
SUBSTITUTE SENATE BILL 5549

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Long and Hargrove; by request of Sentencing Guidelines Commission)

Read first time 02/19/99.

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (c) The secretary shall require electronic monitoring for all
10 offenders in extraordinary medical placement unless the electronic
11 monitoring equipment interferes with the function of the offender's
12 medical equipment or results in the loss of funding for the offender's
13 medical care. The secretary shall specify who shall provide the
14 monitoring services and the terms under which the monitoring shall be
15 performed.

16 (d) The secretary may revoke an extraordinary medical placement
17 under this subsection at any time.

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

22 ~~((+5))~~ (6) No more than the final six months of the sentence may
23 be served in partial confinement designed to aid the offender in
24 finding work and reestablishing himself or herself in the community;

25 ~~((+6))~~ (7) The governor may pardon any offender;

26 ~~((+7))~~ (8) The department of corrections may release an offender
27 from confinement any time within ten days before a release date
28 calculated under this section; and

29 ~~((+8))~~ (9) An offender may leave a correctional facility prior to
30 completion of his or her sentence if the sentence has been reduced as
31 provided in RCW 9.94A.160.

32 Notwithstanding any other provisions of this section, an offender
33 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to
34 a mandatory minimum sentence of total confinement shall not be released
35 from total confinement before the completion of the listed mandatory
36 minimum sentence for that felony crime of conviction unless allowed
37 under RCW 9.94A.120(4).

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

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

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

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

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

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

1 the case of an offender convicted of the crime of rape in the first
2 degree; or (c) for an extraordinary medical placement when authorized
3 under RCW 9.94A.150(4).

4 (5) In sentencing a first-time offender the court may waive the
5 imposition of a sentence within the sentence range and impose a
6 sentence which may include up to ninety days of confinement in a
7 facility operated or utilized under contract by the county and a
8 requirement that the offender refrain from committing new offenses.
9 The sentence may also include up to two years of community supervision,
10 which, in addition to crime-related prohibitions, may include
11 requirements that the offender perform any one or more of the
12 following:

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

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

17 (c) Pursue a prescribed, secular course of study or vocational
18 training;

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

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

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

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

28 (i) The offender is convicted of the manufacture, delivery, or
29 possession with intent to manufacture or deliver a controlled substance
30 classified in Schedule I or II that is a narcotic drug or a felony that
31 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
32 criminal solicitation, or criminal conspiracy to commit such crimes,
33 and the violation does not involve a sentence enhancement under RCW
34 9.94A.310 (3) or (4);

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

37 (iii) The offense involved only a small quantity of the particular
38 controlled substance as determined by the judge upon consideration of

1 such factors as the weight, purity, packaging, sale price, and street
2 value of the controlled substance.

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

- 30 (i) Devote time to a specific employment or training;
 - 31 (ii) Remain within prescribed geographical boundaries and notify
32 the court or the community corrections officer before any change in the
33 offender's address or employment;
 - 34 (iii) Report as directed to a community corrections officer;
 - 35 (iv) Pay all court-ordered legal financial obligations;
 - 36 (v) Perform community service work;
 - 37 (vi) Stay out of areas designated by the sentencing judge.
- 38 (c) If the offender violates any of the sentence conditions in (b)
39 of this subsection, the department shall impose sanctions

1 administratively, with notice to the prosecuting attorney and the
2 sentencing court. Upon motion of the court or the prosecuting
3 attorney, a violation hearing shall be held by the court. If the court
4 finds that conditions have been willfully violated, the court may
5 impose confinement consisting of up to the remaining one-half of the
6 midpoint of the standard range. All total confinement served during
7 the period of community custody shall be credited to the offender,
8 regardless of whether the total confinement is served as a result of
9 the original sentence, as a result of a sanction imposed by the
10 department, or as a result of a violation found by the court. The term
11 of community supervision shall be tolled by any period of time served
12 in total confinement as a result of a violation found by the court.

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

19 (7) If a sentence range has not been established for the
20 defendant's crime, the court shall impose a determinate sentence which
21 may include not more than one year of confinement, community service
22 work, a term of community supervision not to exceed one year, and/or
23 other legal financial obligations. The court may impose a sentence
24 which provides more than one year of confinement if the court finds,
25 considering the purpose of this chapter, that there are substantial and
26 compelling reasons justifying an exceptional sentence.

27 (8)(a)(i) When an offender is convicted of a sex offense other than
28 a violation of RCW 9A.44.050 or a sex offense that is also a serious
29 violent offense and has no prior convictions for a sex offense or any
30 other felony sex offenses in this or any other state, the sentencing
31 court, on its own motion or the motion of the state or the defendant,
32 may order an examination to determine whether the defendant is amenable
33 to treatment.

34 The report of the examination shall include at a minimum the
35 following: The defendant's version of the facts and the official
36 version of the facts, the defendant's offense history, an assessment of
37 problems in addition to alleged deviant behaviors, the offender's
38 social and employment situation, and other evaluation measures used.
39 The report shall set forth the sources of the evaluator's information.

1 The examiner shall assess and report regarding the defendant's
2 amenability to treatment and relative risk to the community. A
3 proposed treatment plan shall be provided and shall include, at a
4 minimum:

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

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

8 (C) Monitoring plans, including any requirements regarding living
9 conditions, lifestyle requirements, and monitoring by family members
10 and others;

11 (D) Anticipated length of treatment; and

12 (E) Recommended crime-related prohibitions.

13 The court on its own motion may order, or on a motion by the state
14 shall order, a second examination regarding the offender's amenability
15 to treatment. The evaluator shall be selected by the party making the
16 motion. The defendant shall pay the cost of any second examination
17 ordered unless the court finds the defendant to be indigent in which
18 case the state shall pay the cost.

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

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

32 (B) The court shall order treatment for any period up to three
33 years in duration. The court in its discretion shall order outpatient
34 sex offender treatment or inpatient sex offender treatment, if
35 available. A community mental health center may not be used for such
36 treatment unless it has an appropriate program designed for sex
37 offender treatment. The offender shall not change sex offender
38 treatment providers or treatment conditions without first notifying the
39 prosecutor, the community corrections officer, and the court, and shall

1 not change providers without court approval after a hearing if the
2 prosecutor or community corrections officer object to the change. In
3 addition, as conditions of the suspended sentence, the court may impose
4 other sentence conditions including up to six months of confinement,
5 not to exceed the sentence range of confinement for that offense,
6 crime-related prohibitions, and requirements that the offender perform
7 any one or more of the following:

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

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

12 (III) Report as directed to the court and a community corrections
13 officer;

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

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

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

22 (iii) The sex offender therapist shall submit quarterly reports on
23 the defendant's progress in treatment to the court and the parties.
24 The report shall reference the treatment plan and include at a minimum
25 the following: Dates of attendance, defendant's compliance with
26 requirements, treatment activities, the defendant's relative progress
27 in treatment, and any other material as specified by the court at
28 sentencing.

29 (iv) At the time of sentencing, the court shall set a treatment
30 termination hearing for three months prior to the anticipated date for
31 completion of treatment. Prior to the treatment termination hearing,
32 the treatment professional and community corrections officer shall
33 submit written reports to the court and parties regarding the
34 defendant's compliance with treatment and monitoring requirements, and
35 recommendations regarding termination from treatment, including
36 proposed community supervision conditions. Either party may request
37 and the court may order another evaluation regarding the advisability
38 of termination from treatment. The defendant shall pay the cost of any
39 additional evaluation ordered unless the court finds the defendant to

1 be indigent in which case the state shall pay the cost. At the
2 treatment termination hearing the court may: (A) Modify conditions of
3 community custody, and either (B) terminate treatment, or (C) extend
4 treatment for up to the remaining period of community custody.

5 (v) If a violation of conditions occurs during community custody,
6 the department shall either impose sanctions as provided for in RCW
7 9.94A.205(2)(a) or refer the violation to the court and recommend
8 revocation of the suspended sentence as provided for in (a)(vi) of this
9 subsection.

10 (vi) The court may revoke the suspended sentence at any time during
11 the period of community custody and order execution of the sentence if:
12 (A) The defendant violates the conditions of the suspended sentence, or
13 (B) the court finds that the defendant is failing to make satisfactory
14 progress in treatment. All confinement time served during the period
15 of community custody shall be credited to the offender if the suspended
16 sentence is revoked.

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

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

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

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

38 (b) When an offender commits any felony sex offense on or after
39 July 1, 1987, and is sentenced to a term of confinement of more than

1 one year but less than six years, the sentencing court may, on its own
2 motion or on the motion of the offender or the state, request the
3 department of corrections to evaluate whether the offender is amenable
4 to treatment and the department may place the offender in a treatment
5 program within a correctional facility operated by the department.

6 Except for an offender who has been convicted of a violation of RCW
7 9A.44.040 or 9A.44.050, if the offender completes the treatment program
8 before the expiration of his or her term of confinement, the department
9 of corrections may request the court to convert the balance of
10 confinement to community supervision and to place conditions on the
11 offender including crime-related prohibitions and requirements that the
12 offender perform any one or more of the following:

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

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

17 (iii) Report as directed to the court and a community corrections
18 officer;

19 (iv) Undergo available outpatient treatment.

20 If the offender violates any of the terms of his or her community
21 supervision, the court may order the offender to serve out the balance
22 of his or her community supervision term in confinement in the custody
23 of the department of corrections.

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

28 (c) Offenders convicted and sentenced for a sex offense committed
29 prior to July 1, 1987, may, subject to available funds, request an
30 evaluation by the department of corrections to determine whether they
31 are amenable to treatment. If the offender is determined to be
32 amenable to treatment, the offender may request placement in a
33 treatment program within a correctional facility operated by the
34 department. Placement in such treatment program is subject to
35 available funds.

36 (9)(a) When a court sentences a person to a term of total
37 confinement to the custody of the department of corrections for an
38 offense categorized as a sex offense or a serious violent offense
39 committed after July 1, 1988, but before July 1, 1990, assault in the

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

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

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

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

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

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

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

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

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

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

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

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

22 (iv) The offender shall not consume alcohol;

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

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

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

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

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

5 (b) Unless a condition is waived by the court, the terms of
6 community custody shall be the same as those provided for in subsection
7 (9)(b) of this section and may include those provided for in subsection
8 (9)(c) of this section. As part of any sentence that includes a term
9 of community custody imposed under this subsection, the court shall
10 also require the offender to comply with any conditions imposed by the
11 department of corrections under subsection (14) of this section.

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

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

29 (12) If a sentence imposed includes payment of a legal financial
30 obligation, the sentence shall specify the total amount of the legal
31 financial obligation owed, and shall require the offender to pay a
32 specified monthly sum toward that legal financial obligation.
33 Restitution to victims shall be paid prior to any other payments of
34 monetary obligations. Any legal financial obligation that is imposed
35 by the court may be collected by the department, which shall deliver
36 the amount paid to the county clerk for credit. The offender's
37 compliance with payment of legal financial obligations shall be
38 supervised by the department for ten years following the entry of the
39 judgment and sentence or ten years following the offender's release

1 from total confinement. All monetary payments ordered shall be paid no
2 later than ten years after the last date of release from confinement
3 pursuant to a felony conviction or the date the sentence was entered
4 unless the superior court extends the criminal judgment an additional
5 ten years. If the legal financial obligations including crime victims'
6 assessments are not paid during the initial ten-year period, the
7 superior court may extend jurisdiction under the criminal judgment an
8 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
9 9.94A.145. If jurisdiction under the criminal judgment is extended,
10 the department is not responsible for supervision of the offender
11 during the subsequent period. Independent of the department, the party
12 or entity to whom the legal financial obligation is owed shall have the
13 authority to utilize any other remedies available to the party or
14 entity to collect the legal financial obligation. Nothing in this
15 section makes the department, the state, or any of its employees,
16 agents, or other persons acting on their behalf liable under any
17 circumstances for the payment of these legal financial obligations. If
18 an order includes restitution as one of the monetary assessments, the
19 county clerk shall make disbursements to victims named in the order.

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

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

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

36 (b) For offenders sentenced to terms involving community custody
37 for crimes committed on or after June 6, 1996, the department may
38 include, in addition to the instructions in (a) of this subsection, any
39 appropriate conditions of supervision, including but not limited to,

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

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

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

31 (16) The sentencing court shall give the offender credit for all
32 confinement time served before the sentencing if that confinement was
33 solely in regard to the offense for which the offender is being
34 sentenced.

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

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

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

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

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

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

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

1 (1)

TABLE 1

2 Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

9 or

6 0 1 2 3 4 5 6 7 8 more

8 XV Life Sentence without Parole/Death Penalty

10 XIV 23y4m 24y4m 25y4m 26y4m 27y4m 28y4m 30y4m 32y10m36y 40y
11 240- 250- 261- 271- 281- 291- 312- 338- 370- 411-
12 320 333 347 361 374 388 416 450 493 548

14 XIII 14y4m 15y4m 16y2m 17y 17y11m18y9m 20y5m 22y2m 25y7m 29y
15 123- 134- 144- 154- 165- 175- 195- 216- 257- 298-
16 220 234 244 254 265 275 295 316 357 397

18 XII 9y 9y11m 10y9m 11y8m 12y6m 13y5m 15y9m 17y3m 20y3m 23y3m
19 93- 102- 111- 120- 129- 138- 162- 178- 209- 240-
20 123 136 147 160 171 184 216 236 277 318

22 XI 7y6m 8y4m 9y2m 9y11m 10y9m 11y7m 14y2m 15y5m 17y11m20y5m
23 78- 86- 95- 102- 111- 120- 146- 159- 185- 210-
24 102 114 125 136 147 158 194 211 245 280

26 X 5y 5y6m 6y 6y6m 7y 7y6m 9y6m 10y6m 12y6m 14y6m
27 51- 57- 62- 67- 72- 77- 98- 108- 129- 149-
28 68 75 82 89 96 102 130 144 171 198

30 IX 3y 3y6m 4y 4y6m 5y 5y6m 7y6m 8y6m 10y6m 12y6m
31 31- 36- 41- 46- 51- 57- 77- 87- 108- 129-
32 41 48 54 61 68 75 102 116 144 171

34 VIII 2y 2y6m 3y 3y6m 4y 4y6m 6y6m 7y6m 8y6m 10y6m
35 21- 26- 31- 36- 41- 46- 67- 77- 87- 108-
36 27 34 41 48 54 61 89 102 116 144

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

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

33 (2) For persons convicted of the anticipatory offenses of criminal
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the
35 presumptive sentence is determined by locating the sentencing grid
36 sentence range defined by the appropriate offender score and the
37 seriousness level of the completed crime, and multiplying the range by
38 75 percent.

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

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

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

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

27 (d) If the offender is being sentenced for any firearm
28 enhancements under (a), (b), and/or (c) of this subsection and the
29 offender has previously been sentenced for any deadly weapon
30 enhancements after July 23, 1995, under (a), (b), and/or (c) of this
31 subsection or subsection (4)(a), (b), and/or (c) of this section, or
32 both, any and all firearm enhancements under this subsection shall be
33 twice the amount of the enhancement listed.

34 (e) Notwithstanding any other provision of law, any and all
35 firearm enhancements under this section are mandatory, shall be served
36 in total confinement, and shall run consecutively to all other
37 sentencing provisions, including other firearm or deadly weapon
38 enhancements, for all offenses sentenced under this chapter. However,
39 whether or not a mandatory minimum term has expired, an offender

1 serving a sentence under this subsection may be granted an
2 extraordinary medical placement when authorized under RCW 9.94A.150(4).

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

8 (g) If the presumptive sentence under this section exceeds the
9 statutory maximum for the offense, the statutory maximum sentence shall
10 be the presumptive sentence unless the offender is a persistent
11 offender as defined in RCW 9.94A.030. If the addition of a firearm
12 enhancement increases the sentence so that it would exceed the
13 statutory maximum for the offense, the portion of the sentence
14 representing the enhancement may not be reduced.

15 (4) The following additional times shall be added to the
16 presumptive sentence for felony crimes committed after July 23, 1995,
17 if the offender or an accomplice was armed with a deadly weapon as
18 defined in this chapter other than a firearm as defined in RCW 9.41.010
19 and the offender is being sentenced for one of the crimes listed in
20 this subsection as eligible for any deadly weapon enhancements based on
21 the classification of the completed felony crime. If the offender is
22 being sentenced for more than one offense, the deadly weapon
23 enhancement or enhancements must be added to the total period of
24 confinement for all offenses, regardless of which underlying offense is
25 subject to a deadly weapon enhancement. If the offender or an
26 accomplice was armed with a deadly weapon other than a firearm as
27 defined in RCW 9.41.010 and the offender is being sentenced for an
28 anticipatory offense under chapter 9A.28 RCW to commit one of the
29 crimes listed in this subsection as eligible for any deadly weapon
30 enhancements, the following additional times shall be added to the
31 presumptive sentence determined under subsection (2) of this section
32 based on the felony crime of conviction as classified under RCW
33 9A.28.020:

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

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

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

4 (d) If the offender is being sentenced under (a), (b), and/or (c)
5 of this subsection for any deadly weapon enhancements and the offender
6 has previously been sentenced for any deadly weapon enhancements after
7 July 23, 1995, under (a), (b), and/or (c) of this subsection or
8 subsection (3)(a), (b), and/or (c) of this section, or both, any and
9 all deadly weapon enhancements under this subsection shall be twice the
10 amount of the enhancement listed.

11 (e) Notwithstanding any other provision of law, any and all deadly
12 weapon enhancements under this section are mandatory, shall be served
13 in total confinement, and shall run consecutively to all other
14 sentencing provisions, including other firearm or deadly weapon
15 enhancements, for all offenses sentenced under this chapter. However,
16 whether or not a mandatory minimum term has expired, an offender
17 serving a sentence under this subsection may be granted an
18 extraordinary medical placement when authorized under RCW 9.94A.150(4).

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

24 (g) If the presumptive sentence under this section exceeds the
25 statutory maximum for the offense, the statutory maximum sentence shall
26 be the presumptive sentence unless the offender is a persistent
27 offender as defined in RCW 9.94A.030. If the addition of a deadly
28 weapon enhancement increases the sentence so that it would exceed the
29 statutory maximum for the offense, the portion of the sentence
30 representing the enhancement may not be reduced.

31 (5) The following additional times shall be added to the
32 presumptive sentence if the offender or an accomplice committed the
33 offense while in a county jail or state correctional facility as that
34 term is defined in this chapter and the offender is being sentenced for
35 one of the crimes listed in this subsection. If the offender or an
36 accomplice committed one of the crimes listed in this subsection while
37 in a county jail or state correctional facility as that term is defined
38 in this chapter, and the offender is being sentenced for an
39 anticipatory offense under chapter 9A.28 RCW to commit one of the

1 crimes listed in this subsection, the following additional times shall
2 be added to the presumptive sentence determined under subsection (2) of
3 this section:

4 (a) Eighteen months for offenses committed under RCW
5 69.50.401(a)(1) (i) or (ii) or 69.50.410;

6 (b) Fifteen months for offenses committed under RCW
7 69.50.401(a)(1) (iii), (iv), and (v);

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

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

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

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

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

21 The board shall fix the duration of confinement for persons
22 committed by the court before July 1, 1986, for crimes committed before
23 July 1, 1984. Within six months after the admission of the convicted
24 person to a state correctional facility, the board shall fix the
25 duration of confinement. The term of imprisonment so fixed shall not
26 exceed the maximum provided by law for the offense of which the person
27 was convicted or the maximum fixed by the court where the law does not
28 provide for a maximum term.

29 Subject to RCW 9.95.047, the following limitations are placed on
30 the board or the court for persons committed to a state correctional
31 facility on or after July 1, 1986, for crimes committed before July 1,
32 1984, with regard to fixing the duration of confinement in certain
33 cases, notwithstanding any provisions of law specifying a lesser
34 sentence:

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

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

5 The words "deadly weapon," as used in this section include, but
6 are not limited to, any instrument known as a blackjack, sling shot,
7 billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol,
8 revolver, or any other firearm, any knife having a blade longer than
9 three inches, any razor with an unguarded blade, any metal pipe or bar
10 used or intended to be used as a club, any explosive, and any weapon
11 containing poisonous or injurious gas.

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

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

19 Except when an inmate of a state correctional facility has been
20 convicted of murder in the first or second degree, the board may parole
21 an inmate prior to the expiration of a mandatory minimum term, provided
22 such inmate has demonstrated a meritorious effort in rehabilitation and
23 at least two-thirds of the board members concur in such action:
24 PROVIDED, That any inmate who has a mandatory minimum term and is
25 paroled prior to the expiration of such term according to the
26 provisions of this chapter shall not receive a conditional release from
27 supervision while on parole until after the mandatory minimum term has
28 expired.

29 An inmate serving a sentence fixed under this chapter, whether or
30 not a mandatory minimum term has expired, may be granted an
31 extraordinary medical placement by the secretary of corrections when
32 authorized under RCW 9.94A.150(4).

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

36 (1) A person who is convicted of a violation of RCW 46.61.502 or
37 46.61.504 and who has no prior offense within seven years shall be
38 punished as follows:

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

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

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

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

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

37 (i) By imprisonment for not less than two days nor more than one
38 year. Two consecutive days of the imprisonment may not be suspended or
39 deferred unless the court finds that the imposition of this mandatory

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

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

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

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

26 (2) A person who is convicted of a violation of RCW 46.61.502 or
27 46.61.504 and who has one prior offense within seven years shall be
28 punished as follows:

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

33 (i) By imprisonment for not less than thirty days nor more than
34 one year and sixty days of electronic home monitoring. The offender
35 shall pay for the cost of the electronic monitoring. The county or
36 municipality where the penalty is being imposed shall determine the
37 cost. The court may also require the offender's electronic home
38 monitoring device include an alcohol detection breathalyzer, and may
39 restrict the amount of alcohol the offender may consume during the time

1 the offender is on electronic home monitoring. Thirty days of
2 imprisonment and sixty days of electronic home monitoring may not be
3 suspended or deferred unless the court finds that the imposition of
4 this mandatory minimum sentence would impose a substantial risk to the
5 offender's physical or mental well-being. Whenever the mandatory
6 minimum sentence is suspended or deferred, the court shall state in
7 writing the reason for granting the suspension or deferral and the
8 facts upon which the suspension or deferral is based; and

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

13 (iii) By revocation of the offender's license or permit to drive,
14 or suspension of any nonresident privilege to drive, for a period of
15 two years. The period of license, permit, or privilege revocation may
16 not be suspended. The court shall notify the department of licensing
17 of the conviction, and upon receiving notification of the conviction
18 the department shall revoke the offender's license, permit, or
19 privilege; and

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

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

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

1 deferral and the facts upon which the suspension or deferral is based;
2 and

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

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

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

15 (3) A person who is convicted of a violation of RCW 46.61.502 or
16 46.61.504 and who has two or more prior offenses within seven years
17 shall be punished as follows:

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

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

38 (ii) By a fine of not less than one thousand dollars nor more than
39 five thousand dollars. One thousand dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be
2 indigent; and

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

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

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

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

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

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

1 the department shall revoke the offender's license, permit, or
2 privilege; and

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

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

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

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

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

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

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

37 (b) For each violation of mandatory conditions of probation under
38 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall

1 order the convicted person to be confined for thirty days, which shall
2 not be suspended or deferred.

3 (c) For each incident involving a violation of a mandatory
4 condition of probation imposed under this subsection, the license,
5 permit, or privilege to drive of the person shall be suspended by the
6 court for thirty days or, if such license, permit, or privilege to
7 drive already is suspended, revoked, or denied at the time the finding
8 of probation violation is made, the suspension, revocation, or denial
9 then in effect shall be extended by thirty days. The court shall
10 notify the department of any suspension, revocation, or denial or any
11 extension of a suspension, revocation, or denial imposed under this
12 subsection.

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

17 (9) For purposes of this section:

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

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

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

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

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

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

29 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or
30 9A.36.050 or an equivalent local ordinance, if the conviction is the
31 result of a charge that was originally filed as a violation of RCW
32 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW
33 46.61.520 or 46.61.522;

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

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

1 (viii) A deferred prosecution under chapter 10.05 RCW granted in
2 a prosecution for a violation of RCW 46.61.5249, or an equivalent local
3 ordinance, if the charge under which the deferred prosecution was
4 granted was originally filed as a violation of RCW 46.61.502 or
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or
6 46.61.522; and

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

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

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

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

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

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

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

23 (2) Any person convicted of a violation of subsection (1) of this
24 section shall receive a sentence of not more than five years in a
25 correctional facility of the department of social and health services
26 for the first offense. Any person convicted on a second or subsequent
27 cause, the sale having transpired after prosecution and conviction on
28 the first cause, of subsection (1) of this section shall receive a
29 mandatory sentence of five years in a correctional facility of the
30 department of social and health services and no judge of any court
31 shall suspend or defer the sentence imposed for the second or
32 subsequent violation of subsection (1) of this section.

33 (3) Any person convicted of a violation of subsection (1) of this
34 section by selling heroin shall receive a mandatory sentence of two
35 years in a correctional facility of the department of social and health
36 services and no judge of any court shall suspend or defer the sentence
37 imposed for such violation. Any person convicted on a second or
38 subsequent sale of heroin, the sale having transpired after prosecution

1 and conviction on the first cause of the sale of heroin shall receive
2 a mandatory sentence of ten years in a correctional facility of the
3 department of social and health services and no judge of any court
4 shall suspend or defer the sentence imposed for this second or
5 subsequent violation: PROVIDED, That the indeterminate sentence review
6 board ((of prison terms and paroles)) under RCW 9.95.040 shall not
7 reduce the minimum term imposed for a violation under this subsection.

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

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

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

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

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

35 The secretary shall report annually to the legislature on the
36 number of offenders considered for an extraordinary medical placement,
37 the number of offenders who were granted such a placement, the number
38 of offenders who were denied such a placement, the length of time

1 between initial consideration and the placement decision for each
2 offender who was granted an extraordinary medical placement, the number
3 of offenders granted an extraordinary medical placement who were later
4 returned to total confinement, and the cost savings realized by the
5 state.

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