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HOUSE BILL 2341

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State of Washington

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

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1 AN ACT Relating to community custody ranges; reenacting and  
2 amending RCW 9.94A.120; adding a new section to chapter 9.94A RCW; and  
3 prescribing penalties.

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

5 NEW SECTION. Sec. 1. A new section is added to chapter 9.94A RCW  
6 to read as follows:

7 **COMMUNITY CUSTODY RANGES**

8	<u>Offense Type</u>	<u>Community Custody Range</u>
9	Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months
10		
11		
12	Serious Violent Offenses	24 to 48 months
13	Violent Offenses	18 to 36 months
14	Crimes Against Persons (As defined in RCW	9 to 18 months
15		
16	9.94A.440(2))	

1           Offenses Under Chapter           9 to 12 months  
2           69.50 or 69.52 RCW  
3           (Not sentenced under  
4           RCW 9.94A.120(6))

5           The community custody ranges specified in this section shall only  
6 be included in sentences of more than twelve months as specified in RCW  
7 9.94A.120(11)(a). The community custody ranges specified in this  
8 section are not intended to affect or limit the authority to impose  
9 exceptional community custody ranges, either above or below the  
10 standard community custody range as authorized by RCW 9.94A.120(2) and  
11 pursuant to guidelines specified in RCW 9.94A.390. The community  
12 custody range for offenders with multiple convictions must be based on  
13 the offense that dictates the longest term of community custody. The  
14 community custody range for offenders convicted of an offense that  
15 falls into more than one of the categories of offense types listed in  
16 this section must be based on the offense type that dictates the  
17 longest term of community custody.

18           **Sec. 2.** RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c  
19 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as  
20 follows:

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

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

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

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

34           (4) A persistent offender shall be sentenced to a term of total  
35 confinement for life without the possibility of parole or, when  
36 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
37 first degree, sentenced to death, notwithstanding the maximum sentence  
38 under any other law. An offender convicted of the crime of murder in

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

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

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

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

36 (iii) Pursue a prescribed, secular course of study or vocational  
37 training;

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

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

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

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

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

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

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

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

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

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

33 (iii) For a violation of the uniform controlled substances act  
34 under chapter 69.50 RCW or a criminal solicitation to commit such a  
35 violation under chapter 9A.28 RCW, the offense involved only a small  
36 quantity of the particular controlled substance as determined by the  
37 judge upon consideration of such factors as the weight, purity,  
38 packaging, sale price, and street value of the controlled substance;  
39 and

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

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

16 The court shall also impose:

17 (i) The remainder of the midpoint of the standard range as a term  
18 of community custody which must include appropriate substance abuse  
19 treatment in a program that has been approved by the division of  
20 alcohol and substance abuse of the department of social and health  
21 services;

22 (ii) Crime-related prohibitions including a condition not to use  
23 illegal controlled substances; and

24 (iii) A requirement to submit to urinalysis or other testing to  
25 monitor that status.

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

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

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

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

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

- 1 (E) Perform community service work;  
2 (F) Stay out of areas designated by the sentencing judge;  
3 (G) Such other conditions as the court may require such as  
4 affirmative conditions.

5 (c) If the offender violates any of the sentence conditions in (b)  
6 of this subsection, a violation hearing shall be held by the department  
7 unless waived by the offender. If the department finds that conditions  
8 have been willfully violated, the offender may be reclassified to serve  
9 the remaining balance of the original sentence.

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

16 (e) An offender who fails to complete the special drug offender  
17 sentencing alternative program or who is administratively terminated  
18 from the program shall be reclassified to serve the unexpired term of  
19 his or her sentence as ordered by the sentencing judge and shall be  
20 subject to all rules relating to earned early release time. An  
21 offender who violates any conditions of supervision as defined by the  
22 department shall be sanctioned. Sanctions may include, but are not  
23 limited to, reclassifying the offender to serve the unexpired term of  
24 his or her sentence as ordered by the sentencing judge. If an offender  
25 is reclassified to serve the unexpired term of his or her sentence, the  
26 offender shall be subject to all rules relating to earned early release  
27 time.

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

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

8 The report of the examination shall include at a minimum the  
9 following: The defendant's version of the facts and the official  
10 version of the facts, the defendant's offense history, an assessment of  
11 problems in addition to alleged deviant behaviors, the offender's  
12 social and employment situation, and other evaluation measures used.  
13 The report shall set forth the sources of the evaluator's information.

14 The examiner shall assess and report regarding the defendant's  
15 amenability to treatment and relative risk to the community. A  
16 proposed treatment plan shall be provided and shall include, at a  
17 minimum:

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

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

21 (C) Monitoring plans, including any requirements regarding living  
22 conditions, lifestyle requirements, and monitoring by family members  
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

26 The court on its own motion may order, or on a motion by the state  
27 shall order, a second examination regarding the offender's amenability  
28 to treatment. The evaluator shall be selected by the party making the  
29 motion. The defendant shall pay the cost of any second examination  
30 ordered unless the court finds the defendant to be indigent in which  
31 case the state shall pay the cost.

32 (ii) After receipt of the reports, the court shall consider whether  
33 the offender and the community will benefit from use of this special  
34 sex offender sentencing alternative and consider the victim's opinion  
35 whether the offender should receive a treatment disposition under this  
36 subsection. If the court determines that this special sex offender  
37 sentencing alternative is appropriate, the court shall then impose a  
38 sentence within the sentence range. If this sentence is less than

1 eleven years of confinement, the court may suspend the execution of the  
2 sentence and impose the following conditions of suspension:

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

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

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

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

26 (III) Report as directed to the court and a community corrections  
27 officer;

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

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

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

36 (iii) The sex offender therapist shall submit quarterly reports on  
37 the defendant's progress in treatment to the court and the parties.  
38 The report shall reference the treatment plan and include at a minimum  
39 the following: Dates of attendance, defendant's compliance with



1 requirements, treatment activities, the defendant's relative progress  
2 in treatment, and any other material as specified by the court at  
3 sentencing.

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

19 (v) If a violation of conditions occurs during community custody,  
20 the department shall either impose sanctions as provided for in RCW  
21 9.94A.205(2)(a) or refer the violation to the court and recommend  
22 revocation of the suspended sentence as provided for in (a)(vi) of this  
23 subsection.

24 (vi) The court may revoke the suspended sentence at any time during  
25 the period of community custody and order execution of the sentence if:  
26 (A) The defendant violates the conditions of the suspended sentence, or  
27 (B) the court finds that the defendant is failing to make satisfactory  
28 progress in treatment. All confinement time served during the period  
29 of community custody shall be credited to the offender if the suspended  
30 sentence is revoked.

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

35 (viii) A sex offender therapist who examines or treats a sex  
36 offender pursuant to this subsection (8) does not have to be certified  
37 by the department of health pursuant to chapter 18.155 RCW if the court  
38 finds that: (A) The offender has already moved to another state or  
39 plans to move to another state for reasons other than circumventing the

1 certification requirements; (B) no certified providers are available  
2 for treatment within a reasonable geographical distance of the  
3 offender's home; and (C) the evaluation and treatment plan comply with  
4 this subsection (8) and the rules adopted by the department of health.

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

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

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

20 Except for an offender who has been convicted of a violation of RCW  
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
22 before the expiration of his or her term of confinement, the department  
23 of corrections may request the court to convert the balance of  
24 confinement to community supervision and to place conditions on the  
25 offender including crime-related prohibitions and requirements that the  
26 offender perform any one or more of the following:

- 27 (i) Devote time to a specific employment or occupation;
- 28 (ii) Remain within prescribed geographical boundaries and notify  
29 the court or the community corrections officer prior to any change in  
30 the offender's address or employment;
- 31 (iii) Report as directed to the court and a community corrections  
32 officer;
- 33 (iv) Undergo available outpatient treatment.

34 If the offender violates any of the terms of his or her community  
35 supervision, the court may order the offender to serve out the balance  
36 of his or her community supervision term in confinement in the custody  
37 of the department of corrections.

38 Nothing in this subsection (8)(b) shall confer eligibility for such  
39 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (8)(b) does not apply  
2 to any crime committed after July 1, 1990.

3 (c) Offenders convicted and sentenced for a sex offense committed  
4 prior to July 1, 1987, may, subject to available funds, request an  
5 evaluation by the department of corrections to determine whether they  
6 are amenable to treatment. If the offender is determined to be  
7 amenable to treatment, the offender may request placement in a  
8 treatment program within a correctional facility operated by the  
9 department. Placement in such treatment program is subject to  
10 available funds.

11 (d) Within the funds available for this purpose, the department  
12 shall develop and monitor transition and relapse prevention strategies,  
13 including risk assessment and release plans, to reduce risk to the  
14 community after sex offenders' terms of confinement in the custody of  
15 the department.

16 (9)(a)(i) When a court sentences a person to a term of total  
17 confinement to the custody of the department of corrections for an  
18 offense categorized as a sex offense or a serious violent offense  
19 committed after July 1, 1988, but before July 1, 1990, assault in the  
20 second degree, assault of a child in the second degree, any crime  
21 against a person where it is determined in accordance with RCW  
22 9.94A.125 that the defendant or an accomplice was armed with a deadly  
23 weapon at the time of commission, or any felony offense under chapter  
24 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
25 committed on or after July 1, 1988, but before July 25, 1999, the court  
26 shall in addition to the other terms of the sentence, sentence the  
27 offender to a one-year term of community placement beginning either  
28 upon completion of the term of confinement or at such time as the  
29 offender is transferred to community custody in lieu of earned release  
30 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
31 an offender under this subsection to the statutory maximum period of  
32 confinement then the community placement portion of the sentence shall  
33 consist entirely of such community custody to which the offender may  
34 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
35 period of community custody actually served shall be credited against  
36 the community placement portion of the sentence.

37 (ii) Except for persons sentenced under (b) of this subsection or  
38 subsection (10)(a) of this section, when a court sentences a person to  
39 a term of total confinement to the custody of the department of

1 corrections for a violent offense, any crime against a person under RCW  
2 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW  
3 not sentenced under subsection (6) of this section, committed on or  
4 after July 25, 1999, but before July 1, 2000, the court shall in  
5 addition to the other terms of the sentence, sentence the offender to  
6 a one-year term of community placement beginning either upon completion  
7 of the term of confinement or at such time as the offender is  
8 transferred to community custody in lieu of earned release in  
9 accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
10 the offender under this subsection (9)(a)(ii) to the statutory maximum  
11 period of confinement, then the community placement portion of the  
12 sentence shall consist entirely of such community custody to which the  
13 offender may become eligible, in accordance with RCW 9.94A.150 (1) and  
14 (2). Any period of community custody actually served shall be credited  
15 against the community placement portion of the sentence.

16 (b) When a court sentences a person to a term of total confinement  
17 to the custody of the department of corrections for an offense  
18 categorized as a sex offense committed on or after July 1, 1990, but  
19 before June 6, 1996, or a serious violent offense, vehicular homicide,  
20 or vehicular assault, committed on or after July 1, 1990, but before  
21 July 1, 2000, the court shall in addition to other terms of the  
22 sentence, sentence the offender to community placement for two years or  
23 up to the period of earned release awarded pursuant to RCW 9.94A.150  
24 (1) and (2), whichever is longer. The community placement shall begin  
25 either upon completion of the term of confinement or at such time as  
26 the offender is transferred to community custody in lieu of earned  
27 release in accordance with RCW 9.94A.150 (1) and (2). When the court  
28 sentences an offender under this subsection to the statutory maximum  
29 period of confinement then the community placement portion of the  
30 sentence shall consist entirely of the 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. Unless a  
34 condition is waived by the court, the terms of community placement for  
35 offenders sentenced pursuant to this section shall include the  
36 following conditions:

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

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

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

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

7 (v) The residence location and living arrangements are subject to  
8 the prior approval of the department of corrections during the period  
9 of community placement; and

10 (vi) The offender shall submit to affirmative acts necessary to  
11 monitor compliance with the orders of the court as required by the  
12 department.

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

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

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

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

22 (iv) The offender shall not consume alcohol;

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

24 or

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

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

34 (10)(a) When a court sentences a person to the custody of the  
35 department of corrections for an offense categorized as a sex offense  
36 committed on or after June 6, 1996, but before July 1, 2000, the court  
37 shall, in addition to other terms of the sentence, sentence the  
38 offender to community custody for three years or up to the period of  
39 earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever

1 is longer. The community custody shall begin either upon completion of  
2 the term of confinement or at such time as the offender is transferred  
3 to community custody in lieu of earned release in accordance with RCW  
4 9.94A.150 (1) and (2).

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

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

23 (11)(a) When a court sentences a person to the custody of the  
24 department of corrections for a sex offense, a violent offense, any  
25 crime against a person under RCW 9.94A.440(2), or a felony offense  
26 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of  
27 this section, committed on or after July 1, 2000, the court shall in  
28 addition to the other terms of the sentence, sentence the offender to  
29 community custody for the community custody range as established in  
30 section 1 of this act or up to the period of earned release awarded  
31 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
32 community custody shall begin either upon completion of the term of  
33 confinement or at such time as the offender is transferred to community  
34 custody in lieu of earned release in accordance with RCW 9.94A.150 (1)  
35 and (2). Community custody is considered to be a part of the entire  
36 sentence, and a community custody term is limited by the statutory  
37 maximum for the sentence.

38 (b) Unless a condition is waived by the court, the conditions of  
39 community custody shall include those provided for in subsection

1 (9)(b)(i) through (vi) of this section. The conditions may also  
2 include those provided for in subsection (9)(c)(i) through (vi) of this  
3 section. The court may also order the offender to participate in  
4 rehabilitative programs or otherwise perform affirmative conduct  
5 reasonably related to the circumstances of the offense, the offender's  
6 risk of reoffending, or the safety of the community, and the department  
7 shall enforce such conditions pursuant to (f) of this subsection. As  
8 part of any sentence that includes a term of community custody imposed  
9 under this subsection, the court shall also require the offender to  
10 comply with any conditions imposed by the department of corrections  
11 under subsection (15) of this section. The department shall assess the  
12 offender's risk of reoffense and may establish and modify additional  
13 conditions of the offender's community custody based upon the risk to  
14 community safety. The department may not impose conditions that are  
15 contrary to those ordered by the court and may not contravene or  
16 decrease court imposed conditions. The department shall notify the  
17 offender in writing of any such conditions or modifications. In  
18 setting, modifying, and enforcing conditions of community custody, the  
19 department shall be deemed to be performing a quasi-judicial function.

20 (c) If an offender violates conditions imposed by the court or the  
21 department pursuant to this subsection during community custody, the  
22 department may transfer the offender to a more restrictive confinement  
23 status and impose other available sanctions as provided in RCW  
24 9.94A.205 and 9.94A.207.

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

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

1 the sentence for the purposes of RCW 9.94A.195 and may be punishable as  
2 contempt of court as provided for in RCW 7.21.040. If the court  
3 extends a condition beyond the expiration of the term of community  
4 custody, the department is not responsible for supervision of the  
5 offender's compliance with the condition.

6 (f) Within the funds available for community custody, the  
7 department shall determine conditions and duration of community custody  
8 on the basis of risk to community safety, and shall supervise offenders  
9 during community custody on the basis of risk to community safety and  
10 conditions imposed by the court. The secretary shall adopt rules to  
11 implement the provisions of this subsection (11)(f).

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

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

25 (13) If a sentence imposed includes payment of a legal financial  
26 obligation, the sentence shall specify the total amount of the legal  
27 financial obligation owed, and shall require the offender to pay a  
28 specified monthly sum toward that legal financial obligation.  
29 Restitution to victims shall be paid prior to any other payments of  
30 monetary obligations. Any legal financial obligation that is imposed  
31 by the court may be collected by the department, which shall deliver  
32 the amount paid to the county clerk for credit. The offender's  
33 compliance with payment of legal financial obligations shall be  
34 supervised by the department for ten years following the entry of the  
35 judgment and sentence or ten years following the offender's release  
36 from total confinement. All monetary payments ordered shall be paid no  
37 later than ten years after the last date of release from confinement  
38 pursuant to a felony conviction or the date the sentence was entered  
39 unless the superior court extends the criminal judgment an additional



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

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

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

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

33 (b) For offenders sentenced to terms involving community custody  
34 for crimes committed on or after June 6, 1996, the department may  
35 include, in addition to the instructions in (a) of this subsection, any  
36 appropriate conditions of supervision, including but not limited to,  
37 prohibiting the offender from having contact with any other specified  
38 individuals or specific class of individuals. For offenders sentenced  
39 to terms of community custody for crimes committed on or after July 1,

1 2000, the department may additionally require the offender to  
2 participate in rehabilitative programs or otherwise perform affirmative  
3 conduct, and to obey all laws.

4 The conditions authorized under this subsection (15)(b) may be  
5 imposed by the department prior to or during an offender's community  
6 custody term. If a violation of conditions imposed by the court or the  
7 department pursuant to subsection (10) of this section occurs during  
8 community custody, it shall be deemed a violation of community  
9 placement for the purposes of RCW 9.94A.207 and shall authorize the  
10 department to transfer an offender to a more restrictive confinement  
11 status as provided in RCW 9.94A.205. At any time prior to the  
12 completion of an offender's term of community custody, the department  
13 may recommend to the court that any or all of the conditions imposed by  
14 the court or the department pursuant to subsection (10) or (11) of this  
15 section be continued beyond the expiration of the offender's term of  
16 community custody as authorized in subsection (10)(c) or (11)(e) of  
17 this section.

18 The department may require offenders to pay for special services  
19 rendered on or after July 25, 1993, including electronic monitoring,  
20 day reporting, and telephone reporting, dependent upon the offender's  
21 ability to pay. The department may pay for these services for  
22 offenders who are not able to pay.

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

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

38 (18) A departure from the standards in RCW 9.94A.400 (1) and (2)  
39 governing whether sentences are to be served consecutively or

1 concurrently is an exceptional sentence subject to the limitations in  
2 subsections (2) and (3) of this section, and may be appealed by the  
3 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

4 (19) The court shall order restitution whenever the offender is  
5 convicted of a felony that results in injury to any person or damage to  
6 or loss of property, whether the offender is sentenced to confinement  
7 or placed under community supervision, unless extraordinary  
8 circumstances exist that make restitution inappropriate in the court's  
9 judgment. The court shall set forth the extraordinary circumstances in  
10 the record if it does not order restitution.

11 (20) As a part of any sentence, the court may impose and enforce an  
12 order that relates directly to the circumstances of the crime for which  
13 the offender has been convicted, prohibiting the offender from having  
14 any contact with other specified individuals or a specific class of  
15 individuals for a period not to exceed the maximum allowable sentence  
16 for the crime, regardless of the expiration of the offender's term of  
17 community supervision or community placement.

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

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

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

37 (24) In sentencing an offender convicted of a crime of domestic  
38 violence, as defined in RCW 10.99.020, if the offender has a minor  
39 child, or if the victim of the offense for which the offender was

1 convicted has a minor child, the court may, as part of any term of  
2 community supervision, order the offender to participate in a domestic  
3 violence perpetrator program approved under RCW 26.50.150.

4 (25)(a) Sex offender examinations and treatment ordered as a  
5 special condition of community placement or community custody under  
6 this section shall be conducted only by sex offender treatment  
7 providers certified by the department of health under chapter 18.155  
8 RCW unless the court finds that: (i) The offender has already moved to  
9 another state or plans to move to another state for reasons other than  
10 circumventing the certification requirements; (ii) no certified  
11 providers are available for treatment within a reasonable geographic  
12 distance of the offender's home, as determined in rules adopted by the  
13 secretary; (iii) the evaluation and treatment plan comply with the  
14 rules adopted by the department of health; or (iv) the treatment  
15 provider is employed by the department. A treatment provider selected  
16 by an offender who is not certified by the department of health shall  
17 consult with a certified provider during the offender's period of  
18 treatment to ensure compliance with the rules adopted by the department  
19 of health. The frequency and content of the consultation shall be  
20 based on the recommendation of the certified provider.

21 (b) A sex offender's failure to participate in treatment required  
22 as a condition of community placement or community custody is a  
23 violation that will not be excused on the basis that no treatment  
24 provider was located within a reasonable geographic distance of the  
25 offender's home.

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