of community placement beginning either upon completion  
25 of the term of confinement or at such time as the offender is  
26 transferred to community custody in lieu of earned release in  
27 accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
28 the offender under this subsection (9)(a)(ii) to the statutory maximum  
29 period of confinement, then the community placement portion of the  
30 sentence shall consist entirely of such community custody to which the  
31 offender may become eligible, in accordance with RCW 9.94A.150 (1) and  
32 (2). Any period of community custody actually served shall be credited  
33 against the community placement portion of the sentence.

34 (b) When a court sentences a person to a term of total confinement  
35 to the custody of the department of corrections for an offense  
36 categorized as a sex offense committed on or after July 1, 1990, but  
37 before June 6, 1996, or a serious violent offense, vehicular homicide,  
38 or vehicular assault, committed on or after July 1, 1990, but before  
39 July 1, 2000, the court shall in addition to other terms of the

1 sentence, sentence the offender to community placement for two years or  
2 up to the period of earned release awarded pursuant to RCW 9.94A.150  
3 (1) and (2), whichever is longer. The community placement shall begin  
4 either upon completion of the term of confinement or at such time as  
5 the offender is transferred to community custody in lieu of earned  
6 release in accordance with RCW 9.94A.150 (1) and (2). When the court  
7 sentences an offender under this subsection to the statutory maximum  
8 period of confinement then the community placement portion of the  
9 sentence shall consist entirely of the community custody to which the  
10 offender may become eligible, in accordance with RCW 9.94A.150 (1) and  
11 (2). Any period of community custody actually served shall be credited  
12 against the community placement portion of the sentence. Unless a  
13 condition is waived by the court, the terms of community placement for  
14 offenders sentenced pursuant to this section shall include the  
15 following conditions:

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

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

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

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

24 (v) The residence location and living arrangements are subject to  
25 the prior approval of the department of corrections during the period  
26 of community placement; and

27 (vi) The offender shall submit to affirmative acts necessary to  
28 monitor compliance with the orders of the court as required by the  
29 department.

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

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

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

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

39 (iv) The offender shall not consume alcohol;

1 (v) The offender shall comply with any crime-related prohibitions;  
2 or

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

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

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

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

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

1 (11)(a) When a court sentences a person to the custody of the  
2 department of corrections for a sex offense, a violent offense, any  
3 crime against a person under RCW 9.94A.440(2), or a felony offense  
4 under chapter 69.50 or 69.52 RCW (~~(not sentenced under subsection (6)~~  
5 ~~of this section)~~), committed on or after July 1, 2000, the court shall  
6 in addition to the other terms of the sentence, sentence the offender  
7 to community custody for the community custody range or up to the  
8 period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),  
9 whichever is longer. The community custody shall begin (~~either~~):  
10 (i) Upon completion of the term of confinement (~~or~~); (ii) at such  
11 time as the offender is transferred to community custody in lieu of  
12 earned release in accordance with RCW 9.94A.150 (1) and (2); or (iii)  
13 with regard to offenders sentenced under subsection (6) of this  
14 section, upon failure to complete or administrative termination from  
15 the special drug offender sentencing alternative program.

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

37 (c) If an offender violates conditions imposed by the court or the  
38 department pursuant to this subsection during community custody, the  
39 department may transfer the offender to a more restrictive confinement

1 status and impose other available sanctions as provided in RCW  
2 9.94A.205 and 9.94A.207.

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

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

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

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

36 (12) If the court imposes a sentence requiring confinement of  
37 thirty days or less, the court may, in its discretion, specify that the  
38 sentence be served on consecutive or intermittent days. A sentence  
39 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

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

33 (14) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a  
34 court may not impose a sentence providing for a term of confinement or  
35 community supervision, community placement, or community custody which  
36 exceeds the statutory maximum for the crime as provided in chapter  
37 9A.20 RCW.

38 (15) All offenders sentenced to terms involving community  
39 supervision, community service, community placement, community custody,



1 or legal financial obligation shall be under the supervision of the  
2 department of corrections and shall follow explicitly the instructions  
3 and conditions of the department of corrections. The department may  
4 require an offender to perform affirmative acts it deems appropriate to  
5 monitor compliance with the conditions of the sentence imposed.

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

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

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

35 The department may require offenders to pay for special services  
36 rendered on or after July 25, 1993, including electronic monitoring,  
37 day reporting, and telephone reporting, dependent upon the offender's  
38 ability to pay. The department may pay for these services for  
39 offenders who are not able to pay.

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

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

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

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

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

35 (21) The court may order an offender whose sentence includes  
36 community placement or community supervision to undergo a mental status  
37 evaluation and to participate in available outpatient mental health  
38 treatment, if the court finds that reasonable grounds exist to believe  
39 that the offender is a mentally ill person as defined in RCW 71.24.025,

1 and that this condition is likely to have influenced the offense. An  
2 order requiring mental status evaluation or treatment must be based on  
3 a presentence report and, if applicable, mental status evaluations that  
4 have been filed with the court to determine the offender's competency  
5 or eligibility for a defense of insanity. The court may order  
6 additional evaluations at a later date if deemed appropriate.

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

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

15 (24) In sentencing an offender convicted of a crime of domestic  
16 violence, as defined in RCW 10.99.020, if the offender has a minor  
17 child, or if the victim of the offense for which the offender was  
18 convicted has a minor child, the court may, as part of any term of  
19 community supervision, order the offender to participate in a domestic  
20 violence perpetrator program approved under RCW 26.50.150.

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

38 (b) A sex offender's failure to participate in treatment required  
39 as a condition of community placement or community custody is a

1 violation that will not be excused on the basis that no treatment  
2 provider was located within a reasonable geographic distance of the  
3 offender's home.

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