
SECOND SUBSTITUTE SENATE BILL 5421

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke)

Read first time 03/08/1999.

1 AN ACT Relating to the supervision of offenders in the community;
2 amending RCW 9.94A.010, 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.170,
3 9.94A.205, 9.94A.207, 9.94A.383, and 9.94A.440; reenacting and amending
4 RCW 9.94A.040 and 9.94A.145; adding new sections to chapter 72.09 RCW;
5 creating new sections; prescribing penalties; providing an effective
6 date; and providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read
9 as follows:

10 The purpose of this chapter is to make the criminal justice system
11 accountable to the public by developing a system for the sentencing of
12 felony offenders which structures, but does not eliminate,
13 discretionary decisions affecting sentences, and to (~~add a new chapter~~
14 ~~to Title 9 RCW designed to~~):

15 (1) Ensure that the punishment for a criminal offense is
16 proportionate to the seriousness of the offense and the offender's
17 criminal history;

18 (2) Promote respect for the law by providing punishment which is
19 just;

- 1 (3) Be commensurate with the punishment imposed on others
- 2 committing similar offenses;
- 3 (4) Protect the public;
- 4 (5) Offer the offender an opportunity to improve him or herself;
- 5 (~~and~~)
- 6 (6) Make frugal use of the state's and local governments'
- 7 resources; and
- 8 (7) Reduce the risk of reoffending by offenders in the community.

9 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
10 as follows:

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

13 (1) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department of
15 corrections, means that the department, either directly or through a
16 collection agreement authorized by RCW 9.94A.145, is responsible for
17 monitoring and enforcing the offender's sentence with regard to the
18 legal financial obligation, receiving payment thereof from the
19 offender, and, consistent with current law, delivering daily the entire
20 payment to the superior court clerk without depositing it in a
21 departmental account.

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

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

27 (4) "Community custody" means that portion of an (~~inmate's~~)
28 offender's sentence of confinement in lieu of earned (~~early~~) release
29 time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), (~~or~~)~~
30 ~~(10), or (11),~~ or RCW 9.94A.383, served in the community subject to
31 controls placed on the (~~inmate's~~) offender's movement and activities
32 by the department of corrections. For offenders placed on community
33 custody for crimes committed on or after July 1, 2000, the department
34 shall assess the offender's risk of reoffense and may establish and
35 modify conditions of community custody, in addition to those imposed by
36 the court, based upon the risk to community safety.

37 (5) "Community custody range" means the minimum and maximum period
38 of community custody included as part of a sentence under RCW 9.94A.120

1 (11), as established by the sentencing guidelines commission or the
2 legislature under RCW 9.94A.040, for crimes committed on or after July
3 1, 2000.

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

12 ((+6)) (7) "Community service" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender.

15 ((+7)) (8) "Community supervision" means a period of time during
16 which a convicted offender is subject to crime-related prohibitions and
17 other sentence conditions imposed by a court pursuant to this chapter
18 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the
19 supervision may include crime-related prohibitions and other conditions
20 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
21 compact for out-of-state supervision of parolees and probationers, RCW
22 9.95.270, community supervision is the functional equivalent of
23 probation and should be considered the same as probation by other
24 states.

25 ((+8)) (9) "Confinement" means total or partial confinement as
26 defined in this section.

27 ((+9)) (10) "Conviction" means an adjudication of guilt pursuant
28 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
29 guilty, and acceptance of a plea of guilty.

30 ((+10)) (11) "Court-ordered legal financial obligation" means a
31 sum of money that is ordered by a superior court of the state of
32 Washington for legal financial obligations which may include
33 restitution to the victim, statutorily imposed crime victims'
34 compensation fees as assessed pursuant to RCW 7.68.035, court costs,
35 county or interlocal drug funds, court-appointed attorneys' fees, and
36 costs of defense, fines, and any other financial obligation that is
37 assessed to the offender as a result of a felony conviction. Upon
38 conviction for vehicular assault while under the influence of
39 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular

1 homicide while under the influence of intoxicating liquor or any drug,
2 RCW 46.61.520(1)(a), legal financial obligations may also include
3 payment to a public agency of the expense of an emergency response to
4 the incident resulting in the conviction, subject to the provisions in
5 RCW 38.52.430.

6 ~~((11))~~ (12) "Crime-related prohibition" means an order of a court
7 prohibiting conduct that directly relates to the circumstances of the
8 crime for which the offender has been convicted, and shall not be
9 construed to mean orders directing an offender affirmatively to
10 participate in rehabilitative programs or to otherwise perform
11 affirmative conduct. However, affirmative acts necessary to monitor
12 compliance with the order of a court may be required by the department.

13 ~~((12))~~ (13) "Criminal history" means the list of a defendant's
14 prior convictions and juvenile adjudications, whether in this state, in
15 federal court, or elsewhere. The history shall include, where known,
16 for each conviction (a) whether the defendant has been placed on
17 probation and the length and terms thereof; and (b) whether the
18 defendant has been incarcerated and the length of incarceration.

19 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
20 judge that equals the difference between the offender's net daily
21 income and the reasonable obligations that the offender has for the
22 support of the offender and any dependents.

23 ~~((14))~~ (15) "Day reporting" means a program of enhanced
24 supervision designed to monitor the defendant's daily activities and
25 compliance with sentence conditions, and in which the defendant is
26 required to report daily to a specific location designated by the
27 department or the sentencing judge.

28 ~~((15))~~ (16) "Department" means the department of corrections.

29 ~~((16))~~ (17) "Determinate sentence" means a sentence that states
30 with exactitude the number of actual years, months, or days of total
31 confinement, of partial confinement, of community supervision, the
32 number of actual hours or days of community service work, or dollars or
33 terms of a legal financial obligation. The fact that an offender
34 through "earned ~~((early))~~ release" can reduce the actual period of
35 confinement shall not affect the classification of the sentence as a
36 determinate sentence.

37 ~~((17))~~ (18) "Disposable earnings" means that part of the earnings
38 of an individual remaining after the deduction from those earnings of
39 any amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 ~~((18))~~ (19) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
13 controlled substance (RCW 69.50.403);

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

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

20 ~~((19))~~ (20) "Escape" means:

21 (a) Escape in the first degree (RCW 9A.76.110), escape in the
22 second degree (RCW 9A.76.120), willful failure to return from furlough
23 (RCW 72.66.060), willful failure to return from work release (RCW
24 72.65.070), or willful failure to be available for supervision by the
25 department while in community custody (RCW 72.09.310); or

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

29 ~~((20))~~ (21) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
32 and-run injury-accident (RCW 46.52.020(4)); or

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

36 ~~((21))~~ (22) "Fines" means the requirement that the offender pay
37 a specific sum of money over a specific period of time to the court.

38 ~~((22))~~ (23) "First-time offender" means any person who is
39 convicted of a felony (a) not classified as a violent offense or a sex

1 offense under this chapter, or (b) that is not the manufacture,
2 delivery, or possession with intent to manufacture or deliver a
3 controlled substance classified in Schedule I or II that is a narcotic
4 drug or flunitrazepam classified in Schedule IV, nor the manufacture,
5 delivery, or possession with intent to deliver methamphetamine, its
6 salts, isomers, and salts of its isomers as defined in RCW
7 69.50.206(d)(2), nor the selling for profit of any controlled substance
8 or counterfeit substance classified in Schedule I, RCW 69.50.204,
9 except leaves and flowering tops of marihuana, who previously has never
10 been convicted of a felony in this state, federal court, or another
11 state, and who has never participated in a program of deferred
12 prosecution for a felony offense.

13 ~~((23))~~ (24) "Home detention" means a program of partial
14 confinement available to offenders wherein the offender is confined in
15 a private residence subject to electronic surveillance.

16 (25) "Most serious offense" means any of the following felonies or
17 a felony attempt to commit any of the following felonies, as now
18 existing or hereafter amended:

19 (a) Any felony defined under any law as a class A felony or
20 criminal solicitation of or criminal conspiracy to commit a class A
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

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

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Promoting prostitution in the first degree;

34 (n) Rape in the third degree;

35 (o) Robbery in the second degree;

36 (p) Sexual exploitation;

37 (q) Vehicular assault;

38 (r) Vehicular homicide, when proximately caused by the driving of
39 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

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

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW
13 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
14 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
15 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
16 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

17 (ii) A prior conviction for indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
19 if: (A) The crime was committed against a child under the age of
20 fourteen; or (B) the relationship between the victim and perpetrator is
21 included in the definition of indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
23 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
24 through July 27, 1997.

25 (~~((24))~~) (26) "Nonviolent offense" means an offense which is not a
26 violent offense.

27 (~~((25))~~) (27) "Offender" means a person who has committed a felony
28 established by state law and is eighteen years of age or older or is
29 less than eighteen years of age but whose case is under superior court
30 jurisdiction under RCW 13.04.030 or has been transferred by the
31 appropriate juvenile court to a criminal court pursuant to RCW
32 13.40.110. Throughout this chapter, the terms "offender" and
33 "defendant" are used interchangeably.

34 (~~((26))~~) (28) "Partial confinement" means confinement for no more
35 than one year in a facility or institution operated or utilized under
36 contract by the state or any other unit of government, or, if home
37 detention or work crew has been ordered by the court, in an approved
38 residence, for a substantial portion of each day with the balance of
39 the day spent in the community. Partial confinement includes work

1 release, home detention, work crew, and a combination of work crew and
2 home detention as defined in this section.

3 ~~((+27+))~~ (29) "Persistent offender" is an offender who:

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

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

14 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
15 of a child in the first degree, child molestation in the first degree,
16 rape in the second degree, rape of a child in the second degree, or
17 indecent liberties by forcible compulsion; (B) murder in the first
18 degree, murder in the second degree, homicide by abuse, kidnapping in
19 the first degree, kidnapping in the second degree, assault in the first
20 degree, assault in the second degree, assault of a child in the first
21 degree, or burglary in the first degree, with a finding of sexual
22 motivation; or (C) an attempt to commit any crime listed in this
23 subsection ~~((+27+))~~ (29)(b)(i); and

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

34 ~~((+28+))~~ (30) "Postrelease supervision" is that portion of an
35 offender's community placement that is not community custody.

36 ~~((+29+))~~ (31) "Restitution" means the requirement that the offender
37 pay a specific sum of money over a specific period of time to the court
38 as payment of damages. The sum may include both public and private

1 costs. The imposition of a restitution order does not preclude civil
2 redress.

3 ~~((+30+))~~ (32) "Risk assessment" means the application of an
4 objective instrument supported by research and adopted by the
5 department for the purpose of assessing an offender's risk of
6 reoffense, taking into consideration the nature of the harm done by the
7 offender, place and circumstances of the offender related to risk, the
8 offender's relationship to any victim, and any information provided to
9 the department by victims. The results of a risk assessment shall not
10 be based on unconfirmed or unconfirmable allegations.

11 (33) "Serious traffic offense" means:

12 (a) Driving while under the influence of intoxicating liquor or any
13 drug (RCW 46.61.502), actual physical control while under the influence
14 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
15 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
16 or

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

20 ~~((+31+))~~ (34) "Serious violent offense" is a subcategory of violent
21 offense and means:

22 (a) Murder in the first degree, homicide by abuse, murder in the
23 second degree, manslaughter in the first degree, assault in the first
24 degree, kidnapping in the first degree, or rape in the first degree,
25 assault of a child in the first degree, or an attempt, criminal
26 solicitation, or criminal conspiracy to commit one of these felonies;
27 or

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

31 ~~((+32+))~~ (35) "Sentence range" means the sentencing court's
32 discretionary range in imposing a nonappealable sentence.

33 ~~((+33+))~~ (36) "Sex offense" means:

34 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
35 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
36 criminal attempt, criminal solicitation, or criminal conspiracy to
37 commit such crimes;

38 (b) A felony with a finding of sexual motivation under RCW
39 9.94A.127 or 13.40.135; or

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

4 (~~(34)~~) (37) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(35)~~) (38) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(36)~~) (39) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(37)~~) (40) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(38)~~) (41) "Violent offense" means:

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

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

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

1 (~~(39)~~) (42) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the community
3 of not less than thirty-five hours per week that complies with RCW
4 9.94A.135. The civic improvement tasks shall have minimal negative
5 impact on existing private industries or the labor force in the county
6 where the service or labor is performed. The civic improvement tasks
7 shall not affect employment opportunities for people with developmental
8 disabilities contracted through sheltered workshops as defined in RCW
9 82.04.385. Only those offenders sentenced to a facility operated or
10 utilized under contract by a county or the state, or sanctioned under
11 RCW 9.94A.205, are eligible to participate on a work crew. Offenders
12 sentenced for a sex offense as defined in subsection (~~(33)~~) (36) of
13 this section are not eligible for the work crew program.

14 (~~(40)~~) (43) "Work ethic camp" means an alternative incarceration
15 program designed to reduce recidivism and lower the cost of corrections
16 by requiring offenders to complete a comprehensive array of real-world
17 job and vocational experiences, character-building work ethics
18 training, life management skills development, substance abuse
19 rehabilitation, counseling, literacy training, and basic adult
20 education.

21 (~~(41)~~) (44) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school. Participation in work release shall
24 be conditioned upon the offender attending work or school at regularly
25 defined hours and abiding by the rules of the work release facility.

26 (~~(42)~~ "Home detention" means a program of partial confinement
27 available to offenders wherein the offender is confined in a private
28 residence subject to electronic surveillance.))

29 **Sec. 3.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are
30 each reenacted and amended to read as follows:

31 (1) A sentencing guidelines commission is established as an agency
32 of state government.

33 (2) The legislature finds that the commission, having accomplished
34 its original statutory directive to implement this chapter, and having
35 expertise in sentencing practice and policies, shall:

36 (a) Evaluate state sentencing policy, to include whether the
37 sentencing ranges and standards are consistent with and further:

38 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

1 (ii) The intent of the legislature to emphasize confinement for the
2 violent offender and alternatives to confinement for the nonviolent
3 offender.

4 The commission shall provide the governor and the legislature with
5 its evaluation and recommendations under this subsection not later than
6 December 1, 1996, and every two years thereafter;

7 (b) Recommend to the legislature revisions or modifications to the
8 standard sentence ranges, state sentencing policy, prosecuting
9 standards, and other standards. If implementation of the revisions or
10 modifications would result in exceeding the capacity of correctional
11 facilities, then the commission shall accompany its recommendation with
12 an additional list of standard sentence ranges which are consistent
13 with correction capacity;

14 (c) Study the existing criminal code and from time to time make
15 recommendations to the legislature for modification;

16 (d)(i) Serve as a clearinghouse and information center for the
17 collection, preparation, analysis, and dissemination of information on
18 state and local adult and juvenile sentencing practices; (ii) develop
19 and maintain a computerized adult and juvenile sentencing information
20 system by individual superior court judge consisting of offender,
21 offense, history, and sentence information entered from judgment and
22 sentence forms for all adult felons; and (iii) conduct ongoing research
23 regarding adult and juvenile sentencing guidelines, use of total
24 confinement and alternatives to total confinement, plea bargaining, and
25 other matters relating to the improvement of the adult criminal justice
26 system and the juvenile justice system;

27 (e) Assume the powers and duties of the juvenile disposition
28 standards commission after June 30, 1996;

29 (f) Evaluate the effectiveness of existing disposition standards
30 and related statutes in implementing policies set forth in RCW
31 13.40.010 generally, specifically review the guidelines relating to the
32 confinement of minor and first offenders as well as the use of
33 diversion, and review the application of current and proposed juvenile
34 sentencing standards and guidelines for potential adverse impacts on
35 the sentencing outcomes of racial and ethnic minority youth;

36 (g) Solicit the comments and suggestions of the juvenile justice
37 community concerning disposition standards, and make recommendations to
38 the legislature regarding revisions or modifications of the standards.
39 The evaluations shall be submitted to the legislature on December 1 of

1 each odd-numbered year. The department of social and health services
2 shall provide the commission with available data concerning the
3 implementation of the disposition standards and related statutes and
4 their effect on the performance of the department's responsibilities
5 relating to juvenile offenders, and with recommendations for
6 modification of the disposition standards. The office of the
7 administrator for the courts shall provide the commission with
8 available data on diversion and dispositions of juvenile offenders
9 under chapter 13.40 RCW; and

10 (h) Not later than December 1, 1997, and at least every two years
11 thereafter, based on available information, report to the governor and
12 the legislature on:

13 (i) Racial disproportionality in juvenile and adult sentencing;

14 (ii) The capacity of state and local juvenile and adult facilities
15 and resources; and

16 (iii) Recidivism information on adult and juvenile offenders.

17 (3) Each of the commission's recommended standard sentence ranges
18 shall include one or more of the following: Total confinement, partial
19 confinement, community supervision, community service, and a fine.

20 (4) The standard sentence ranges of total and partial confinement
21 under this chapter are subject to the following limitations:

22 (a) If the maximum term in the range is one year or less, the
23 minimum term in the range shall be no less than one-third of the
24 maximum term in the range, except that if the maximum term in the range
25 is ninety days or less, the minimum term may be less than one-third of
26 the maximum;

27 (b) If the maximum term in the range is greater than one year, the
28 minimum term in the range shall be no less than seventy-five percent of
29 the maximum term in the range, except that for murder in the second
30 degree in seriousness category XIII under RCW 9.94A.310, the minimum
31 term in the range shall be no less than fifty percent of the maximum
32 term in the range; and

33 (c) The maximum term of confinement in a range may not exceed the
34 statutory maximum for the crime as provided in RCW 9A.20.021.

35 (5)(a) Not later than December 31, 1999, the commission shall
36 propose to the legislature the initial community custody ranges to be
37 included in sentences under RCW 9.94A.120(11) for crimes committed on
38 or after July 1, 2000. Not later than December 31 of each year, the
39 commission may propose modifications to the ranges. The ranges shall

1 be based on the principles in RCW 9.94A.010, and shall take into
2 account the funds available to the department for community custody.
3 The minimum term in each range shall not be less than one-half of the
4 maximum term.

5 (b) The legislature may, by enactment of a legislative bill, adopt
6 or modify the community custody ranges proposed by the commission. If
7 the legislature fails to adopt or modify the initial ranges in its next
8 regular session after they are proposed, the proposed ranges shall take
9 effect without legislative approval for crimes committed on or after
10 July 1, 2000.

11 When the sentencing guidelines commission proposes modifications to
12 ranges pursuant to this subsection, the legislature may, by enactment
13 of a bill, adopt or modify the ranges proposed by the commission for
14 crimes committed on or after July 1 of the year after they were
15 proposed. Unless the legislature adopts or modifies the commission's
16 proposal in its next regular session, the proposed ranges shall not
17 take effect.

18 (6) The commission shall exercise its duties under this section in
19 conformity with chapter 34.05 RCW.

20 **Sec. 4.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read
21 as follows:

22 Before imposing a sentence upon a defendant, the court shall
23 conduct a sentencing hearing. The sentencing hearing shall be held
24 within forty court days following conviction. Upon the motion of
25 either party for good cause shown, or on its own motion, the court may
26 extend the time period for conducting the sentencing hearing.

27 Except in cases where the defendant shall be sentenced to a term of
28 total confinement for life without the possibility of release or, when
29 authorized by RCW 10.95.030 for the crime of aggravated murder in the
30 first degree, sentenced to death, the court may order the department to
31 complete a risk assessment report. If available before sentencing, the
32 report shall be provided to the court.

33 The court shall, at the time of plea or conviction, order the
34 department to complete a presentence report before imposing a sentence
35 upon a defendant who has been convicted of a felony sexual offense.
36 The department of corrections shall give priority to presentence
37 investigations for sexual offenders. If the court determines that the
38 defendant may be a mentally ill person as defined in RCW 71.24.025,

1 although the defendant has not established that at the time of the
2 crime he or she lacked the capacity to commit the crime, was
3 incompetent to commit the crime, or was insane at the time of the
4 crime, the court shall order the department to complete a presentence
5 report before imposing a sentence.

6 The court shall consider the risk assessment report and presentence
7 reports, if any, including any victim impact statement and criminal
8 history, and allow arguments from the prosecutor, the defense counsel,
9 the offender, the victim, the survivor of the victim, or a
10 representative of the victim or survivor, and an investigative law
11 enforcement officer as to the sentence to be imposed.

12 If the court is satisfied by a preponderance of the evidence that
13 the defendant has a criminal history, the court shall specify the
14 convictions it has found to exist. All of this information shall be
15 part of the record. Copies of all risk assessment reports and
16 presentence reports presented to the sentencing court and all written
17 findings of facts and conclusions of law as to sentencing entered by
18 the court shall be sent to the department by the clerk of the court at
19 the conclusion of the sentencing and shall accompany the offender if
20 the offender is committed to the custody of the department. Court
21 clerks shall provide, without charge, certified copies of documents
22 relating to criminal convictions requested by prosecuting attorneys.

23 **Sec. 5.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read
24 as follows:

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

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

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

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

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

27 (5) In sentencing a first-time offender the court may waive the
28 imposition of a sentence within the sentence range and impose a
29 sentence which may include up to ninety days of confinement in a
30 facility operated or utilized under contract by the county and a
31 requirement that the offender refrain from committing new offenses.
32 The sentence may also include up to ((two years)) one year of community
33 ((supervision, which,)) custody. If treatment has been ordered, the
34 period of community custody may include up to the period of treatment,
35 but shall not exceed two years. In addition to crime-related
36 prohibitions, conditions may include requirements that the offender
37 perform any one or more of the following:

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

1 (b) Undergo available outpatient treatment for up to (~~two years~~)
2 one year, or inpatient treatment not to exceed the standard range of
3 confinement for that offense;

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

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

9 (e) Report as directed to (~~the court and~~) a community corrections
10 officer; or

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

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

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

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

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

28 (b) If the midpoint of the standard range is greater than one year
29 and the sentencing judge determines that the offender is eligible for
30 this option and that the offender and the community will benefit from
31 the use of the special drug offender sentencing alternative, the judge
32 may waive imposition of a sentence within the standard range and impose
33 a sentence that must include a period of total confinement in a state
34 facility for one-half of the midpoint of the standard range. During
35 incarceration in the state facility, offenders sentenced under this
36 subsection shall undergo a comprehensive substance abuse assessment and
37 receive, within available resources, treatment services appropriate for
38 the offender. The treatment services shall be designed by the division
39 of alcohol and substance abuse of the department of social and health

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

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

1 obligations which the offender has for the support of the offender and
2 any dependents. These rules shall be developed in consultation with
3 the administrator for the courts, the office of financial management,
4 and the commission.

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

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

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

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

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

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

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

39 (D) Anticipated length of treatment; and

1 (E) Recommended crime-related prohibitions.

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

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

17 (A) The court shall place the defendant on community custody for
18 the length of the suspended sentence or three years, whichever is
19 greater, and require the offender to comply with any conditions imposed
20 by the department of corrections under subsection (~~(14)~~) (15) of this
21 section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (iv) Undergo available outpatient treatment.

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

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

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

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

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

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

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

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

1 July 1, 2000, the court shall in addition to other terms of the
2 sentence, sentence the offender to community placement for two years or
3 up to the period of earned ((early)) release awarded pursuant to RCW
4 9.94A.150 (1) and (2), whichever is longer. The community placement
5 shall begin either upon completion of the term of confinement or at
6 such time as the offender is transferred to community custody in lieu
7 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and
8 (2). When the court sentences an offender under this subsection to the
9 statutory maximum period of confinement then the community placement
10 portion of the sentence shall consist entirely of the community custody
11 to which the offender may become eligible, in accordance with RCW
12 9.94A.150 (1) and (2). Any period of community custody actually served
13 shall be credited against the community placement portion of the
14 sentence. Unless a condition is waived by the court, the terms of
15 community placement for offenders sentenced pursuant to this section
16 shall include the following conditions:

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

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

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

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

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

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

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

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

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

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

1 (iv) The offender shall not consume alcohol;

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

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

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

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

23 (b) Unless a condition is waived by the court, the terms of
24 community custody shall be the same as those provided for in subsection
25 (9)(b) of this section and may include those provided for in subsection
26 (9)(c) of this section. As part of any sentence that includes a term
27 of community custody imposed under this subsection, the court shall
28 also require the offender to comply with any conditions imposed by the
29 department of corrections under subsection ((+14)) (15) of this
30 section.

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

1 the purposes of RCW 9.94A.195 and may be punishable as contempt of
2 court as provided for in RCW 7.21.040.

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

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 ~~((12))~~ (13) If a sentence imposed includes payment of a legal
4 financial obligation, the sentence shall specify the total amount of
5 the legal financial obligation owed, and shall require the offender to
6 pay a 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 ~~((13))~~ (14) Except as provided under RCW 9.94A.140(1) and
34 9.94A.142(1), a court may not impose a sentence providing for a term of
35 confinement or community supervision ~~((or))~~, community placement, or
36 community custody which exceeds the statutory maximum for the crime as
37 provided in chapter 9A.20 RCW.

38 ~~((14))~~ (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 (~~((14))~~) (15)(b)
22 may be imposed by the department prior to or during an offender's
23 community custody term. If a violation of conditions imposed by the
24 court or the department pursuant to subsection (10) of this section
25 occurs during community custody, it shall be deemed a violation of
26 community placement for the purposes of RCW 9.94A.207 and shall
27 authorize the department to transfer an offender to a more restrictive
28 confinement status as provided in RCW 9.94A.205. At any time prior to
29 the completion of (~~(a-sex)~~) an offender's term of community custody,
30 the department may recommend to the court that any or all of the
31 conditions imposed by the court or the department pursuant to
32 subsection (10) or (11) of this section be continued beyond the
33 expiration of the offender's term of community custody as authorized in
34 subsection (10)(c) or (11)(e) of 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 (~~(15)~~) (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 (~~(16)~~) (17) The sentencing court shall give the offender credit
13 for all confinement time served before the sentencing if that
14 confinement was solely in regard to the offense for which the offender
15 is being sentenced.

16 (~~(17)~~) (18) A departure from the standards in RCW 9.94A.400 (1)
17 and (2) 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 (~~(18)~~) (19) The court shall order restitution whenever the
22 offender is convicted of a felony that results in injury to any person
23 or damage to or loss of property, whether the offender is sentenced to
24 confinement 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 (~~(19)~~) (20) As a part of any sentence, the court may impose and
29 enforce an order that relates directly to the circumstances of the
30 crime for which the offender has been convicted, prohibiting the
31 offender from having any contact with other specified individuals or a
32 specific class of individuals for a period not to exceed the maximum
33 allowable sentence for the crime, regardless of the expiration of the
34 offender's term of community supervision or community placement.

35 (~~(20)~~) (21) The court may order an offender whose sentence
36 includes community placement or community supervision to undergo a
37 mental status evaluation and to participate in available outpatient
38 mental health treatment, if the court finds that reasonable grounds
39 exist to believe that the offender is a mentally ill person as defined

1 in RCW 71.24.025, and that this condition is likely to have influenced
2 the offense. An order requiring mental status evaluation or treatment
3 must be based on a presentence report and, if applicable, mental status
4 evaluations that have been filed with the court to determine the
5 offender's competency or eligibility for a defense of insanity. The
6 court may order additional evaluations at a later date if deemed
7 appropriate.

8 ~~((+21+))~~ (22) In any sentence of partial confinement, the court may
9 require the defendant to serve the partial confinement in work release,
10 in a program of home detention, on work crew, or in a combined program
11 of work crew and home detention.

12 ~~((+22+))~~ (23) All court-ordered legal financial obligations
13 collected by the department and remitted to the county clerk shall be
14 credited and paid where restitution is ordered. Restitution shall be
15 paid prior to any other payments of monetary obligations.

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

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

37 **Sec. 6.** RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are
38 each reenacted and amended to read as follows:

1 (1) Whenever a person is convicted of a felony, the court may order
2 the payment of a legal financial obligation as part of the sentence.
3 The court must on either the judgment and sentence or on a subsequent
4 order to pay, designate the total amount of a legal financial
5 obligation and segregate this amount among the separate assessments
6 made for restitution, costs, fines, and other assessments required by
7 law. On the same order, the court is also to set a sum that the
8 offender is required to pay on a monthly basis towards satisfying the
9 legal financial obligation. If the court fails to set the offender
10 monthly payment amount, the department shall set the amount. Upon
11 receipt of an offender's monthly payment, after restitution is
12 satisfied, the county clerk shall distribute the payment proportionally
13 among all other fines, costs, and assessments imposed, unless otherwise
14 ordered by the court.

15 (2) If the court determines that the offender, at the time of
16 sentencing, has the means to pay for the cost of incarceration, the
17 court may require the offender to pay for the cost of incarceration at
18 a rate of fifty dollars per day of incarceration. Payment of other
19 court-ordered financial obligations, including all legal financial
20 obligations and costs of supervision shall take precedence over the
21 payment of the cost of incarceration ordered by the court. All funds
22 recovered from offenders for the cost of incarceration in the county
23 jail shall be remitted to the county and the costs of incarceration in
24 a prison shall be remitted to the department of corrections.

25 (3) The court may add to the judgment and sentence or subsequent
26 order to pay a statement that a notice of payroll deduction is to be
27 immediately issued. If the court chooses not to order the immediate
28 issuance of a notice of payroll deduction at sentencing, the court
29 shall add to the judgment and sentence or subsequent order to pay a
30 statement that a notice of payroll deduction may be issued or other
31 income-withholding action may be taken, without further notice to the
32 offender if a monthly court-ordered legal financial obligation payment
33 is not paid when due, and an amount equal to or greater than the amount
34 payable for one month is owed.

35 If a judgment and sentence or subsequent order to pay does not
36 include the statement that a notice of payroll deduction may be issued
37 or other income-withholding action may be taken if a monthly legal
38 financial obligation payment is past due, the department may serve a
39 notice on the offender stating such requirements and authorizations.

1 Service shall be by personal service or any form of mail requiring a
2 return receipt.

3 (4) All legal financial obligations that are ordered as a result of
4 a conviction for a felony, may also be enforced in the same manner as
5 a judgment in a civil action by the party or entity to whom the legal
6 financial obligation is owed. Restitution collected through civil
7 enforcement must be paid through the registry of the court and must be
8 distributed proportionately according to each victim's loss when there
9 is more than one victim. The judgment and sentence shall identify the
10 party or entity to whom restitution is owed so that the state, party,
11 or entity may enforce the judgment. If restitution is ordered pursuant
12 to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and
13 the victim's child born from the rape, the Washington state child
14 support registry shall be identified as the party to whom payments must
15 be made. Restitution obligations arising from the rape of a child in
16 the first, second, or third degree that result in the pregnancy of the
17 victim may be enforced for the time periods provided under RCW
18 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations
19 may be enforced at any time during the ten-year period following the
20 offender's release from total confinement or within ten years of entry
21 of the judgment and sentence, whichever period is longer. Prior to the
22 expiration of the initial ten-year period, the superior court may
23 extend the criminal judgment an additional ten years for payment of
24 legal financial obligations including crime victims' assessments. If
25 jurisdiction under the criminal judgment is extended, the department is
26 not responsible for supervision of the offender during the subsequent
27 period. Independent of the department, the party or entity to whom the
28 legal financial obligation is owed shall have the authority to utilize
29 any other remedies available to the party or entity to collect the
30 legal financial obligation.

31 (5) In order to assist the court in setting a monthly sum that the
32 offender must pay during the period of supervision, the offender is
33 required to report to the department for purposes of preparing a
34 recommendation to the court. When reporting, the offender is required,
35 under oath, to truthfully and honestly respond to all questions
36 concerning present, past, and future earning capabilities and the
37 location and nature of all property or financial assets. The offender
38 is further required to bring any and all documents as requested by the
39 department.

1 (6) After completing the investigation, the department shall make
2 a report to the court on the amount of the monthly payment that the
3 offender should be required to make towards a satisfied legal financial
4 obligation.

5 (7) During the period of supervision, the department may make a
6 recommendation to the court that the offender's monthly payment
7 schedule be modified so as to reflect a change in financial
8 circumstances. If the department sets the monthly payment amount, the
9 department may modify the monthly payment amount without the matter
10 being returned to the court. Also, during the period of supervision,
11 the offender may be required at the request of the department to report
12 to the department for the purposes of reviewing the appropriateness of
13 the collection schedule for the legal financial obligation. During
14 this reporting, the offender is required under oath to truthfully and
15 honestly respond to all questions concerning earning capabilities and
16 the location and nature of all property or financial assets. Also, the
17 offender is required to bring any and all documents as requested by the
18 department in order to prepare the collection schedule.

19 (8) After the judgment and sentence or payment order is entered,
20 the department shall for any period of supervision be authorized to
21 collect the legal financial obligation from the offender. Any amount
22 collected by the department shall be remitted daily to the county clerk
23 for the purposes of disbursements. The department is authorized to
24 accept credit cards as payment for a legal financial obligation, and
25 any costs incurred related to accepting credit card payments shall be
26 the responsibility of the offender.

27 (9) The department or any obligee of the legal financial obligation
28 may seek a mandatory wage assignment for the purposes of obtaining
29 satisfaction for the legal financial obligation pursuant to RCW
30 9.94A.2001.

31 (10) The requirement that the offender pay a monthly sum towards a
32 legal financial obligation constitutes a condition or requirement of a
33 sentence and the offender is subject to the penalties as provided in
34 RCW 9.94A.200 for noncompliance.

35 (11) The county clerk shall provide the department with
36 individualized monthly billings for each offender with an unsatisfied
37 legal financial obligation and shall provide the department with notice
38 of payments by such offenders no less frequently than weekly.

1 (12) The department may arrange for the collection of unpaid legal
2 financial obligations through the county clerk, or through another
3 entity if the clerk does not assume responsibility for collection. The
4 costs for collection services shall be paid by the offender.

5 **Sec. 7.** RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read
6 as follows:

7 (1) A term of confinement(~~(, including community custody,)~~) ordered
8 in a sentence pursuant to this chapter shall be tolled by any period of
9 time during which the offender has absented ((him)) himself or herself
10 from confinement without the prior approval of the entity in whose
11 custody the offender has been placed. A term of partial confinement
12 shall be tolled during any period of time spent in total confinement
13 pursuant to a new conviction or pursuant to sanctions for violation of
14 sentence conditions on a separate felony conviction.

15 (2) A term of ((~~supervision, including postrelease supervision~~))
16 community custody ordered in a sentence pursuant to this chapter shall
17 be tolled by any period of time during which the offender has absented
18 himself or herself from supervision without prior approval of the
19 entity under whose ((~~supervision~~)) community custody the offender has
20 been placed.

21 (3) Any period of ((~~supervision~~)) community custody shall be tolled
22 during any period of time the offender is in confinement for any
23 reason. However, if an offender is detained pursuant to RCW 9.94A.207
24 or 9.94A.195 and is later found not to have violated a condition or
25 requirement of ((~~supervision~~)) community custody, time spent in
26 confinement due to such detention shall not toll ((~~to {the}~~)) the
27 period of ((~~supervision~~)) community custody.

28 (4) For confinement or ((~~supervision~~)) community custody sentences,
29 the date for the tolling of the sentence shall be established by the
30 entity responsible for the confinement or ((~~supervision~~)) community
31 custody.

32 **Sec. 8.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read
33 as follows:

34 (1) If an ((~~inmate~~)) offender violates any condition or requirement
35 of community custody, the department may transfer the ((~~inmate~~))
36 offender to a more restrictive confinement status to serve up to the
37 remaining portion of the sentence, less credit for any period actually

1 spent in community custody or in detention awaiting disposition of an
2 alleged violation and subject to the limitations of subsection (2) of
3 this section.

4 (2)(a) For a sex offender sentenced to a term of community custody
5 under RCW 9.94A.120(8) who violates any condition of community custody,
6 the department may impose a sanction of up to sixty days' confinement
7 in a local correctional facility for each violation. If the department
8 imposes a sanction, the department shall submit within seventy-two
9 hours a report to the court and the prosecuting attorney outlining the
10 violation or violations and the sanctions imposed.

11 (b) For a sex offender sentenced to a term of community custody
12 under RCW 9.94A.120(10) who violates any condition of community custody
13 after having completed his or her maximum term of total confinement,
14 including time served on community custody in lieu of earned ((early))
15 release, the department may impose a sanction of up to sixty days in a
16 local correctional facility for each violation.

17 (c) For an offender sentenced to a term of community custody under
18 RCW 9.94A.120 (5) through (7) or (11), or under RCW 9.94A.383, for a
19 crime committed on or after July 1, 2000, who violates any condition
20 of community custody after having completed his or her maximum term of
21 total confinement, including time served on community custody in lieu
22 of earned release, the department may impose a sanction of up to sixty
23 days in total confinement for each violation. The department may
24 impose sanctions such as work release, home detention with electronic
25 monitoring, work crew, community service, inpatient treatment, daily
26 reporting, curfew, educational or counseling sessions, supervision
27 enhanced through electronic monitoring, or any other sanctions
28 available in the community.

29 (d) For an offender sentenced to a term of community custody under
30 RCW 9.94A.120(9)(a)(ii) who violates any condition of community custody
31 after having completed his or her maximum term of total confinement,
32 including time served on community custody in lieu of earned release,
33 the department may impose a sanction of up to sixty days in total
34 confinement for each violation. The department may impose sanctions
35 such as work release, home detention with electronic monitoring, work
36 crew, community service, inpatient treatment, daily reporting, curfew,
37 educational or counseling sessions, supervision enhanced through
38 electronic monitoring, or any other sanctions available in the
39 community.

1 (3) If an ((inmate)) offender is accused of violating any condition
2 or requirement of community custody, he or she is entitled to a hearing
3 before the department prior to the imposition of sanctions. The
4 hearing shall be considered as ((inmate)) offender disciplinary
5 proceedings and shall not be subject to chapter 34.05 RCW. The
6 department shall develop hearing procedures and a structure of
7 graduated sanctions.

8 (4) The hearing procedures required under subsection (3) of this
9 section shall be developed by rule and include the following:

10 (a) Hearing officers shall report through a chain of command
11 separate from that of community corrections officers;

12 (b) The department shall provide the offender with written notice
13 of the violation, the evidence relied upon, and the reasons the
14 particular sanction was imposed. The notice shall include a statement
15 of the rights specified in this subsection, and the offender's right to
16 file a personal restraint petition under court rules after the final
17 decision of the department;

18 (c) The hearing shall be held unless waived by the offender and
19 shall be electronically recorded. For offenders not in total
20 confinement, the hearing shall be held within fifteen working days, but
21 not less than twenty-four hours, after notice of the violation. For
22 offenders in total confinement, the hearing shall be held within five
23 working days, but not less than twenty-four hours, after notice of the
24 violation;

25 (d) The offender shall have the right to: (i) Be present at the
26 hearing; (ii) have the assistance of a person qualified to assist the
27 offender in the hearing, appointed by the hearing officer if the
28 offender has a language or communications barrier; (iii) testify or
29 remain silent; (iv) call witnesses and present documentary evidence;
30 and (v) question witnesses who appear and testify; and

31 (e) The sanction shall take effect if affirmed by the hearing
32 officer. Within seven days after the hearing officer's decision, the
33 offender may appeal the decision to a panel of three reviewing officers
34 designated by the secretary or the secretary's designee. The sanction
35 shall be reversed or modified if a majority of the panel finds that the
36 sanction was not reasonably related to any of the following: (i) The
37 crime of conviction; (ii) the violation committed; (iii) the offender's
38 risk of reoffending; or (iv) the safety of the community.

1 (5) For purposes of this section, no finding of a violation of
2 conditions may be based on unconfirmed or unconfirmable allegations.

3 **Sec. 9.** RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read
4 as follows:

5 (1) The secretary may issue warrants for the arrest of any offender
6 who violates a condition of community placement or community custody.
7 The arrest warrants shall authorize any law enforcement or peace
8 officer or community corrections officer of this state or any other
9 state where such offender may be located, to arrest the offender and
10 place him or her in total confinement pending disposition of the
11 alleged violation. The department shall compensate the local
12 jurisdiction at the office of financial management's adjudicated rate,
13 in accordance with RCW 70.48.440. A community corrections officer, if
14 he or she has reasonable cause to believe an offender in community
15 placement or community custody has violated a condition of community
16 placement or community custody, may suspend the person's community
17 placement or community custody status and arrest or cause the arrest
18 and detention in total confinement of the offender, pending the
19 determination of the secretary as to whether the violation has
20 occurred. The community corrections officer shall report to the
21 secretary all facts and circumstances and the reasons for the action of
22 suspending community placement or community custody status. A
23 violation of a condition of community placement or community custody
24 shall be deemed a violation of the sentence for purposes of RCW
25 9.94A.195. The authority granted to community corrections officers
26 under this section shall be in addition to that set forth in RCW
27 9.94A.195.

28 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
29 to community custody and who are detained in a local correctional
30 facility are the financial responsibility of the department of
31 corrections, except as provided in subsection (3) of this section. The
32 community custody inmate shall be removed from the local correctional
33 facility, except as provided in subsection (3) of this section, not
34 later than eight days, excluding weekends and holidays, following
35 admittance to the local correctional facility and notification that the
36 inmate is available for movement to a state correctional institution.

37 (3) The department may negotiate with local correctional
38 authorities for an additional period of detention; however, sex

1 offenders sanctioned for community custody violations under RCW
2 9.94A.205(2) to a term of confinement shall remain in the local
3 correctional facility for the complete term of the sanction. For
4 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
5 correctional facility shall be financially responsible. For
6 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
7 of corrections shall be financially responsible for that portion of the
8 sanction served during the time in which the sex offender is on
9 community custody in lieu of earned ((early)) release, and the local
10 correctional facility shall be financially responsible for that portion
11 of the sanction served by the sex offender after the time in which the
12 sex offender is on community custody in lieu of earned ((early))
13 release. The department, in consultation with the Washington
14 association of sheriffs and police chiefs and those counties in which
15 the sheriff does not operate a correctional facility, shall establish
16 a methodology for determining the department's local correctional
17 facilities bed utilization rate, for each county in calendar year 1998,
18 for offenders being held for violations of conditions of community
19 custody, community placement, or community supervision. For
20 confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the
21 local correctional facility shall continue to be financially
22 responsible to the extent of the calendar year 1998 bed utilization
23 rate. If the department's use of bed space in local correctional
24 facilities of any county for confinement sanctions imposed on offenders
25 sentenced to a term of community custody under RCW 9.94A.120 (7) or
26 (11) or 9.94A.383 exceeds the 1998 bed utilization rate for the county,
27 the department shall compensate the county for the excess use at the
28 per diem rate equal to the lowest rate charged by the county under its
29 contract with a municipal government during the year in which the use
30 occurs.

31 **Sec. 10.** RCW 9.94A.383 and 1988 c 143 s 23 are each amended to
32 read as follows:

33 On all sentences of confinement for one year or less, the court may
34 impose up to one year of community ((supervision)) custody, subject to
35 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and
36 (c). An offender shall be on community ((supervision)) custody as of
37 the date of sentencing. However, during the time for which the
38 offender is in total or partial confinement pursuant to the sentence or

1 a violation of the sentence, the period of community ((~~supervision~~))
2 custody shall toll.

3 **Sec. 11.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
4 as follows:

5 (1) Decision not to prosecute.

6 STANDARD: A prosecuting attorney may decline to prosecute, even
7 though technically sufficient evidence to prosecute exists, in
8 situations where prosecution would serve no public purpose, would
9 defeat the underlying purpose of the law in question or would result in
10 decreased respect for the law.

11 GUIDELINE/COMMENTARY:

12 Examples

13 The following are examples of reasons not to prosecute which could
14 satisfy the standard.

15 (a) Contrary to Legislative Intent - It may be proper to decline to
16 charge where the application of criminal sanctions would be clearly
17 contrary to the intent of the legislature in enacting the particular
18 statute.

19 (b) Antiquated Statute - It may be proper to decline to charge
20 where the statute in question is antiquated in that:

21 (i) It has not been enforced for many years; and

22 (ii) Most members of society act as if it were no longer in
23 existence; and

24 (iii) It serves no deterrent or protective purpose in today's
25 society; and

26 (iv) The statute has not been recently reconsidered by the
27 legislature.

28 This reason is not to be construed as the basis for declining cases
29 because the law in question is unpopular or because it is difficult to
30 enforce.

31 (c) De Minimus Violation - It may be proper to decline to charge
32 where the violation of law is only technical or insubstantial and where
33 no public interest or deterrent purpose would be served by prosecution.

34 (d) Confinement on Other Charges - It may be proper to decline to
35 charge because the accused has been sentenced on another charge to a
36 lengthy period of confinement; and

37 (i) Conviction of the new offense would not merit any additional
38 direct or collateral punishment;

1 (ii) The new offense is either a misdemeanor or a felony which is
2 not particularly aggravated; and

3 (iii) Conviction of the new offense would not serve any significant
4 deterrent purpose.

5 (e) Pending Conviction on Another Charge - It may be proper to
6 decline to charge because the accused is facing a pending prosecution
7 in the same or another county; and

8 (i) Conviction of the new offense would not merit any additional
9 direct or collateral punishment;

10 (ii) Conviction in the pending prosecution is imminent;

11 (iii) The new offense is either a misdemeanor or a felony which is
12 not particularly aggravated; and

13 (iv) Conviction of the new offense would not serve any significant
14 deterrent purpose.

15 (f) High Disproportionate Cost of Prosecution - It may be proper to
16 decline to charge where the cost of locating or transporting, or the
17 burden on, prosecution witnesses is highly disproportionate to the
18 importance of prosecuting the offense in question. This reason should
19 be limited to minor cases and should not be relied upon in serious
20 cases.

21 (g) Improper Motives of Complainant - It may be proper to decline
22 charges because the motives of the complainant are improper and
23 prosecution would serve no public purpose, would defeat the underlying
24 purpose of the law in question or would result in decreased respect for
25 the law.

26 (h) Immunity - It may be proper to decline to charge where immunity
27 is to be given to an accused in order to prosecute another where the
28 accused's information or testimony will reasonably lead to the
29 conviction of others who are responsible for more serious criminal
30 conduct or who represent a greater danger to the public interest.

31 (i) Victim Request - It may be proper to decline to charge because
32 the victim requests that no criminal charges be filed and the case
33 involves the following crimes or situations:

34 (i) Assault cases where the victim has suffered little or no
35 injury;

36 (ii) Crimes against property, not involving violence, where no
37 major loss was suffered;

38 (iii) Where doing so would not jeopardize the safety of society.

1 Care should be taken to insure that the victim's request is freely
2 made and is not the product of threats or pressure by the accused.

3 The presence of these factors may also justify the decision to
4 dismiss a prosecution which has been commenced.

5 Notification

6 The prosecutor is encouraged to notify the victim, when practical,
7 and the law enforcement personnel, of the decision not to prosecute.

8 (2) Decision to prosecute.

9 (a) STANDARD:

10 Crimes against persons will be filed if sufficient admissible
11 evidence exists, which, when considered with the most plausible,
12 reasonably foreseeable defense that could be raised under the evidence,
13 would justify conviction by a reasonable and objective fact-finder.
14 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
15 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
16 9A.64.020 the prosecutor should avoid prefiling agreements or
17 diversions intended to place the accused in a program of treatment or
18 counseling, so that treatment, if determined to be beneficial, can be
19 provided pursuant to RCW 9.94A.120(8).

20 Crimes against property/other crimes will be filed if the
21 admissible evidence is of such convincing force as to make it probable
22 that a reasonable and objective fact-finder would convict after hearing
23 all the admissible evidence and the most plausible defense that could
24 be raised.

25 See table below for the crimes within these categories.

26 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

27 CRIMES AGAINST PERSONS

28 Aggravated Murder

29 1st Degree Murder

30 2nd Degree Murder

31 1st Degree Kidnaping

32 1st Degree Assault

33 1st Degree Assault of a Child

34 1st Degree Rape

35 1st Degree Robbery

36 1st Degree Rape of a Child

37 1st Degree Arson

38 2nd Degree Kidnaping

1 2nd Degree Assault
2 2nd Degree Assault of a Child
3 2nd Degree Rape
4 2nd Degree Robbery
5 1st Degree Burglary
6 1st Degree Manslaughter
7 2nd Degree Manslaughter
8 1st Degree Extortion
9 Indecent Liberties
10 Incest
11 2nd Degree Rape of a Child
12 Vehicular Homicide
13 Vehicular Assault
14 3rd Degree Rape
15 3rd Degree Rape of a Child
16 1st Degree Child Molestation
17 2nd Degree Child Molestation
18 3rd Degree Child Molestation
19 2nd Degree Extortion
20 1st Degree Promoting Prostitution
21 Intimidating a Juror
22 Communication with a Minor
23 Intimidating a Witness
24 Intimidating a Public Servant
25 Bomb Threat (if against person)
26 3rd Degree Assault
27 3rd Degree Assault of a Child
28 Unlawful Imprisonment
29 Promoting a Suicide Attempt
30 Riot (if against person)
31 Stalking
32 Custodial Assault
33 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
34 and (c))
35 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
36 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
37 (5))

1 CRIMES AGAINST PROPERTY/OTHER CRIMES
2 2nd Degree Arson
3 1st Degree Escape
4 2nd Degree Burglary
5 1st Degree Theft
6 1st Degree Perjury
7 1st Degree Introducing Contraband
8 1st Degree Possession of Stolen Property
9 Bribery
10 Bribing a Witness
11 Bribe received by a Witness
12 Bomb Threat (if against property)
13 1st Degree Malicious Mischief
14 2nd Degree Theft
15 2nd Degree Escape
16 2nd Degree Introducing Contraband
17 2nd Degree Possession of Stolen Property
18 2nd Degree Malicious Mischief
19 1st Degree Reckless Burning
20 Taking a Motor Vehicle without Authorization
21 Forgery
22 2nd Degree Perjury
23 2nd Degree Promoting Prostitution
24 Tampering with a Witness
25 Trading in Public Office
26 Trading in Special Influence
27 Receiving/Granting Unlawful Compensation
28 Bigamy
29 Eluding a Pursuing Police Vehicle
30 Willful Failure to Return from Furlough
31 Escape from Community Custody
32 Riot (if against property)
33 Thefts of Livestock

34 ALL OTHER UNCLASSIFIED FELONIES

35 Selection of Charges/Degree of Charge

36 ((+1)) (i) The prosecutor should file charges which adequately
37 describe the nature of defendant's conduct. Other offenses may be
38 charged only if they are necessary to ensure that the charges:

1 (~~(a)~~) (A) Will significantly enhance the strength of the state's
2 case at trial; or

3 (~~(b)~~) (B) Will result in restitution to all victims.

4 (~~(2)~~) (ii) The prosecutor should not overcharge to obtain a
5 guilty plea. Overcharging includes:

6 (~~(a)~~) (A) Charging a higher degree;

7 (~~(b)~~) (B) Charging additional counts.

8 This standard is intended to direct prosecutors to charge those
9 crimes which demonstrate the nature and seriousness of a defendant's
10 criminal conduct, but to decline to charge crimes which are not
11 necessary to such an indication. Crimes which do not merge as a matter
12 of law, but which arise from the same course of conduct, do not all
13 have to be charged.

14 (b) GUIDELINES/COMMENTARY:

15 (i) Police Investigation

16 A prosecuting attorney is dependent upon law enforcement agencies
17 to conduct the necessary factual investigation which must precede the
18 decision to prosecute. The prosecuting attorney shall ensure that a
19 thorough factual investigation has been conducted before a decision to
20 prosecute is made. In ordinary circumstances the investigation should
21 include the following:

22 (~~(1)~~) (A) The interviewing of all material witnesses, together
23 with the obtaining of written statements whenever possible;

24 (~~(2)~~) (B) The completion of necessary laboratory tests; and

25 (~~(3)~~) (C) The obtaining, in accordance with constitutional
26 requirements, of the suspect's version of the events.

27 If the initial investigation is incomplete, a prosecuting attorney
28 should insist upon further investigation before a decision to prosecute
29 is made, and specify what the investigation needs to include.

30 (ii) Exceptions

31 In certain situations, a prosecuting attorney may authorize filing
32 of a criminal complaint before the investigation is complete if:

33 (~~(1)~~) (A) Probable cause exists to believe the suspect is guilty;
34 and

35 (~~(2)~~) (B) The suspect presents a danger to the community or is
36 likely to flee if not apprehended; or

37 (~~(3)~~) (C) The arrest of the suspect is necessary to complete the
38 investigation of the crime.

1 In the event that the exception to the standard is applied, the
2 prosecuting attorney shall obtain a commitment from the law enforcement
3 agency involved to complete the investigation in a timely manner. If
4 the subsequent investigation does not produce sufficient evidence to
5 meet the normal charging standard, the complaint should be dismissed.

6 (iii) Investigation Techniques

7 The prosecutor should be fully advised of the investigatory
8 techniques that were used in the case investigation including:

9 ~~((1))~~ (A) Polygraph testing;

10 ~~((2))~~ (B) Hypnosis;

11 ~~((3))~~ (C) Electronic surveillance;

12 ~~((4))~~ (D) Use of informants.

13 (iv) Pre-Filing Discussions with Defendant

14 Discussions with the defendant or his/her representative regarding
15 the selection or disposition of charges may occur prior to the filing
16 of charges, and potential agreements can be reached.

17 (v) Pre-Filing Discussions with Victim(s)

18 Discussions with the victim(s) or victims' representatives
19 regarding the selection or disposition of charges may occur before the
20 filing of charges. The discussions may be considered by the prosecutor
21 in charging and disposition decisions, and should be considered before
22 reaching any agreement with the defendant regarding these decisions.

23 NEW SECTION. Sec. 12. A new section is added to chapter 72.09 RCW
24 to read as follows:

25 Except as specifically prohibited by other law, and for purposes of
26 determining, modifying, or monitoring compliance with conditions of
27 community custody, community placement, or community supervision as
28 authorized under RCW 9.94A.120 and 9.94A.383, the department:

29 (1) Shall have access to all relevant records and information in
30 the possession of public agencies relating to offenders, including
31 police reports, prosecutors' statements of probable cause, complete
32 criminal history information, psychological evaluations and psychiatric
33 hospital reports, sex offender treatment program reports, and juvenile
34 records; and

35 (2) May require periodic reports from providers of treatment or
36 other services required by the court or the department, including
37 progress reports, evaluations and assessments, and reports of
38 violations of conditions imposed by the court or the department.

1 NEW SECTION. **Sec. 13.** A new section is added to chapter 72.09 RCW
2 to read as follows:

3 To the extent practicable, the department shall deploy community
4 corrections staff on the basis of geographic areas in which offenders
5 under the department's jurisdiction are located, and shall establish a
6 systematic means of assessing risk to the safety of those communities.

7 NEW SECTION. **Sec. 14.** The secretary of corrections may adopt
8 rules to implement sections 1 through 13 of this act.

9 NEW SECTION. **Sec. 15.** A new section is added to chapter 72.09 RCW
10 to read as follows:

11 (1) The Washington state institute for public policy shall conduct
12 a study of the effect of the use of community custody under this act.
13 The study shall include the effect of this act on recidivism and other
14 outcomes. In its study the institute shall consider:

15 (a) Recidivism, according to the definition adopted by the
16 institute pursuant to section 59, chapter 338, Laws of 1997;

17 (b) The number and seriousness level of violations of conditions;

18 (c) The application of the graduated sanctions by the department;

19 (d) Unauthorized absences from supervision;

20 (e) Payment of legal financial obligations;

21 (f) Unlawful use of controlled substances;

22 (g) Use of alcohol when abstention or treatment for alcoholism is
23 a condition of supervision;

24 (h) Effects on the number of offenders who are employed or
25 participate in vocational rehabilitation;

26 (i) Participation in vocational and education programs; and

27 (j) Impact on the receipt of public assistance.

28 (2) By January 1, 2000, the institute shall report to the
29 legislature on the design for the study. By January 1st of each year
30 thereafter, the institute shall report to the legislature on the
31 progress and findings of the study and make recommendations based on
32 its findings. By January 1, 2010, the institute shall provide to the
33 legislature a final report on the findings of the study.

34 (3) This section expires December 31, 2010.

35 NEW SECTION. **Sec. 16.** This act may be known and cited as the
36 offender accountability act.

1 NEW SECTION. **Sec. 17.** Section 10 of this act takes effect July 1,
2 2000, and applies only to offenses committed on or after July 1, 2000.

3 NEW SECTION. **Sec. 18.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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