
HOUSE BILL 2340

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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. If the department finds
20 that conditions have been willfully violated, the offender may be
21 reclassified to serve the remaining balance of the original sentence.
22 If the United States attorney general finds that the offender is
23 subject to a deportation order, the department may administratively
24 terminate the offender from the program.

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

31 (e) An offender who fails to complete the special drug offender
32 sentencing alternative program or who is administratively terminated
33 from the program shall be reclassified to serve the unexpired term of
34 his or her sentence as ordered by the sentencing judge and shall be
35 subject to all rules relating to community custody and earned early
36 release time. An offender who violates any conditions of supervision
37 as defined by the department shall be sanctioned. Sanctions may
38 include, but are not limited to, reclassifying the offender to serve
39 the unexpired term of his or her sentence as ordered by the sentencing

1 judge. If an offender is reclassified to serve the unexpired term of
2 his or her sentence, the offender shall be subject to all rules
3 relating to earned early release time.

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

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

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

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

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

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

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

38 (D) Anticipated length of treatment; and

39 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

1 (III) Report as directed to the court and a community corrections
2 officer;

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

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

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

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

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

33 (v) If a violation of conditions occurs during community custody,
34 the department shall either impose sanctions as provided for in RCW
35 9.94A.205(2)(a) or refer the violation to the court and recommend
36 revocation of the suspended sentence as provided for in (a)(vi) of this
37 subsection.

38 (vi) The court may revoke the suspended sentence at any time during
39 the period of community custody and order execution of the sentence if:

1 (A) The defendant violates the conditions of the suspended sentence, or
2 (B) the court finds that the defendant is failing to make satisfactory
3 progress in treatment. All confinement time served during the period
4 of community custody shall be credited to the offender if the suspended
5 sentence is revoked.

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

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

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

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

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

34 Except for an offender who has been convicted of a violation of RCW
35 9A.44.040 or 9A.44.050, if the offender completes the treatment program
36 before the expiration of his or her term of confinement, the department
37 of corrections may request the court to convert the balance of
38 confinement to community supervision and to place conditions on the

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

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

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

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

9 (iv) Undergo available outpatient treatment.

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

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

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

26 (d) Within the funds available for this purpose, the department
27 shall develop and monitor transition and relapse prevention strategies,
28 including risk assessment and release plans, to reduce risk to the
29 community after sex offenders' terms of confinement in the custody of
30 the department.

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

1 committed on or after July 1, 1988, but before July 25, 1999, the court
2 shall in addition to the other terms of the sentence, sentence the
3 offender to a one-year term of community placement beginning either
4 upon completion of the term of confinement or at such time as the
5 offender is transferred to community custody in lieu of earned release
6 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
7 an offender under this subsection to the statutory maximum period of
8 confinement then the community placement portion of the sentence shall
9 consist entirely of such community custody to which the offender may
10 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
11 period of community custody actually served shall be credited against
12 the community placement portion of the sentence.

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

31 (b) When a court sentences a person to a term of total confinement
32 to the custody of the department of corrections for an offense
33 categorized as a sex offense committed on or after July 1, 1990, but
34 before June 6, 1996, or a serious violent offense, vehicular homicide,
35 or vehicular assault, committed on or after July 1, 1990, but before
36 July 1, 2000, the court shall in addition to other terms of the
37 sentence, sentence the offender to community placement for two years or
38 up to the period of earned release awarded pursuant to RCW 9.94A.150
39 (1) and (2), whichever is longer. The community placement shall begin

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

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

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

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

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

21 (v) The residence location and living arrangements are subject to
22 the prior approval of the department of corrections during the period
23 of community placement; and

24 (vi) The offender shall submit to affirmative acts necessary to
25 monitor compliance with the orders of the court as required by the
26 department.

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

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

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

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

36 (iv) The offender shall not consume alcohol;

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

38 or

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

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

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

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

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

38 (11)(a) When a court sentences a person to the custody of the
39 department of corrections for a sex offense, a violent offense, any

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

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

36 (c) If an offender violates conditions imposed by the court or the
37 department pursuant to this subsection during community custody, the
38 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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