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**SENATE BILL 5419**

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**State of Washington**                      **57th Legislature**                      **2001 Regular Session**

**By** Senators Patterson, Long, Hargrove, Kline, Winsley and Kohl-Welles

Read first time 01/22/2001. Referred to Committee on Judiciary.

1            AN ACT Relating to chemical dependency treatment for certain  
2 offenders; amending RCW 69.50.101, 70.96A.020, 9.94A.030, 69.50.425,  
3 69.50.430, and 9.94A.360; reenacting and amending RCW 9.94A.120 and  
4 9.94A.320; adding a new section to chapter 9.94A RCW; adding a new  
5 section to chapter 69.50 RCW; adding a new section to chapter 70.96A  
6 RCW; adding a new section to chapter 43.20A RCW; creating new sections;  
7 prescribing penalties; providing an effective date; and declaring an  
8 emergency.

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

10            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
11 "substance abuse and crime prevention act of 2001."

12            NEW SECTION.    **Sec. 2.** The legislature finds and declares that:  
13            (1) Substance abuse treatment is a proven public safety and health  
14 measure. Nonviolent, drug-dependent criminal offenders who receive  
15 chemical dependency treatment are much less likely to abuse drugs and  
16 commit future crimes, and are more likely to live healthier, more  
17 stable, and more productive lives.

1 (2) Community safety and health are promoted, and taxpayer dollars  
2 are saved, when nonviolent persons convicted of drug possession or drug  
3 use are provided appropriate community-based treatment instead of  
4 incarceration.

5 (3) In 1996, Arizona voters by a 2-1 margin passed the drug  
6 medicalization, prevention, and control act, which diverted nonviolent  
7 drug offenders into chemical dependency treatment and education  
8 services rather than incarceration. According to a report prepared by  
9 the Arizona supreme court, the Arizona law is "resulting in safer  
10 communities and more substance abusing probationers in recovery," has  
11 already saved state taxpayers millions of dollars, and is helping more  
12 than seventy-five percent of program participants to remain drug free.

13 NEW SECTION. **Sec. 3.** The legislature hereby declares its purpose  
14 and intent in enacting this act to be as follows:

15 (1) To enhance public safety by reducing drug-related crime and  
16 preserving jails and prison cells for serious and violent offenders,  
17 and to improve public health by reducing drug abuse and drug dependence  
18 through proven and effective chemical dependency treatment strategies;

19 (2) To halt the wasteful expenditure of millions of dollars each  
20 year on the incarceration and reincarceration of nonviolent drug users  
21 who would be better served by community-based treatment; and

22 (3) To divert from incarceration into community-based substance  
23 abuse treatment programs nonviolent drug offenders and offenders under  
24 supervision in the community convicted of simple drug possession or  
25 drug use offenses.

26 **Sec. 4.** RCW 69.50.101 and 1998 c 222 s 3 are each amended to read  
27 as follows:

28 Unless the context clearly requires otherwise, definitions of terms  
29 shall be as indicated where used in this chapter:

30 (a) "Administer" means to apply a controlled substance, whether by  
31 injection, inhalation, ingestion, or any other means, directly to the  
32 body of a patient or research subject by:

33 (1) a practitioner authorized to prescribe (or, by the  
34 practitioner's authorized agent); or

35 (2) the patient or research subject at the direction and in the  
36 presence of the practitioner.

1 (b) "Agent" means an authorized person who acts on behalf of or at  
2 the direction of a manufacturer, distributor, or dispenser. It does  
3 not include a common or contract carrier, public warehouseperson, or  
4 employee of the carrier or warehouseperson.

5 (c) "Approved chemical dependency treatment program" or "approved  
6 treatment program" means a discrete program of chemical dependency  
7 treatment provided by a treatment program certified by the department  
8 of social and health services as meeting standards adopted under  
9 chapter 70.96A RCW, which may include one or more of the following:  
10 Outpatient treatment, recovery house treatment, narcotic replacement  
11 therapy, drug education or prevention courses, and inpatient or  
12 residential chemical dependency treatment as necessary to address  
13 special detoxification or relapse situations or severe dependence.  
14 "Approved chemical dependency treatment program" and "chemical  
15 dependency treatment" shall not include chemical dependency treatment  
16 programs offered in a prison or jail facility.

17 (d) "Board" means the state board of pharmacy.

18 ~~((d))~~ (e) "Controlled substance" means a drug, substance, or  
19 immediate precursor included in Schedules I through V as set forth in  
20 federal or state laws, or federal or board rules.

21 ~~((e))~~ (f)(1) "Controlled substance analog" means a substance the  
22 chemical structure of which is substantially similar to the chemical  
23 structure of a controlled substance in Schedule I or II and:

24 (i) that has a stimulant, depressant, or hallucinogenic effect on  
25 the central nervous system substantially similar to the stimulant,  
26 depressant, or hallucinogenic effect on the central nervous system of  
27 a controlled substance included in Schedule I or II; or

28 (ii) with respect to a particular individual, that the individual  
29 represents or intends to have a stimulant, depressant, or  
30 hallucinogenic effect on the central nervous system substantially  
31 similar to the stimulant, depressant, or hallucinogenic effect on the  
32 central nervous system of a controlled substance included in Schedule  
33 I or II.

34 (2) The term does not include:

35 (i) a controlled substance;

36 (ii) a substance for which there is an approved new drug  
37 application;

38 (iii) a substance with respect to which an exemption is in effect  
39 for investigational use by a particular person under Section 505 of the

1 federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent  
2 conduct with respect to the substance is pursuant to the exemption; or  
3 (iv) any substance to the extent not intended for human consumption  
4 before an exemption takes effect with respect to the substance.

5 (~~(f)~~) (g) "Deliver" or "delivery," means the actual or  
6 constructive transfer from one person to another of a substance,  
7 whether or not there is an agency relationship.

8 (~~(g)~~) (h) "Department" means the department of health.

9 (~~(h)~~) (i) "Dispense" means the interpretation of a prescription  
10 or order for a controlled substance and, pursuant to that prescription  
11 or order, the proper selection, measuring, compounding, labeling, or  
12 packaging necessary to prepare that prescription or order for delivery.

13 (~~(i)~~) (j) "Dispenser" means a practitioner who dispenses.

14 (~~(j)~~) (k) "Distribute" means to deliver other than by  
15 administering or dispensing a controlled substance.

16 (~~(k)~~) (l) "Distributor" means a person who distributes.

17 (~~(l)~~) (m) "Drug" means (1) a controlled substance recognized as  
18 a drug in the official United States pharmacopoeia/national formulary  
19 or the official homeopathic pharmacopoeia of the United States, or any  
20 supplement to them; (2) controlled substances intended for use in the  
21 diagnosis, cure, mitigation, treatment, or prevention of disease in  
22 individuals or animals; (3) controlled substances (other than food)  
23 intended to affect the structure or any function of the body of  
24 individuals or animals; and (4) controlled substances intended for use  
25 as a component of any article specified in (1), (2), or (3) of this  
26 subsection. The term does not include devices or their components,  
27 parts, or accessories.

28 (~~(m)~~) (n) "Drug enforcement administration" means the drug  
29 enforcement administration in the United States Department of Justice,  
30 or its successor agency.

31 (~~(n)~~) (o) "Immediate precursor" means a substance:

32 (1) that the state board of pharmacy has found to be and by rule  
33 designates as being the principal compound commonly used, or produced  
34 primarily for use, in the manufacture of a controlled substance;

35 (2) that is an immediate chemical intermediary used or likely to be  
36 used in the manufacture of a controlled substance; and

37 (3) the control of which is necessary to prevent, curtail, or limit  
38 the manufacture of the controlled substance.

1       (~~(p)~~) (p) "Isomer" means an optical isomer, but in RCW  
2 69.50.101(~~(r)~~) (t)(5), 69.50.204(a) (12) and (34), and  
3 69.50.206(a)(4), the term includes any geometrical isomer; in RCW  
4 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any  
5 positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and  
6 69.50.208(a) the term includes any positional or geometric isomer.

7       (~~(q)~~) (q) "Manufacture" means the production, preparation,  
8 propagation, compounding, conversion, or processing of a controlled  
9 substance, either directly or indirectly or by extraction from  
10 substances of natural origin, or independently by means of chemical  
11 synthesis, or by a combination of extraction and chemical synthesis,  
12 and includes any packaging or repackaging of the substance or labeling  
13 or relabeling of its container. The term does not include the  
14 preparation, compounding, packaging, repackaging, labeling, or  
15 relabeling of a controlled substance:

16       (1) by a practitioner as an incident to the practitioner's  
17 administering or dispensing of a controlled substance in the course of  
18 the practitioner's professional practice; or

19       (2) by a practitioner, or by the practitioner's authorized agent  
20 under the practitioner's supervision, for the purpose of, or as an  
21 incident to, research, teaching, or chemical analysis and not for sale.

22       (~~(r)~~) (r) "Marijuana" or "marihuana" means all parts of the plant  
23 Cannabis, whether growing or not; the seeds thereof; the resin  
24 extracted from any part of the plant; and every compound, manufacture,  
25 salt, derivative, mixture, or preparation of the plant, its seeds or  
26 resin. The term does not include the mature stalks of the plant, fiber  
27 produced from the stalks, oil or cake made from the seeds of the plant,  
28 any other compound, manufacture, salt, derivative, mixture, or  
29 preparation of the mature stalks (except the resin extracted  
30 therefrom), fiber, oil, or cake, or the sterilized seed of the plant  
31 which is incapable of germination.

32       (~~(s)~~) (s) "Misdemeanor not related to the use of drugs" means a  
33 misdemeanor that does not involve (1) the simple possession or use of  
34 drugs or drug paraphernalia, being present where drugs are used, or use  
35 of a forged prescription, or (2) any activity similar to those listed  
36 in (1) of this subsection.

37       (t) "Narcotic drug" means any of the following, whether produced  
38 directly or indirectly by extraction from substances of vegetable

1 origin, or independently by means of chemical synthesis, or by a  
2 combination of extraction and chemical synthesis:

3 (1) Opium, opium derivative, and any derivative of opium or opium  
4 derivative, including their salts, isomers, and salts of isomers,  
5 whenever the existence of the salts, isomers, and salts of isomers is  
6 possible within the specific chemical designation. The term does not  
7 include the isoquinoline alkaloids of opium.

8 (2) Synthetic opiate and any derivative of synthetic opiate,  
9 including their isomers, esters, ethers, salts, and salts of isomers,  
10 esters, and ethers, whenever the existence of the isomers, esters,  
11 ethers, and salts is possible within the specific chemical designation.

12 (3) Poppy straw and concentrate of poppy straw.

13 (4) Coca leaves, except coca leaves and extracts of coca leaves  
14 from which cocaine, ecgonine, and derivatives or ecgonine or their  
15 salts have been removed.

16 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

17 (6) Cocaine base.

18 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer  
19 thereof.

20 (8) Any compound, mixture, or preparation containing any quantity  
21 of any substance referred to in ~~((subparagraphs))~~ (1) through (7) of  
22 this subsection.

23 ~~((s))~~ (u) "Nonviolent drug possession offense" means (1) the  
24 unlawful possession, use, or transportation for personal use of any  
25 controlled substance identified in this chapter, (2) the offense of  
26 being under the influence of a controlled substance, or (3) an offense  
27 for use of a forged prescription. Nonviolent drug possession offense  
28 does not include the unlawful creation, manufacture, production,  
29 delivery, sale, or possession with intent to deliver of any controlled  
30 substance, or unlawful possession of flunitrazepam.

31 (v) "Opiate" means any substance having an addiction-forming or  
32 addiction-sustaining liability similar to morphine or being capable of  
33 conversion into a drug having addiction-forming or addiction-sustaining  
34 liability. The term includes opium, substances derived from opium  
35 (opium derivatives), and synthetic opiates. The term does not include,  
36 unless specifically designated as controlled under RCW 69.50.201, the  
37 dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts  
38 (dextromethorphan). The term includes the racemic and levorotatory  
39 forms of dextromethorphan.

1       (~~(t)~~) (w) "Opium poppy" means the plant of the species *Papaver*  
2 *somniferum* L., except its seeds.

3       (~~(u)~~) (x) "Person" means individual, corporation, business trust,  
4 estate, trust, partnership, association, joint venture, government,  
5 governmental subdivision or agency, or any other legal or commercial  
6 entity.

7       (~~(v)~~) (y) "Poppy straw" means all parts, except the seeds, of the  
8 opium poppy, after mowing.

9       (~~(w)~~) (z) "Practitioner" means:

10       (1) A physician under chapter 18.71 RCW, a physician assistant  
11 under chapter 18.71A RCW, an osteopathic physician and surgeon under  
12 chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric  
13 physician and surgeon under chapter 18.22 RCW, a veterinarian under  
14 chapter 18.92 RCW, a registered nurse, advanced registered nurse  
15 practitioner, or licensed practical nurse under chapter 18.79 RCW, a  
16 pharmacist under chapter 18.64 RCW or a scientific investigator under  
17 this chapter, licensed, registered or otherwise permitted insofar as is  
18 consistent with those licensing laws to distribute, dispense, conduct  
19 research with respect to or administer a controlled substance in the  
20 course of their professional practice or research in this state.

21       (2) A pharmacy, hospital or other institution licensed, registered,  
22 or otherwise permitted to distribute, dispense, conduct research with  
23 respect to or to administer a controlled substance in the course of  
24 professional practice or research in this state.

25       (3) A physician licensed to practice medicine and surgery, a  
26 physician licensed to practice osteopathic medicine and surgery, a  
27 dentist licensed to practice dentistry, a podiatric physician and  
28 surgeon licensed to practice podiatric medicine and surgery, or a  
29 veterinarian licensed to practice veterinary medicine in any state of  
30 the United States.

31       (~~(x)~~) (aa) "Prescription" means an order for controlled  
32 substances issued by a practitioner duly authorized by law or rule in  
33 the state of Washington to prescribe controlled substances within the  
34 scope of his or her professional practice for a legitimate medical  
35 purpose.

36       (~~(y)~~) (bb) "Production" includes the manufacturing, planting,  
37 cultivating, growing, or harvesting of a controlled substance.

38       (~~(z)~~) (cc) "Secretary" means the secretary of health or the  
39 secretary's designee.

1       (~~(aa)~~) (dd) "State," unless the context otherwise requires, means  
2 a state of the United States, the District of Columbia, the  
3 Commonwealth of Puerto Rico, or a territory or insular possession  
4 subject to the jurisdiction of the United States.

5       (~~(bb)~~) (ee) "Successful completion of treatment" means that an  
6 offender who has had chemical dependency treatment imposed as a  
7 condition of community custody has completed the prescribed course of  
8 chemical dependency treatment and, as a result, there is reasonable  
9 cause to believe that the offender will not abuse controlled substances  
10 in the future.

11       (ff) "Ultimate user" means an individual who lawfully possesses a  
12 controlled substance for the individual's own use or for the use of a  
13 member of the individual's household or for administering to an animal  
14 owned by the individual or by a member of the individual's household.

15       (~~(ee)~~) (gg) "Electronic communication of prescription  
16 information" means the communication of prescription information by  
17 computer, or the transmission of an exact visual image of a  
18 prescription by facsimile, or other electronic means for original  
19 prescription information or prescription refill information for a  
20 Schedule III-V controlled substance between an authorized practitioner  
21 and a pharmacy or the transfer of prescription information for a  
22 controlled substance from one pharmacy to another pharmacy.

23       **Sec. 5.** RCW 70.96A.020 and 1998 c 296 s 22 are each amended to  
24 read as follows:

25       For the purposes of this chapter the following words and phrases  
26 shall have the following meanings unless the context clearly requires  
27 otherwise:

28       (1) "Alcoholic" means a person who suffers from the disease of  
29 alcoholism.

30       (2) "Alcoholism" means a disease, characterized by a dependency on  
31 alcoholic beverages, loss of control over the amount and circumstances  
32 of use, symptoms of tolerance, physiological or psychological  
33 withdrawal, or both, if use is reduced or discontinued, and impairment  
34 of health or disruption of social or economic functioning.

35       (3) "Approved chemical dependency treatment program" or "approved  
36 treatment program" means a discrete program of chemical dependency  
37 treatment provided by a treatment program certified by the department  
38 of social and health services as meeting standards adopted under this

1 chapter, which may include one or more of the following: Outpatient  
2 treatment, recovery house treatment, narcotic replacement therapy, drug  
3 education or prevention courses, and inpatient or residential chemical  
4 dependency treatment as necessary to address special detoxification or  
5 relapse situations or severe dependence. "Approved chemical dependency  
6 treatment program" and "chemical dependency treatment" shall not  
7 include chemical dependency treatment programs offered in a prison or  
8 jail facility.

9 (4) "Chemical dependency" means alcoholism or drug addiction, or  
10 dependence on alcohol and one or more other psychoactive chemicals, as  
11 the context requires.

12 (5) "Chemical dependency program" means expenditures and activities  
13 of the department designed and conducted to prevent or treat alcoholism  
14 and other drug addiction, including reasonable administration and  
15 overhead.

16 (6) "Department" means the department of social and health  
17 services.

18 (7) "Designated chemical dependency specialist" means a person  
19 designated by the county alcoholism and other drug addiction program  
20 coordinator designated under RCW 70.96A.310 to perform the commitment  
21 duties described in RCW 70.96A.140 and qualified to do so by meeting  
22 standards adopted by the department.

23 (8) "Director" means the person administering the chemical  
24 dependency program within the department.

25 (9) "Drug addict" means a person who suffers from the disease of  
26 drug addiction.

27 (10) "Drug addiction" means a disease characterized by a dependency  
28 on psychoactive chemicals, loss of control over the amount and  
29 circumstances of use, symptoms of tolerance, physiological or  
30 psychological withdrawal, or both, if use is reduced or discontinued,  
31 and impairment of health or disruption of social or economic  
32 functioning.

33 (11) "Emergency service patrol" means a patrol established under  
34 RCW 70.96A.170.

35 (12) "Gravely disabled by alcohol or other drugs" means that a  
36 person, as a result of the use of alcohol or other drugs: (a) Is in  
37 danger of serious physical harm resulting from a failure to provide for  
38 his or her essential human needs of health or safety; or (b) manifests  
39 severe deterioration in routine functioning evidenced by a repeated and

1 escalating loss of cognition or volitional control over his or her  
2 actions and is not receiving care as essential for his or her health or  
3 safety.

4 (13) "Incapacitated by alcohol or other psychoactive chemicals"  
5 means that a person, as a result of the use of alcohol or other  
6 psychoactive chemicals, has his or her judgment so impaired that he or  
7 she is incapable of realizing and making a rational decision with  
8 respect to his or her need for treatment and presents a likelihood of  
9 serious harm to himself or herself, to any other person, or to  
10 property.

11 (14) "Incompetent person" means a person who has been adjudged  
12 incompetent by the superior court.

13 (15) "Intoxicated person" means a person whose mental or physical  
14 functioning is substantially impaired as a result of the use of alcohol  
15 or other psychoactive chemicals.

16 (16) "Licensed physician" means a person licensed to practice  
17 medicine or osteopathic medicine and surgery in the state of  
18 Washington.

19 (17) "Likelihood of serious harm" means either: (a) A substantial  
20 risk that physical harm will be inflicted by an individual upon his or  
21 her own person, as evidenced by threats or attempts to commit suicide  
22 or inflict physical harm on one's self; (b) a substantial risk that  
23 physical harm will be inflicted by an individual upon another, as  
24 evidenced by behavior that has caused the harm or that places another  
25 person or persons in reasonable fear of sustaining the harm; or (c) a  
26 substantial risk that physical harm will be inflicted by an individual  
27 upon the property of others, as evidenced by behavior that has caused  
28 substantial loss or damage to the property of others.

29 (18) "Medical necessity" for inpatient care of a minor means a  
30 requested certified inpatient service that is reasonably calculated to:  
31 (a) Diagnose, arrest, or alleviate a chemical dependency; or (b)  
32 prevent the worsening of chemical dependency conditions that endanger  
33 life or cause suffering and pain, or result in illness or infirmity or  
34 threaten to cause or aggravate a handicap, or cause physical deformity  
35 or malfunction, and there is no adequate less restrictive alternative  
36 available.

37 (19) "Minor" means a person less than eighteen years of age.

38 (20) "Parent" means the parent or parents who have the legal right  
39 to custody of the child. Parent includes custodian or guardian.

1 (21) "Peace officer" means a law enforcement official of a public  
2 agency or governmental unit, and includes persons specifically given  
3 peace officer powers by any state law, local ordinance, or judicial  
4 order of appointment.

5 (22) "Person" means an individual, including a minor.

6 (23) "Professional person in charge" or "professional person" means  
7 a physician or chemical dependency counselor as defined in rule by the  
8 department, who is empowered by a certified treatment program with  
9 authority to make assessment, admission, continuing care, and discharge  
10 decisions on behalf of the certified program.

11 (24) "Secretary" means the secretary of the department of social  
12 and health services.

13 (25) "Treatment" means the broad range of emergency,  
14 detoxification, residential, and outpatient services and care,  
15 including diagnostic evaluation, chemical dependency education and  
16 counseling, medical, psychiatric, psychological, and social service  
17 care, vocational rehabilitation and career counseling, which may be  
18 extended to alcoholics and other drug addicts and their families,  
19 persons incapacitated by alcohol or other psychoactive chemicals, and  
20 intoxicated persons.

21 (26) "Treatment program" means an organization, institution, or  
22 corporation, public or private, engaged in the care, treatment, or  
23 rehabilitation of alcoholics or other drug addicts.

24 **Sec. 6.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read  
25 as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Approved chemical dependency treatment program" or "approved  
29 treatment program" means a discrete program of chemical dependency  
30 treatment provided by a treatment program certified by the department  
31 of social and health services as meeting standards adopted under  
32 chapter 70.96A RCW, which may include one or more of the following:  
33 Outpatient treatment, recovery house treatment, narcotic replacement  
34 therapy, drug education or prevention courses, and inpatient or  
35 residential chemical dependency treatment as necessary to address  
36 special detoxification or relapse situations or severe dependence.

37 (2) "Collect," or any derivative thereof, "collect and remit," or  
38 "collect and deliver," when used with reference to the department,

1 means that the department, either directly or through a collection  
2 agreement authorized by RCW 9.94A.145, is responsible for monitoring  
3 and enforcing the offender's sentence with regard to the legal  
4 financial obligation, receiving payment thereof from the offender, and,  
5 consistent with current law, delivering daily the entire payment to the  
6 superior court clerk without depositing it in a departmental account.

7 ((+2)) (3) "Commission" means the sentencing guidelines  
8 commission.

9 ((+3)) (4) "Community corrections officer" means an employee of  
10 the department who is responsible for carrying out specific duties in  
11 supervision of sentenced offenders and monitoring of sentence  
12 conditions.

13 ((+4)) (5) "Community custody" means that portion of an offender's  
14 sentence of confinement in lieu of earned release time or imposed  
15 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,  
16 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the  
17 community subject to controls placed on the offender's movement and  
18 activities by the department. For offenders placed on community  
19 custody for crimes committed on or after July 1, 2000, the department  
20 shall assess the offender's risk of reoffense and may establish and  
21 modify conditions of community custody, in addition to those imposed by  
22 the court, based upon the risk to community safety.

23 ((+5)) (6) "Community custody range" means the minimum and maximum  
24 period of community custody included as part of a sentence under RCW  
25 9.94A.715, as established by the commission or the legislature under  
26 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

27 ((+6)) (7) "Community placement" means that period during which  
28 the offender is subject to the conditions of community custody and/or  
29 postrelease supervision, which begins either upon completion of the  
30 term of confinement (postrelease supervision) or at such time as the  
31 offender is transferred to community custody in lieu of earned release.  
32 Community placement may consist of entirely community custody, entirely  
33 postrelease supervision, or a combination of the two.

34 ((+7)) (8) "Community service" means compulsory service, without  
35 compensation, performed for the benefit of the community by the  
36 offender.

37 ((+8)) (9) "Community supervision" means a period of time during  
38 which a convicted offender is subject to crime-related prohibitions and  
39 other sentence conditions imposed by a court pursuant to this chapter

1 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any  
2 offender has a chemical dependency that has contributed to his or her  
3 offense, the conditions of supervision may, subject to available  
4 resources, include treatment. For purposes of the interstate compact  
5 for out-of-state supervision of parolees and probationers, RCW  
6 9.95.270, community supervision is the functional equivalent of  
7 probation and should be considered the same as probation by other  
8 states.

9 ~~((9))~~ (10) "Confinement" means total or partial confinement.

10 ~~((10))~~ (11) "Conviction" means an adjudication of guilt pursuant  
11 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
12 guilty, and acceptance of a plea of guilty.

13 ~~((11))~~ (12) "Crime-related prohibition" means an order of a court  
14 prohibiting conduct that directly relates to the circumstances of the  
15 crime for which the offender has been convicted, and shall not be  
16 construed to mean orders directing an offender affirmatively to  
17 participate in rehabilitative programs or to otherwise perform  
18 affirmative conduct. However, affirmative acts necessary to monitor  
19 compliance with the order of a court may be required by the department.

20 ~~((12))~~ (13) "Criminal history" means the list of a defendant's  
21 prior convictions and juvenile adjudications, whether in this state, in  
22 federal court, or elsewhere. The history shall include, where known,  
23 for each conviction (a) whether the defendant has been placed on  
24 probation and the length and terms thereof; and (b) whether the  
25 defendant has been incarcerated and the length of incarceration.

26 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing  
27 court that equals the difference between the offender's net daily  
28 income and the reasonable obligations that the offender has for the  
29 support of the offender and any dependents.

30 ~~((14))~~ (15) "Day reporting" means a program of enhanced  
31 supervision designed to monitor the offender's daily activities and  
32 compliance with sentence conditions, and in which the offender is  
33 required to report daily to a specific location designated by the  
34 department or the sentencing court.

35 ~~((15))~~ (16) "Department" means the department of corrections.

36 ~~((16))~~ (17) "Determinate sentence" means a sentence that states  
37 with exactitude the number of actual years, months, or days of total  
38 confinement, of partial confinement, of community supervision, the  
39 number of actual hours or days of community service work, or dollars or

1 terms of a legal financial obligation. The fact that an offender  
2 through earned release can reduce the actual period of confinement  
3 shall not affect the classification of the sentence as a determinate  
4 sentence.

5 ~~((17))~~ (18) "Disposable earnings" means that part of the earnings  
6 of an offender remaining after the deduction from those earnings of any  
7 amount required by law to be withheld. For the purposes of this  
8 definition, "earnings" means compensation paid or payable for personal  
9 services, whether denominated as wages, salary, commission, bonuses, or  
10 otherwise, and, notwithstanding any other provision of law making the  
11 payments exempt from garnishment, attachment, or other process to  
12 satisfy a court-ordered legal financial obligation, specifically  
13 includes periodic payments pursuant to pension or retirement programs,  
14 or insurance policies of any type, but does not include payments made  
15 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
16 or Title 74 RCW.

17 ~~((18))~~ (19) "Drug offender sentencing alternative" is a  
18 sentencing option available to persons convicted of a felony offense  
19 other than a violent offense or a sex offense and who are eligible for  
20 the option under RCW 9.94A.660.

21 ~~((19))~~ (20) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of  
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
24 controlled substance (RCW 69.50.403);

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

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

31 ~~((20))~~ (21) "Earned release" means earned release from  
32 confinement as provided in RCW 9.94A.150.

33 ~~((21))~~ (22) "Escape" means:

34 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
35 second degree (RCW 9A.76.120), willful failure to return from furlough  
36 (RCW 72.66.060), willful failure to return from work release (RCW  
37 72.65.070), or willful failure to be available for supervision by the  
38 department while in community custody (RCW 72.09.310); or

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

4 (~~((22))~~) (23) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
7 and-run injury-accident (RCW 46.52.020(4)); or

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

11 (~~((23))~~) (24) "Fine" means a specific sum of money ordered by the  
12 sentencing court to be paid by the offender to the court over a  
13 specific period of time.

14 (~~((24))~~) (25) "First-time offender" means any person who has no  
15 prior convictions for a felony and is eligible for the first-time  
16 offender waiver under RCW 9.94A.650.

17 (~~((25))~~) (26) "Home detention" means a program of partial  
18 confinement available to offenders wherein the offender is confined in  
19 a private residence subject to electronic surveillance.

20 (~~((26))~~) (27) "Legal financial obligation" means a sum of money  
21 that is ordered by a superior court of the state of Washington for  
22 legal financial obligations which may include restitution to the  
23 victim, statutorily imposed crime victims' compensation fees as  
24 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
25 drug funds, court-appointed attorneys' fees, and costs of defense,  
26 fines, and any other financial obligation that is assessed to the  
27 offender as a result of a felony conviction. Upon conviction for  
28 vehicular assault while under the influence of intoxicating liquor or  
29 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
30 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),  
31 legal financial obligations may also include payment to a public agency  
32 of the expense of an emergency response to the incident resulting in  
33 the conviction, subject to RCW 38.52.430.

34 (~~((27))~~) (28) "Most serious offense" means any of the following  
35 felonies or a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or  
37 criminal solicitation of or criminal conspiracy to commit a class A  
38 felony;

39 (b) Assault in the second degree;

- 1 (c) Assault of a child in the second degree;
- 2 (d) Child molestation in the second degree;
- 3 (e) Controlled substance homicide;
- 4 (f) Extortion in the first degree;
- 5 (g) Incest when committed against a child under age fourteen;
- 6 (h) Indecent liberties;
- 7 (i) Kidnapping in the second degree;
- 8 (j) Leading organized crime;
- 9 (k) Manslaughter in the first degree;
- 10 (l) Manslaughter in the second degree;
- 11 (m) Promoting prostitution in the first degree;
- 12 (n) Rape in the third degree;
- 13 (o) Robbery in the second degree;
- 14 (p) Sexual exploitation;
- 15 (q) Vehicular assault;
- 16 (r) Vehicular homicide, when proximately caused by the driving of
- 17 any vehicle by any person while under the influence of intoxicating
- 18 liquor or any drug as defined by RCW 46.61.502, or by the operation of
- 19 any vehicle in a reckless manner;
- 20 (s) Any other class B felony offense with a finding of sexual
- 21 motivation;
- 22 (t) Any other felony with a deadly weapon verdict under RCW
- 23 9.94A.125;
- 24 (u) Any felony offense in effect at any time prior to December 2,
- 25 1993, that is comparable to a most serious offense under this
- 26 subsection, or any federal or out-of-state conviction for an offense
- 27 that under the laws of this state would be a felony classified as a
- 28 most serious offense under this subsection;
- 29 (v)(i) A prior conviction for indecent liberties under RCW
- 30 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
- 31 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
- 32 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
- 33 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 34 (ii) A prior conviction for indecent liberties under RCW
- 35 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
- 36 if: (A) The crime was committed against a child under the age of
- 37 fourteen; or (B) the relationship between the victim and perpetrator is
- 38 included in the definition of indecent liberties under RCW
- 39 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,

1 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
2 through July 27, 1997.

3 ~~((28))~~ (29) "Nonviolent drug possession offense" means (a) the  
4 unlawful possession, use, or transportation for personal use of any  
5 controlled substance identified in chapter 69.50 RCW, (b) the offense  
6 of being under the influence of a controlled substance, or (c) the  
7 offense of use of a forged prescription. Nonviolent drug possession  
8 offense does not include the unlawful creation, manufacture,  
9 production, delivery, sale, or possession with intent to deliver of any  
10 controlled substance, or unlawful possession of flunitrazepam.

11 (30) "Nonviolent offense" means an offense which is not a violent  
12 offense.

13 ~~((29))~~ (31) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. Throughout this chapter, the terms "offender" and  
19 "defendant" are used interchangeably.

20 ~~((30))~~ (32) "Partial confinement" means confinement for no more  
21 than one year in a facility or institution operated or utilized under  
22 contract by the state or any other unit of government, or, if home  
23 detention or work crew has been ordered by the court, in an approved  
24 residence, for a substantial portion of each day with the balance of  
25 the day spent in the community. Partial confinement includes work  
26 release, home detention, work crew, and a combination of work crew and  
27 home detention.

28 ~~((31))~~ (33) "Persistent offender" is an offender who:

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

31 (ii) Has, before the commission of the offense under (a) of this  
32 subsection, been convicted as an offender on at least two separate  
33 occasions, whether in this state or elsewhere, of felonies that under  
34 the laws of this state would be considered most serious offenses and  
35 would be included in the offender score under RCW 9.94A.360; provided  
36 that of the two or more previous convictions, at least one conviction  
37 must have occurred before the commission of any of the other most  
38 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
2 of a child in the first degree, child molestation in the first degree,  
3 rape in the second degree, rape of a child in the second degree, or  
4 indecent liberties by forcible compulsion; (B) murder in the first  
5 degree, murder in the second degree, homicide by abuse, kidnapping in  
6 the first degree, kidnapping in the second degree, assault in the first  
7 degree, assault in the second degree, assault of a child in the first  
8 degree, or burglary in the first degree, with a finding of sexual  
9 motivation; or (C) an attempt to commit any crime listed in this  
10 subsection (~~(31)~~) (33)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this  
12 subsection, been convicted as an offender on at least one occasion,  
13 whether in this state or elsewhere, of an offense listed in (b)(i) of  
14 this subsection. A conviction for rape of a child in the first degree  
15 constitutes a conviction under (b)(i) of this subsection only when the  
16 offender was sixteen years of age or older when the offender committed  
17 the offense. A conviction for rape of a child in the second degree  
18 constitutes a conviction under (b)(i) of this subsection only when the  
19 offender was eighteen years of age or older when the offender committed  
20 the offense.

21 (~~(32)~~) (34) "Postrelease supervision" is that portion of an  
22 offender's community placement that is not community custody.

23 (~~(33)~~) (35) "Restitution" means a specific sum of money ordered  
24 by the sentencing court to be paid by the offender to the court over a  
25 specified period of time as payment of damages. The sum may include  
26 both public and private costs.

27 (~~(34)~~) (36) "Risk assessment" means the application of an  
28 objective instrument supported by research and adopted by the  
29 department for the purpose of assessing an offender's risk of  
30 reoffense, taking into consideration the nature of the harm done by the  
31 offender, place and circumstances of the offender related to risk, the  
32 offender's relationship to any victim, and any information provided to  
33 the department by victims. The results of a risk assessment shall not  
34 be based on unconfirmed or unconfirmable allegations.

35 (~~(35)~~) (37) "Serious traffic offense" means:

36 (a) Driving while under the influence of intoxicating liquor or any  
37 drug (RCW 46.61.502), actual physical control while under the influence  
38 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
2 or

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

6 (~~(36)~~) (38) "Serious violent offense" is a subcategory of violent  
7 offense and means:

8 (a)(i) Murder in the first degree;

9 (ii) Homicide by abuse;

10 (iii) Murder in the second degree;

11 (iv) Manslaughter in the first degree;

12 (v) Assault in the first degree;

13 (vi) Kidnapping in the first degree;

14 (vii) Rape in the first degree;

15 (viii) Assault of a child in the first degree; or

16 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
17 commit one of these felonies; or

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

21 (~~(37)~~) (39) "Sex offense" means:

22 (a) A felony that is a violation of:

23 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

24 (ii) RCW 9A.64.020;

25 (iii) RCW 9.68A.090; or

26 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
27 criminal solicitation, or criminal conspiracy to commit such crimes;

28 (b) Any conviction for a felony offense in effect at any time prior  
29 to July 1, 1976, that is comparable to a felony classified as a sex  
30 offense in (a) of this subsection;

31 (c) A felony with a finding of sexual motivation under RCW  
32 9.94A.127 or 13.40.135; or

33 (d) 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 sex  
35 offense under (a) of this subsection.

36 (~~(38)~~) (40) "Sexual motivation" means that one of the purposes  
37 for which the defendant committed the crime was for the purpose of his  
38 or her sexual gratification.

1       ~~((39))~~ (41) "Standard sentence range" means the sentencing  
2 court's discretionary range in imposing a nonappealable sentence.

3       ~~((40))~~ (42) "Statutory maximum sentence" means the maximum length  
4 of time for which an offender may be confined as punishment for a crime  
5 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
6 the crime, or other statute defining the maximum penalty for a crime.

7       ~~((41))~~ (43) "Successful completion of treatment" means that an  
8 offender who has had chemical dependency treatment imposed as a  
9 condition of community custody has completed the prescribed course of  
10 chemical dependency treatment and, as a result, there is reasonable  
11 cause to believe that the offender will not abuse controlled substances  
12 in the future.

13       (44) "Total confinement" means confinement inside the physical  
14 boundaries of a facility or institution operated or utilized under  
15 contract by the state or any other unit of government for twenty-four  
16 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

17       ~~((42))~~ (45) "Transition training" means written and verbal  
18 instructions and assistance provided by the department to the offender  
19 during the two weeks prior to the offender's successful completion of  
20 the work ethic camp program. The transition training shall include  
21 instructions in the offender's requirements and obligations during the  
22 offender's period of community custody.

23       ~~((43))~~ (46) "Victim" means any person who has sustained  
24 emotional, psychological, physical, or financial injury to person or  
25 property as a direct result of the crime charged.

26       ~~((44))~~ (47) "Violent offense" means:

27       (a) Any of the following felonies:

28       (i) Any felony defined under any law as a class A felony or an  
29 attempt to commit a class A felony;

30       (ii) Criminal solicitation of or criminal conspiracy to commit a  
31 class A felony;

32       (iii) Manslaughter in the first degree;

33       (iv) Manslaughter in the second degree;

34       (v) Indecent liberties if committed by forcible compulsion;

35       (vi) Kidnapping in the second degree;

36       (vii) Arson in the second degree;

37       (viii) Assault in the second degree;

38       (ix) Assault of a child in the second degree;

39       (x) Extortion in the first degree;

1 (xi) Robbery in the second degree;  
2 (xii) Drive-by shooting;  
3 (xiii) Vehicular assault; and  
4 (xiv) Vehicular homicide, when proximately caused by the driving of  
5 any vehicle by any person while under the influence of intoxicating  
6 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
7 any vehicle in a reckless manner;

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

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

14 (~~(45)~~) (48) "Work crew" means a program of partial confinement  
15 consisting of civic improvement tasks for the benefit of the community  
16 that complies with RCW 9.94A.135.

17 (~~(46)~~) (49) "Work ethic camp" means an alternative incarceration  
18 program as provided in RCW 9.94A.137 designed to reduce recidivism and  
19 lower the cost of corrections by requiring offenders to complete a  
20 comprehensive array of real-world job and vocational experiences,  
21 character-building work ethics training, life management skills  
22 development, substance abuse rehabilitation, counseling, literacy  
23 training, and basic adult education.

24 (~~(47)~~) (50) "Work release" means a program of partial confinement  
25 available to offenders who are employed or engaged as a student in a  
26 regular course of study at school.

27 **Sec. 7.** RCW 69.50.425 and 1989 c 271 s 105 are each amended to  
28 read as follows:

29 (1) Except as provided in subsection (2) of this section and  
30 section 11 of this act, a person who is convicted of a misdemeanor  
31 violation of any provision of this chapter shall be punished by  
32 imprisonment for not less than twenty-four consecutive hours, and by a  
33 fine of not less than two hundred fifty dollars. On a second or  
34 subsequent conviction, the fine shall not be less than five hundred  
35 dollars. These fines shall be in addition to any other fine or penalty  
36 imposed. Unless the court finds that the imposition of the minimum  
37 imprisonment will pose a substantial risk to the defendant's physical  
38 or mental well-being or that local jail facilities are in an

1 overcrowded condition, the minimum term of imprisonment shall not be  
2 suspended or deferred. If the court finds such risk or overcrowding  
3 exists, it shall sentence the defendant to a minimum of forty hours of  
4 community service. If a minimum term of imprisonment is suspended or  
5 deferred, the court shall state in writing the reason for granting the  
6 suspension or deferral and the facts upon which the suspension or  
7 deferral is based. Unless the court finds the person to be indigent,  
8 the minimum fine shall not be suspended or deferred.

9 (2) When any person is convicted of a misdemeanor nonviolent drug  
10 possession offense and referred to an approved treatment program in  
11 lieu of incarceration under section 11 of this act, the court shall  
12 suspend the imposition of incarceration under this section during the  
13 time that the offender is receiving treatment. The court shall have  
14 the discretion to suspend the fines required by this section until such  
15 time as the offender successfully completes treatment or to require the  
16 offender to apply such fines to the payment for services of an approved  
17 chemical dependency treatment program. Following successful completion  
18 of treatment imposed in lieu of incarceration under section 11 of this  
19 act, the court shall dismiss the term of incarceration and may waive  
20 any remaining amount of the fines prescribed in this section if the  
21 court finds the person to be indigent.

22 **Sec. 8.** RCW 69.50.430 and 1989 c 271 s 106 are each amended to  
23 read as follows:

24 (1) Every person convicted of a felony violation of RCW 69.50.401,  
25 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415  
26 shall be fined one thousand dollars in addition to any other fine or  
27 penalty imposed. Except as provided in subsection (3) of this section,  
28 unless the court finds the person to be indigent, this additional fine  
29 shall not be suspended or deferred by the court.

30 (2) On a second or subsequent conviction for violation of any of  
31 the laws listed in subsection (1) of this section, the person shall be  
32 fined two thousand dollars in addition to any other fine or penalty  
33 imposed. Except as provided in subsection (3) of this section, unless  
34 the court finds the person to be indigent, this additional fine shall  
35 not be suspended or deferred by the court.

36 (3) When any person is convicted of a nonviolent drug possession  
37 offense and referred to an approved chemical dependency treatment  
38 program in lieu of incarceration under section 10 of this act, the

1 court shall have the discretion to suspend the fines required by this  
2 section until such time as the offender successfully completes  
3 treatment or to require the offender to apply such fines to the payment  
4 for services of an approved chemical dependency treatment program.  
5 Following successful completion of treatment imposed in lieu of  
6 incarceration under section 10 of this act, the court may waive any  
7 remaining amount of the fines prescribed in this section if the court  
8 finds the person to be indigent.

9       **Sec. 9.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and 2000  
10 c 28 s 5 are each reenacted and amended to read as follows:

11       (1) When a person is convicted of a felony, the court shall impose  
12 punishment as provided in this chapter.

13       (2)(a) The court shall impose a sentence as provided in the  
14 following sections and as applicable in the case:

15       (i) Unless another term of confinement applies, the court shall  
16 impose a sentence within the standard sentence range established in RCW  
17 9.94A.310;

18       (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

19       (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

20       (iv) RCW 9.94A.383, relating to community custody for offenders  
21 whose term of confinement is one year or less;

22       (v) RCW 9.94A.560, relating to persistent offenders;

23       (vi) RCW 9.94A.590, relating to mandatory minimum terms;

24       (vii) RCW 9.94A.650, relating to the first-time offender waiver;

25       (viii) RCW 9.94A.660, relating to the drug offender sentencing  
26 alternative;

27       (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
28 alternative;

29       (x) RCW 9.94A.390, relating to exceptional sentences;

30       (xi) RCW 9.94A.400, relating to consecutive and concurrent  
31 sentences;

32       (xii) Section 10 of this act, relating to nonviolent drug  
33 possession offenders.

34       (b) If a standard sentence range has not been established for the  
35 offender's crime, the court shall impose a determinate sentence which  
36 may include not more than one year of confinement; community service  
37 work; until July 1, 2000, a term of community supervision not to exceed  
38 one year and on and after July 1, 2000, a term of community custody not

1 to exceed one year, subject to conditions and sanctions as authorized  
2 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.  
3 The court may impose a sentence which provides more than one year of  
4 confinement if the court finds reasons justifying an exceptional  
5 sentence as provided in RCW 9.94A.390.

6 (3) If the court imposes a sentence requiring confinement of thirty  
7 days or less, the court may, in its discretion, specify that the  
8 sentence be served on consecutive or intermittent days. A sentence  
9 requiring more than thirty days of confinement shall be served on  
10 consecutive days. Local jail administrators may schedule court-ordered  
11 intermittent sentences as space permits.

12 (4) If a sentence imposed includes payment of a legal financial  
13 obligation, it shall be imposed as provided in RCW 9.94A.140,  
14 9.94A.142, and 9.94A.145.

15 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a  
16 court may not impose a sentence providing for a term of confinement or  
17 community supervision, community placement, or community custody which  
18 exceeds the statutory maximum for the crime as provided in chapter  
19 9A.20 RCW.

20 (6) The sentencing court shall give the offender credit for all  
21 confinement time served before the sentencing if that confinement was  
22 solely in regard to the offense for which the offender is being  
23 sentenced.

24 (7) The court shall order restitution as provided in RCW 9.94A.140  
25 and 9.94A.142.

26 (8) As a part of any sentence, the court may impose and enforce  
27 crime-related prohibitions and affirmative conditions as provided in  
28 this chapter.

29 (9) The court may order an offender whose sentence includes  
30 community placement or community supervision to undergo a mental status  
31 evaluation and to participate in available outpatient mental health  
32 treatment, if the court finds that reasonable grounds exist to believe  
33 that the offender is a mentally ill person as defined in RCW 71.24.025,  
34 and that this condition is likely to have influenced the offense. An  
35 order requiring mental status evaluation or treatment must be based on  
36 a presentence report and, if applicable, mental status evaluations that  
37 have been filed with the court to determine the offender's competency  
38 or eligibility for a defense of insanity. The court may order  
39 additional evaluations at a later date if deemed appropriate.

1 (10) In any sentence of partial confinement, the court may require  
2 the offender to serve the partial confinement in work release, in a  
3 program of home detention, on work crew, or in a combined program of  
4 work crew and home detention.

5 (11) In sentencing an offender convicted of a crime of domestic  
6 violence, as defined in RCW 10.99.020, if the offender has a minor  
7 child, or if the victim of the offense for which the offender was  
8 convicted has a minor child, the court may, as part of any term of  
9 community supervision, community placement, or community custody, order  
10 the offender to participate in a domestic violence perpetrator program  
11 approved under RCW 26.50.150.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 9.94A RCW  
13 to read as follows:

14 (1) Notwithstanding any other provision of law, and except as  
15 provided in subsection (2) of this section, any person convicted of a  
16 nonviolent drug possession offense shall receive a standard range  
17 sentence and range of community custody which shall all be served under  
18 community custody in lieu of incarceration.

19 (a) As a condition of community custody under this section the  
20 court shall require participation in and completion of an approved  
21 chemical dependency treatment program. Unless a condition is waived by  
22 the court, the conditions of community custody shall include those  
23 provided for in RCW 9.94A.700(4). The conditions may also include  
24 those provided for in RCW 9.94A.700(5). The court may also order the  
25 offender to participate in additional rehabilitative programs or  
26 otherwise perform affirmative conduct reasonably related to the  
27 circumstances of the offense, the offender's risk of reoffending, or  
28 the safety of the community and the department shall enforce such  
29 conditions pursuant to RCW 9.94A.715.

30 (b) The court shall also require the offender to comply with any  
31 conditions imposed by the department under RCW 9.94A.720. The  
32 department shall assess the offender's risk of reoffense and may  
33 establish and modify additional conditions of the offender's community  
34 custody based upon the risk to community safety. In addition, the  
35 department may require the offender to participate in additional  
36 rehabilitative programs, or otherwise perform affirmative conduct, and  
37 to obey all laws.

1 (c) The department may not impose conditions that are contrary to  
2 those ordered by the court and may not contravene or decrease court-  
3 imposed conditions. The department shall notify the offender in  
4 writing of any such conditions or modifications. In setting,  
5 modifying, and enforcing conditions of community custody, the  
6 department shall be deemed to be performing a quasi-judicial function.

7 (d) A court may not impose incarceration as an additional condition  
8 of community custody, however, incarceration may be imposed, following  
9 a hearing, as a sanction for a violation of the conditions of community  
10 custody. Aside from the limitations imposed in this subsection, the  
11 trial court is not otherwise limited in the type of conditions it may  
12 impose.

13 (e) In addition to any fines or legal financial obligations  
14 assessed under other provisions of law, the trial court shall require  
15 any person convicted of a nonviolent drug possession offense who is  
16 reasonably able to do so to contribute to the cost of their own  
17 placement in a chemical dependency treatment program.

18 (2) Subsection (1) of this section shall not apply to:

19 (a) Any offender who has previously been convicted of one or more  
20 sex offenses, violent offenses, or serious violent offenses, unless the  
21 nonviolent drug possession offense occurred after a period of five  
22 years in which the offender remained free of both prison custody and  
23 the commission of an offense which results in (i) a felony conviction  
24 other than a nonviolent drug possession offense or (ii) a misdemeanor  
25 conviction involving physical injury or the threat of physical injury  
26 to another person;

27 (b) Any offender who, in addition to one or more nonviolent drug  
28 possession offenses, has been convicted in the same proceeding of any  
29 felony or a misdemeanor not related to the use of drugs;

30 (c) Any offender who:

31 (i) While in possession of a firearm, unlawfully possesses any  
32 amount of (A) a substance containing either cocaine base, cocaine,  
33 heroin, or methamphetamine, or (B) a liquid, nonliquid, plant  
34 substance, or hand-rolled cigarette, containing phencyclidine; or

35 (ii) While in possession of a firearm, is unlawfully under the  
36 influence of cocaine base, cocaine, heroin, methamphetamine, or  
37 phencyclidine;

38 (d) Any offender who refuses chemical dependency treatment as a  
39 condition of community custody; or

1 (e) Any offender who (i) has two separate convictions for  
2 nonviolent drug possession offenses, (ii) has participated in two  
3 separate courses of chemical dependency treatment pursuant to  
4 subsection (1) of this section, and (iii) is found by the court, by  
5 clear and convincing evidence, to be unamenable to any form of  
6 available chemical dependency treatment.

7 (3) Within seven days of an order imposing community custody under  
8 subsection (1) of this section, the department shall notify the  
9 chemical dependency treatment provider designated to provide chemical  
10 dependency treatment under subsection (1) of this section. Within  
11 thirty days of receiving that notice, the treatment provider shall  
12 prepare a treatment plan and forward it to the department. On a  
13 quarterly basis after the offender begins the chemical dependency  
14 treatment program, the treatment provider shall prepare and forward a  
15 progress report to the department.

16 (a) If at any point during the course of chemical dependency  
17 treatment the treatment provider notifies the department that the  
18 offender is unamenable to the treatment being provided, but may be  
19 amenable to other reasonably available chemical dependency treatments  
20 or related programs, the department may modify or move the court to  
21 modify the terms of the sentence to ensure that the offender receives  
22 the alternative chemical dependency treatment or program. If the  
23 modification is not contrary to conditions ordered by the court and  
24 does not contravene or decrease court-imposed conditions, the  
25 department may impose the modification as provided in RCW 9.94A.715.

26 (b) If at any point during the course of chemical dependency  
27 treatment the treatment provider notifies the department that the  
28 offender is unamenable to the treatment provided and all other forms of  
29 chemical dependency treatment, the department may, following the  
30 administrative procedures established in RCW 9.94A.205, revoke  
31 community custody. At the revocation hearing, unless the offender  
32 proves by a preponderance of the evidence that there is an existing and  
33 available chemical dependency treatment program to which he or she is  
34 amenable, the department may administratively revoke community custody.

35 (c) Chemical dependency treatment services provided by subsection  
36 (1) of this section as a mandatory condition of community custody may  
37 not exceed twelve months. However, additional aftercare services as a  
38 condition of custody may be required for up to six months.

1 (4)(a) Upon petition of the offender, the court shall have the  
2 authority to order the conviction set aside following successful  
3 completion of treatment and presentation of evidence that the offender  
4 has remained free of drugs for two years. If the community custody was  
5 revoked, the conviction may not be set aside. If the court finds that  
6 the offender successfully completed chemical dependency treatment, and  
7 substantially complied with the conditions of community custody, the  
8 conviction shall be set aside and the arrest on which the conviction  
9 was based shall be deemed to have never occurred. Except as provided  
10 in (b) of this subsection and subsection (5) of this section, the  
11 offender shall thereafter be released from all penalties and  
12 disabilities resulting from the offense of which he or she has been  
13 convicted.

14 (b) A court's order to set aside a conviction pursuant to (a) of  
15 this subsection shall not restore the right to receive, possess, own,  
16 or transport firearms, which may be restored only pursuant to RCW  
17 9.41.047.

18 (c) Except as otherwise provided in this subsection (4)(c), after  
19 a conviction is set aside pursuant to (a) of this subsection, the  
20 offender may indicate in response to any question concerning his or her  
21 prior criminal record that he or she was not arrested or convicted for  
22 the offense. Except as otherwise provided in this subsection (4)(c),  
23 a record pertaining to an arrest or conviction resulting in successful  
24 completion of an approved chemical dependency treatment program under  
25 this section shall not, without the offender's consent, be used in any  
26 way that could result in the denial of any employment, benefit,  
27 license, or certificate. The Washington state patrol may not release  
28 a record pertaining to a set-aside conviction except under (b) of this  
29 subsection and except that, regardless of his or her successful  
30 completion of chemical dependency treatment, the arrest and conviction  
31 on which the community custody was based may be recorded by the  
32 Washington state patrol and disclosed in response to any peace officer  
33 application request or any law enforcement inquiry. Setting aside a  
34 conviction under this section does not relieve an offender of the  
35 obligation to disclose the arrest and conviction in response to any  
36 direct question contained in any questionnaire or application for  
37 public office, for a position as a peace officer, for licensure by any  
38 state or local agency, for contracting with the Washington state  
39 lottery commission, or for purposes of serving on a jury.

1 (5)(a) If community custody is revoked pursuant to the provisions  
2 of this subsection, the offender may be incarcerated for the remainder  
3 of his or her sentence.

4 (b) Where an offender receives community custody under subsection  
5 (1) of this section and violates the conditions of supervision either  
6 by being arrested for an offense that is not a nonviolent drug  
7 possession offense, or by violating a nondrug-related condition of  
8 supervision, and the community corrections officer moves to revoke  
9 community custody, the department shall conduct a hearing under RCW  
10 9.94A.205 to determine whether community custody shall be revoked. The  
11 department shall revoke community custody if the alleged violation is  
12 proved unless the offender shows good cause why the community custody  
13 should not be revoked. Even if the offender shows good cause, the  
14 department may modify the conditions of the community custody.

15 (c)(i) Where an offender receives community custody under  
16 subsection (1) of this section, and violates the conditions of  
17 supervision either by being arrested for a nonviolent drug possession  
18 offense or by violating a drug-related condition of supervision, and  
19 the community corrections officer moves to revoke community custody,  
20 the department shall conduct a hearing under RCW 9.94A.205 to determine  
21 whether community custody shall be revoked. The department shall  
22 revoke community custody if the alleged violation is proved and the  
23 department proves by a preponderance of the evidence either that the  
24 offender poses a danger to the safety of others or is unamenable to  
25 chemical dependency treatment. In determining whether an offender is  
26 unamenable to chemical dependency treatment, the court may consider, to  
27 the extent relevant, whether the offender has (A) committed a serious  
28 violation of rules at the chemical dependency treatment program, (B)  
29 repeatedly committed violations of program rules that inhibit the  
30 offender's ability to function in the program, or (C) continually  
31 refused to participate in the program or asked to be removed from the  
32 program. If the department does not revoke community custody, it may  
33 modify the chemical dependency treatment plan in accordance with RCW  
34 9.94A.205.

35 (ii) Where an offender receives community custody under subsection  
36 (1) of this section, and for a third time violates the conditions of  
37 supervision either by being arrested for a nonviolent drug possession  
38 offense, or by violating a drug-related condition of supervision, and  
39 the community corrections officer moves for a third time to revoke

1 community custody, the department shall conduct a hearing to determine  
2 whether community custody shall be revoked. If the alleged violation  
3 is proved, the offender is not eligible for continued community custody  
4 under subsection (1) of this section and the community custody shall be  
5 revoked.

6 NEW SECTION. **Sec. 11.** A new section is added to chapter 69.50 RCW  
7 to read as follows:

8 (1) Notwithstanding any other provision of law, and except as  
9 provided in subsection (2) of this section, any person convicted of a  
10 nonviolent drug possession offense that is not a felony shall serve any  
11 sentence term under community custody in lieu of incarceration.

12 (a) As a condition of community custody under this section the  
13 court shall require participation in and completion of an approved  
14 chemical dependency treatment program. Unless a condition is waived by  
15 the court, the conditions of community custody shall include those  
16 provided for in RCW 9.94A.700(4). The conditions may also include  
17 those provided for in RCW 9.94A.700(5). The court may also order the  
18 offender to participate in additional rehabilitative programs or  
19 otherwise perform affirmative conduct reasonably related to the  
20 circumstances of the offense, the offender's risk of reoffending, or  
21 the safety of the community, and the department of corrections shall  
22 enforce such conditions pursuant to RCW 9.94A.715.

23 (b) The court shall also require the offender to comply with any  
24 conditions imposed by the department of corrections under RCW  
25 9.94A.720. The department of corrections shall assess the offender's  
26 risk of reoffense and may establish and modify additional conditions of  
27 the offender's community custody based upon the risk to community  
28 safety. In addition, the department of corrections may require the  
29 offender to participate in additional rehabilitative programs, or  
30 otherwise perform affirmative conduct, and to obey all laws.

31 (c) The department of corrections may not impose conditions that  
32 are contrary to those ordered by the court and may not contravene or  
33 decrease court-imposed conditions. The department of corrections shall  
34 notify the offender in writing of any such conditions or modifications.  
35 In setting, modifying, and enforcing conditions of community custody,  
36 the department of corrections shall be deemed to be performing a quasi-  
37 judicial function.

1 (d) A court may not impose incarceration as an additional condition  
2 of community custody, however, incarceration may be imposed, following  
3 a hearing, as a sanction for a violation of the conditions of community  
4 custody. Aside from the limitations imposed in this subsection, the  
5 trial court is not otherwise limited in the type of conditions it may  
6 impose.

7 (e) In addition to any fines or legal financial obligations  
8 assessed under other provisions of law, the trial court shall require  
9 any person convicted of a nonviolent drug possession offense who is  
10 reasonably able to do so to contribute to the cost of their own  
11 placement in a chemical dependency treatment program.

12 (2) Subsection (1) of this section shall not apply to:

13 (a) Any offender who has previously been convicted of one or more  
14 sex offenses, violent offenses, or serious violent offenses, unless the  
15 nonviolent drug possession offense occurred after a period of five  
16 years in which the offender remained free of both prison custody and  
17 the commission of an offense which results in (i) a felony conviction  
18 other than a nonviolent drug possession offense or (ii) a misdemeanor  
19 conviction involving physical injury or the threat of physical injury  
20 to another person;

21 (b) Any offender who, in addition to one or more nonviolent drug  
22 possession offenses, has been convicted in the same proceeding of any  
23 felony or a misdemeanor not related to the use of drugs;

24 (c) Any offender who:

25 (i) While in possession of a firearm, unlawfully possesses any  
26 amount of (A) a substance containing either cocaine base, cocaine,  
27 heroin, or methamphetamine, or (B) a liquid, nonliquid, plant  
28 substance, or hand-rolled cigarette, containing phencyclidine; or

29 (ii) While in possession of a firearm, is unlawfully under the  
30 influence of cocaine base, cocaine, heroin, methamphetamine, or  
31 phencyclidine;

32 (d) Any offender who refuses chemical dependency treatment as a  
33 condition of community custody; or

34 (e) Any offender who (i) has two separate convictions for  
35 nonviolent drug possession offenses, (ii) has participated in two  
36 separate courses of chemical dependency treatment pursuant to  
37 subsection (1) of this section, and (iii) is found by the court, by  
38 clear and convincing evidence, to be unamenable to any form of  
39 available chemical dependency treatment.

1 (3) Within seven days of an order imposing community custody under  
2 subsection (1) of this section, the department of corrections shall  
3 notify the chemical dependency treatment provider designated to provide  
4 chemical dependency treatment under subsection (1) of this section.  
5 Within thirty days of receiving that notice, the treatment provider  
6 shall prepare a treatment plan and forward it to the department of  
7 corrections. On a quarterly basis after the offender begins the  
8 chemical dependency treatment program, the treatment provider shall  
9 prepare and forward a progress report to the department of corrections.

10 (a) If at any point during the course of chemical dependency  
11 treatment the treatment provider notifies the department of corrections  
12 that the offender is unamenable to the treatment being provided, but  
13 may be amenable to other reasonably available chemical dependency  
14 treatments or related programs, the department of corrections may  
15 modify or move the court to modify the terms of the sentence to ensure  
16 that the offender receives the alternative chemical dependency  
17 treatment or program. If the modification is not contrary to  
18 conditions ordered by the court and does not contravene or decrease  
19 court-imposed conditions, the department of corrections may impose the  
20 modification as provided in RCW 9.94A.715.

21 (b) If at any point during the course of chemical dependency  
22 treatment the treatment provider notifies the department of corrections  
23 that the offender is unamenable to the treatment provided and all other  
24 forms of chemical dependency treatment, the department of corrections  
25 may, following the administrative procedures established in RCW  
26 9.94A.205, revoke community custody. At the revocation hearing, unless  
27 the offender proves by a preponderance of the evidence that there is an  
28 existing and available chemical dependency treatment program to which  
29 he or she is amenable, the department of corrections may  
30 administratively revoke community custody.

31 (c) Chemical dependency treatment services provided by subsection  
32 (1) of this section as a mandatory condition of community custody may  
33 not exceed twelve months. However, additional aftercare services as a  
34 condition of custody may be required for up to six months.

35 (4)(a) Upon petition of the offender, the court shall have the  
36 authority to order the conviction set aside following successful  
37 completion of treatment and presentation of evidence that the offender  
38 has remained free of drugs for two years. If the community custody was  
39 revoked, the conviction may not be set aside. If the court finds that

1 the offender successfully completed chemical dependency treatment, and  
2 substantially complied with the conditions of community custody, the  
3 conviction shall be set aside and the arrest on which the conviction  
4 was based shall be deemed to have never occurred. Except as provided  
5 in (b) of this subsection and subsection (5) of this section, the  
6 offender shall thereafter be released from all penalties and  
7 disabilities resulting from the offense of which he or she has been  
8 convicted.

9 (b) A court's order to set aside a conviction pursuant to (a) of  
10 this subsection shall not restore the right to receive, possess, own,  
11 or transport firearms, which may be restored only pursuant to RCW  
12 9.41.047.

13 (c) Except as otherwise provided in this subsection (4)(c), after  
14 a conviction is set aside pursuant to (a) of this subsection, the  
15 offender may indicate in response to any question concerning his or her  
16 prior criminal record that he or she was not arrested or convicted for  
17 the offense. Except as otherwise provided in this subsection (4)(c),  
18 a record pertaining to an arrest or conviction resulting in successful  
19 completion of an approved chemical dependency treatment program under  
20 this section shall not, without the offender's consent, be used in any  
21 way that could result in the denial of any employment, benefit,  
22 license, or certificate. The Washington state patrol may not release  
23 a record pertaining to a set-aside conviction except under (b) of this  
24 subsection and except that, regardless of his or her successful  
25 completion of chemical dependency treatment, the arrest and conviction  
26 on which the community custody was based may be recorded by the  
27 Washington state patrol and disclosed in response to any peace officer  
28 application request or any law enforcement inquiry. Setting aside a  
29 conviction under this section does not relieve an offender of the  
30 obligation to disclose the arrest and conviction in response to any  
31 direct question contained in any questionnaire or application for  
32 public office, for a position as a peace officer, for licensure by any  
33 state or local agency, for contracting with the Washington state  
34 lottery commission, or for purposes of serving on a jury.

35 (5)(a) If community custody is revoked pursuant to the provisions  
36 of this subsection, the offender may be incarcerated for the remainder  
37 of his or her sentence.

38 (b) Where an offender receives community custody under subsection  
39 (1) of this section and violates the conditions of supervision either

1 by being arrested for an offense that is not a nonviolent drug  
2 possession offense, or by violating a nondrug-related condition of  
3 supervision, and the community corrections officer moves to revoke  
4 community custody, the department of corrections shall conduct a  
5 hearing under RCW 9.94A.205 to determine whether community custody  
6 shall be revoked. The department of corrections shall revoke community  
7 custody if the alleged violation is proved unless the offender shows  
8 good cause why the community custody should not be revoked. Even if  
9 the offender shows good cause, the department of corrections may modify  
10 the conditions of the community custody.

11 (c)(i) Where an offender receives community custody under  
12 subsection (1) of this section, and violates the conditions of  
13 supervision either by being arrested for a nonviolent drug possession  
14 offense or by violating a drug-related condition of supervision, and  
15 the community corrections officer moves to revoke community custody,  
16 the department of corrections shall conduct a hearing under RCW  
17 9.94A.205 to determine whether community custody shall be revoked. The  
18 department of corrections shall revoke community custody if the alleged  
19 violation is proved and the department of corrections proves by a  
20 preponderance of the evidence either that the offender poses a danger  
21 to the safety of others or is unamenable to chemical dependency  
22 treatment. In determining whether an offender is unamenable to  
23 chemical dependency treatment, the court may consider, to the extent  
24 relevant, whether the offender has (A) committed a serious violation of  
25 rules at the chemical dependency treatment program, (B) repeatedly  
26 committed violations of program rules that inhibit the offender's  
27 ability to function in the program, or (C) continually refused to  
28 participate in the program or asked to be removed from the program. If  
29 the department of corrections does not revoke community custody, it may  
30 modify the chemical dependency treatment plan in accordance with RCW  
31 9.94A.205.

32 (ii) Where an offender receives community custody under subsection  
33 (1) of this section, and for a third time violates the conditions of  
34 supervision either by being arrested for a nonviolent drug possession  
35 offense, or by violating a drug-related condition of supervision, and  
36 the community corrections officer moves for a third time to revoke  
37 community custody, the department of corrections shall conduct a  
38 hearing to determine whether community custody shall be revoked. If  
39 the alleged violation is proved, the offender is not eligible for

1 continued community custody under subsection (1) of this section and  
2 the community custody shall be revoked.

3 **Sec. 12.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and  
4 2000 c 66 s 2 are each reenacted and amended to read as follows:

5 TABLE 2

6 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

7	XVI	Aggravated Murder 1 (RCW 10.95.020)
8	XV	Homicide by abuse (RCW 9A.32.055)
9		Malicious explosion 1 (RCW 70.74.280(1))
10		Murder 1 (RCW 9A.32.030)
11	XIV	Murder 2 (RCW 9A.32.050)
12	XIII	Malicious explosion 2 (RCW 70.74.280(2))
13		Malicious placement of an explosive 1 (RCW
14		70.74.270(1))
15	XII	Assault 1 (RCW 9A.36.011)
16		Assault of a Child 1 (RCW 9A.36.120)
17		Malicious placement of an imitation device
18		1 (RCW 70.74.272(1)(a))
19		Rape 1 (RCW 9A.44.040)
20		Rape of a Child 1 (RCW 9A.44.073)
21	XI	Manslaughter 1 (RCW 9A.32.060)
22		Rape 2 (RCW 9A.44.050)
23		Rape of a Child 2 (RCW 9A.44.076)
24	X	Child Molestation 1 (RCW 9A.44.083)
25		Indecent Liberties (with forcible
26		compulsion) (RCW 9A.44.100(1)(a))
27		Kidnapping 1 (RCW 9A.40.020)
28		Leading Organized Crime (RCW
29		9A.82.060(1)(a))
30		Malicious explosion 3 (RCW 70.74.280(3))
31		Manufacture of methamphetamine (RCW
32		69.50.401(a)(1)(ii))
33		Over 18 and deliver heroin,
34		methamphetamine, a narcotic from

1 Schedule I or II, or flunitrazepam  
2 from Schedule IV to someone under 18  
3 (RCW 69.50.406)

4 IX Assault of a Child 2 (RCW 9A.36.130)  
5 Controlled Substance Homicide (RCW  
6 69.50.415)  
7 Explosive devices prohibited (RCW  
8 70.74.180)  
9 Homicide by Watercraft, by being under the  
10 influence of intoxicating liquor or  
11 any drug (RCW 79A.60.050)  
12 Inciting Criminal Profiteering (RCW  
13 9A.82.060(1)(b))  
14 Malicious placement of an explosive 2 (RCW  
15 70.74.270(2))  
16 Over 18 and deliver narcotic from Schedule  
17 III, IV, or V or a nonnarcotic, except  
18 flunitrazepam or methamphetamine, from  
19 Schedule I-V to someone under 18 and 3  
20 years junior (RCW 69.50.406)  
21 Robbery 1 (RCW 9A.56.200)  
22 Sexual Exploitation (RCW 9.68A.040)  
23 Vehicular Homicide, by being under the  
24 influence of intoxicating liquor or  
25 any drug (RCW 46.61.520)

26 VIII Arson 1 (RCW 9A.48.020)  
27 ~~((Deliver or possess with intent to deliver~~  
28 ~~methamphetamine (RCW~~  
29 ~~69.50.401(a)(1)(ii)))~~  
30 Hit and Run--Death (RCW 46.52.020(4)(a))  
31 Homicide by Watercraft, by the operation of  
32 any vessel in a reckless manner (RCW  
33 79A.60.050)  
34 Manslaughter 2 (RCW 9A.32.070)  
35 ~~((Manufacture, deliver, or possess with~~  
36 ~~intent to deliver amphetamine (RCW~~  
37 ~~69.50.401(a)(1)(ii)))~~

1           ~~Manufacture, deliver, or possess with~~  
2           ~~intent to deliver heroin or cocaine~~  
3           ~~(RCW 69.50.401(a)(1)(i))~~  
4           ~~Possession of Ephedrine, Pseudoephedrine,~~  
5           ~~or Anhydrous Ammonia with intent to~~  
6           ~~manufacture methamphetamine (RCW~~  
7           ~~69.50.440))~~  
8           Promoting Prostitution 1 (RCW 9A.88.070)  
9           ~~((Selling for profit (controlled or~~  
10           ~~counterfeit) any controlled substance~~  
11           ~~(RCW 69.50.410))~~  
12           Theft of Anhydrous Ammonia (RCW 69.55.010)  
13           Vehicular Homicide, by the operation of any  
14           vehicle in a reckless manner (RCW  
15           46.61.520)

16   VII       Burglary 1 (RCW 9A.52.020)  
17           Child Molestation 2 (RCW 9A.44.086)  
18           Dealing in depictions of minor engaged in  
19           sexually explicit conduct (RCW  
20           9.68A.050)  
21           Drive-by Shooting (RCW 9A.36.045)  
22           Homicide by Watercraft, by disregard for  
23           the safety of others (RCW 79A.60.050)  
24           Indecent Liberties (without forcible  
25           compulsion) (RCW 9A.44.100(1) (b) and  
26           (c))  
27           Introducing Contraband 1 (RCW 9A.76.140)  
28           Involving a minor in drug dealing (RCW  
29           69.50.401(f))  
30           Malicious placement of an explosive 3 (RCW  
31           70.74.270(3))  
32           Sending, bringing into state depictions of  
33           minor engaged in sexually explicit  
34           conduct (RCW 9.68A.060)  
35           Unlawful Possession of a Firearm in the  
36           first degree (RCW 9.41.040(1)(a))  
37           Use of a Machine Gun in Commission of a  
38           Felony (RCW 9.41.225)

1 Vehicular Homicide, by disregard for the  
2 safety of others (RCW 46.61.520)

3 VI Bail Jumping with Murder 1 (RCW  
4 9A.76.170(2)(a))  
5 Bribery (RCW 9A.68.010)  
6 Deliver or possess with intent to deliver  
7 methamphetamine (RCW  
8 69.50.401(a)(1)(ii))  
9 Incest 1 (RCW 9A.64.020(1))  
10 Intimidating a Judge (RCW 9A.72.160)  
11 Intimidating a Juror/Witness (RCW  
12 9A.72.110, 9A.72.130)  
13 Malicious placement of an imitation device  
14 2 (RCW 70.74.272(1)(b))  
15 Manufacture, deliver, or possess with  
16 intent to deliver amphetamine (RCW  
17 69.50.401(a)(1)(ii))  
18 Manufacture, deliver, or possess with  
19 intent to deliver heroin or cocaine  
20 (RCW 69.50.401(a)(1)(i))  
21 Manufacture, deliver, or possess with  
22 intent to deliver narcotics from  
23 Schedule I or II (except heroin or  
24 cocaine) or flunitrazepam from  
25 Schedule IV (RCW 69.50.401(a)(1)(i))  
26 Possession of Ephedrine, Pseudoephedrine,  
27 or Anhydrous Ammonia with intent to  
28 manufacture methamphetamine (RCW  
29 69.50.440)  
30 Rape of a Child 3 (RCW 9A.44.079)  
31 Selling for profit (controlled or  
32 counterfeit) any controlled substance  
33 (RCW 69.50.410)  
34 Theft of a Firearm (RCW 9A.56.300)  
35 Unlawful Storage of Anhydrous Ammonia (RCW  
36 69.55.020)

37 V Abandonment of dependent person 1 (RCW  
38 9A.42.060)

1 Advancing money or property for  
2 extortionate extension of credit (RCW  
3 9A.82.030)  
4 Bail Jumping with class A Felony (RCW  
5 9A.76.170(2)(b))  
6 Child Molestation 3 (RCW 9A.44.089)  
7 Criminal Mistreatment 1 (RCW 9A.42.020)  
8 Custodial Sexual Misconduct 1 (RCW  
9 9A.44.160)  
10 Delivery of imitation controlled substance  
11 by person eighteen or over to person  
12 under eighteen (RCW 69.52.030(2))  
13 Domestic Violence Court Order Violation  
14 (RCW 10.99.040, 10.99.050, 26.09.300,  
15 26.10.220, 26.26.138, 26.50.110,  
16 26.52.070, or 74.34.145)  
17 Extortion 1 (RCW 9A.56.120)  
18 Extortionate Extension of Credit (RCW  
19 9A.82.020)  
20 Extortionate Means to Collect Extensions of  
21 Credit (RCW 9A.82.040)  
22 Incest 2 (RCW 9A.64.020(2))  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Perjury 1 (RCW 9A.72.020)  
25 Persistent prison misbehavior (RCW  
26 9.94.070)  
27 Possession of a Stolen Firearm (RCW  
28 9A.56.310)  
29 Rape 3 (RCW 9A.44.060)  
30 Rendering Criminal Assistance 1 (RCW  
31 9A.76.070)  
32 Sexual Misconduct with a Minor 1 (RCW  
33 9A.44.093)  
34 Sexually Violating Human Remains (RCW  
35 9A.44.105)  
36 Stalking (RCW 9A.46.110)  
37 IV Arson 2 (RCW 9A.48.030)  
38 Assault 2 (RCW 9A.36.021)  
39 Assault by Watercraft (RCW 79A.60.060)

1           Bribing a Witness/Bribe Received by Witness  
2                   (RCW 9A.72.090, 9A.72.100)  
3           Commercial Bribery (RCW 9A.68.060)  
4           Counterfeiting (RCW 9.16.035(4))  
5           Escape 1 (RCW 9A.76.110)  
6           Hit and Run--Injury (RCW 46.52.020(4)(b))  
7           Hit and Run with Vessel--Injury Accident  
8                   (RCW 79A.60.200(3))  
9           Indecent Exposure to Person Under Age  
10                   Fourteen (subsequent sex offense) (RCW  
11                   9A.88.010)  
12           Influencing Outcome of Sporting Event (RCW  
13                   9A.82.070)  
14           Knowingly Trafficking in Stolen Property  
15                   (RCW 9A.82.050(2))  
16           Malicious Harassment (RCW 9A.36.080)  
17           Manufacture, deliver, or possess with  
18                   intent to deliver narcotics from  
19                   Schedule III, IV, or V or nonnarcotics  
20                   from Schedule I-V (except marijuana,  
21                   amphetamine, methamphetamines, or  
22                   flunitrazepam) (RCW 69.50.401(a)(1)  
23                   (iii) through (v))  
24           Residential Burglary (RCW 9A.52.025)  
25           Robbery 2 (RCW 9A.56.210)  
26           Theft of Livestock 1 (RCW 9A.56.080)  
27           Threats to Bomb (RCW 9.61.160)  
28           Use of Proceeds of Criminal Profiteering  
29                   (RCW 9A.82.080 (1) and (2))  
30           Vehicular Assault (RCW 46.61.522)  
31           Willful Failure to Return from Furlough  
32                   (RCW 72.66.060)

33    III       Abandonment of dependent person 2 (RCW  
34                   9A.42.070)  
35           Assault 3 (RCW 9A.36.031)  
36           Assault of a Child 3 (RCW 9A.36.140)  
37           Bail Jumping with class B or C Felony (RCW  
38                   9A.76.170(2)(c))  
39           Burglary 2 (RCW 9A.52.030)

1           Communication with a Minor for Immoral  
2                   Purposes (RCW 9.68A.090)  
3           Criminal Gang Intimidation (RCW 9A.46.120)  
4           Criminal Mistreatment 2 (RCW 9A.42.030)  
5           Custodial Assault (RCW 9A.36.100)  
6           Delivery of a material in lieu of a  
7                   controlled substance (RCW  
8                   69.50.401(c))  
9           Escape 2 (RCW 9A.76.120)  
10          Extortion 2 (RCW 9A.56.130)  
11          Harassment (RCW 9A.46.020)  
12          Intimidating a Public Servant (RCW  
13                   9A.76.180)  
14          Introducing Contraband 2 (RCW 9A.76.150)  
15          Maintaining a Dwelling or Place for  
16                   Controlled Substances (RCW  
17                   69.50.402(a)(6))  
18          Malicious Injury to Railroad Property (RCW  
19                   81.60.070)  
20          Manufacture, deliver, or possess with  
21                   intent to deliver marijuana (RCW  
22                   69.50.401(a)(1)(iii))  
23          Manufacture, distribute, or possess with  
24                   intent to distribute an imitation  
25                   controlled substance (RCW  
26                   69.52.030(1))  
27          Patronizing a Juvenile Prostitute (RCW  
28                   9.68A.100)  
29          Perjury 2 (RCW 9A.72.030)  
30          Possession of Incendiary Device (RCW  
31                   9.40.120)  
32          Possession of Machine Gun or Short-Barreled  
33                   Shotgun or Rifle (RCW 9.41.190)  
34          Promoting Prostitution 2 (RCW 9A.88.080)  
35          Recklessly Trafficking in Stolen Property  
36                   (RCW 9A.82.050(1))  
37          Securities Act violation (RCW 21.20.400)  
38          Tampering with a Witness (RCW 9A.72.120)

1 Telephone Harassment (subsequent conviction  
2 or threat of death) (RCW 9.61.230)  
3 Theft of Livestock 2 (RCW 9A.56.080)  
4 Unlawful Imprisonment (RCW 9A.40.040)  
5 Unlawful possession of firearm in the  
6 second degree (RCW 9.41.040(1)(b))  
7 Unlawful Use of Building for Drug Purposes  
8 (RCW 69.53.010)  
9 Willful Failure to Return from Work Release  
10 (RCW 72.65.070)

11 II Computer Trespass 1 (RCW 9A.52.110)  
12 Counterfeiting (RCW 9.16.035(3))  
13 Create, deliver, or possess a counterfeit  
14 controlled substance (RCW  
15 69.50.401(b))  
16 Escape from Community Custody (RCW  
17 72.09.310)  
18 Health Care False Claims (RCW 48.80.030)  
19 Malicious Mischief 1 (RCW 9A.48.070)  
20 Possession of controlled substance that is  
21 either heroin or narcotics from  
22 Schedule I or II or flunitrazepam from  
23 Schedule IV (RCW 69.50.401(d))  
24 Possession of phencyclidine (PCP) (RCW  
25 69.50.401(d))  
26 Possession of Stolen Property 1 (RCW  
27 9A.56.150)  
28 Theft 1 (RCW 9A.56.030)  
29 Theft of Rental, Leased, or Lease-purchased  
30 Property (valued at one thousand five  
31 hundred dollars or more) (RCW  
32 9A.56.096(4))  
33 Trafficking in Insurance Claims (RCW  
34 48.30A.015)  
35 Unlawful Practice of Law (RCW 2.48.180)  
36 Unlicensed Practice of a Profession or  
37 Business (RCW 18.130.190(7))

1 I Attempting to Elude a Pursuing Police  
2 Vehicle (RCW 46.61.024)  
3 False Verification for Welfare (RCW  
4 74.08.055)  
5 Forged Prescription (RCW 69.41.020)  
6 Forged Prescription for a Controlled  
7 Substance (RCW 69.50.403)  
8 Forgery (RCW 9A.60.020)  
9 Malicious Mischief 2 (RCW 9A.48.080)  
10 Possess Controlled Substance that is a  
11 Narcotic from Schedule III, IV, or V  
12 or Non-narcotic from Schedule I-V  
13 (except phencyclidine or  
14 flunitrazepam) (RCW 69.50.401(d))  
15 Possession of Stolen Property 2 (RCW  
16 9A.56.160)  
17 Reckless Burning 1 (RCW 9A.48.040)  
18 Taking Motor Vehicle Without Permission  
19 (RCW 9A.56.070)  
20 Theft 2 (RCW 9A.56.040)  
21 Theft of Rental, Leased, or Lease-purchased  
22 Property (valued at two hundred fifty  
23 dollars or more but less than one  
24 thousand five hundred dollars) (RCW  
25 9A.56.096(4))  
26 Unlawful Issuance of Checks or Drafts (RCW  
27 9A.56.060)  
28 Unlawful Use of Food Stamps (RCW 9.91.140  
29 (2) and (3))  
30 Vehicle Prowl 1 (RCW 9A.52.095)

31 **Sec. 13.** RCW 9.94A.360 and 2000 c 28 s 15 are each amended to read  
32 as follows:

33 The offender score is measured on the horizontal axis of the  
34 sentencing grid. The offender score rules are as follows:

35 The offender score is the sum of points accrued under this section  
36 rounded down to the nearest whole number.

37 (1) A prior conviction is a conviction which exists before the date  
38 of sentencing for the offense for which the offender score is being

1 computed. Convictions entered or sentenced on the same date as the  
2 conviction for which the offender score is being computed shall be  
3 deemed "other current offenses" within the meaning of RCW 9.94A.400.

4 (2) Class A and sex prior felony convictions shall always be  
5 included in the offender score. Class B prior felony convictions other  
6 than sex offenses shall not be included in the offender score, if since  
7 the last date of release from confinement (including full-time  
8 residential treatment) pursuant to a felony conviction, if any, or  
9 entry of judgment and sentence, the offender had spent ten consecutive  
10 years in the community without committing any crime that subsequently  
11 results in a conviction. Class C prior felony convictions other than  
12 sex offenses shall not be included in the offender score if, since the  
13 last date of release from confinement (including full-time residential  
14 treatment) pursuant to a felony conviction, if any, or entry of  
15 judgment and sentence, the offender had spent five consecutive years in  
16 the community without committing any crime that subsequently results in  
17 a conviction. Serious traffic convictions shall not be included in the  
18 offender score if, since the last date of release from confinement  
19 (including full-time residential treatment) pursuant to a felony  
20 conviction, if any, or entry of judgment and sentence, the offender  
21 spent five years in the community without committing any crime that  
22 subsequently results in a conviction. This subsection applies to both  
23 adult and juvenile prior convictions.

24 (3) Out-of-state convictions for offenses shall be classified  
25 according to the comparable offense definitions and sentences provided  
26 by Washington law. Federal convictions for offenses shall be  
27 classified according to the comparable offense definitions and  
28 sentences provided by Washington law. If there is no clearly  
29 comparable offense under Washington law or the offense is one that is  
30 usually considered subject to exclusive federal jurisdiction, the  
31 offense shall be scored as a class C felony equivalent if it was a  
32 felony under the relevant federal statute.

33 (4) Score prior convictions for felony anticipatory offenses  
34 (attempts, criminal solicitations, and criminal conspiracies) the same  
35 as if they were convictions for completed offenses.

36 (5)(a) In the case of multiple prior convictions, for the purpose  
37 of computing the offender score, count all convictions separately,  
38 except:

1 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to  
2 encompass the same criminal conduct, shall be counted as one offense,  
3 the offense that yields the highest offender score. The current  
4 sentencing court shall determine with respect to other prior adult  
5 offenses for which sentences were served concurrently or prior juvenile  
6 offenses for which sentences were served consecutively, whether those  
7 offenses shall be counted as one offense or as separate offenses using  
8 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and  
9 if the court finds that they shall be counted as one offense, then the  
10 offense that yields the highest offender score shall be used. The  
11 current sentencing court may presume that such other prior offenses  
12 were not the same criminal conduct from sentences imposed on separate  
13 dates, or in separate counties or jurisdictions, or in separate  
14 complaints, indictments, or informations;

15 (ii) In the case of multiple prior convictions for offenses  
16 committed before July 1, 1986, for the purpose of computing the  
17 offender score, count all adult convictions served concurrently as one  
18 offense, and count all juvenile convictions entered on the same date as  
19 one offense. Use the conviction for the offense that yields the  
20 highest offender score.

21 (b) As used in this subsection (5), "served concurrently" means  
22 that: (i) The latter sentence was imposed with specific reference to  
23 the former; (ii) the concurrent relationship of the sentences was  
24 judicially imposed; and (iii) the concurrent timing of the sentences  
25 was not the result of a probation or parole revocation on the former  
26 offense.

27 (6) If the present conviction is one of the anticipatory offenses  
28 of criminal attempt, solicitation, or conspiracy, count each prior  
29 conviction as if the present conviction were for a completed offense.  
30 When these convictions are used as criminal history, score them the  
31 same as a completed crime.

32 (7) If the present conviction is for a nonviolent offense and not  
33 covered by subsection (11) (~~(or (12))~~) of this section, count one point  
34 for each adult prior felony conviction and one point for each juvenile  
35 prior violent felony conviction and 1/2 point for each juvenile prior  
36 nonviolent felony conviction.

37 (8) If the present conviction is for a violent offense and not  
38 covered in subsection (9), (10), or (11) (~~(, or (12))~~) of this section,  
39 count two points for each prior adult and juvenile violent felony

1 conviction, one point for each prior adult nonviolent felony  
2 conviction, and 1/2 point for each prior juvenile nonviolent felony  
3 conviction.

4 (9) If the present conviction is for a serious violent offense,  
5 count three points for prior adult and juvenile convictions for crimes  
6 in this category, two points for each prior adult and juvenile violent  
7 conviction (not already counted), one point for each prior adult  
8 nonviolent felony conviction, and 1/2 point for each prior juvenile  
9 nonviolent felony conviction.

10 (10) If the present conviction is for Burglary 1, count prior  
11 convictions as in subsection (8) of this section; however count two  
12 points for each prior adult Burglary 2 or residential burglary  
13 conviction, and one point for each prior juvenile Burglary 2 or  
14 residential burglary conviction.

15 (11) If the present conviction is for a felony traffic offense  
16 count two points for each adult or juvenile prior conviction for  
17 Vehicular Homicide or Vehicular Assault; for each felony offense count  
18 one point for each adult and 1/2 point for each juvenile prior  
19 conviction; for each serious traffic offense, other than those used for  
20 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
21 adult and 1/2 point for each juvenile prior conviction.

22 ~~(12) ((If the present conviction is for a drug offense count three  
23 points for each adult prior felony drug offense conviction and two  
24 points for each juvenile drug offense. All other adult and juvenile  
25 felonies are scored as in subsection (8) of this section if the current  
26 drug offense is violent, or as in subsection (7) of this section if the  
27 current drug offense is nonviolent.~~

28 ~~(13))~~ If the present conviction is for Willful Failure to Return  
29 from Furlough, RCW 72.66.060, Willful Failure to Return from Work  
30 Release, RCW 72.65.070, or Escape from Community Custody, RCW  
31 72.09.310, count only prior escape convictions in the offender score.  
32 Count adult prior escape convictions as one point and juvenile prior  
33 escape convictions as 1/2 point.

34 ~~((14))~~ (13) If the present conviction is for Escape 1, RCW  
35 9A.76.110, or Escape 2, RCW 9A.76.120, count adult prior convictions as  
36 one point and juvenile prior convictions as 1/2 point.

37 ~~((15))~~ (14) If the present conviction is for Burglary 2 or  
38 residential burglary, count priors as in subsection (7) of this  
39 section; however, count two points for each adult and juvenile prior

1 Burglary 1 conviction, two points for each adult prior Burglary 2 or  
2 residential burglary conviction, and one point for each juvenile prior  
3 Burglary 2 or residential burglary conviction.

4 ~~((+16+))~~ (15) If the present conviction is for a sex offense, count  
5 priors as in subsections (7) through ~~((+15+))~~ (14) of this section;  
6 however count three points for each adult and juvenile prior sex  
7 offense conviction.

8 ~~((+17+))~~ (16) If the present conviction is for an offense committed  
9 while the offender was under community placement, add one point.

10 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.96A  
11 RCW to read as follows:

12 (1) Savings to the department of corrections realized under  
13 sections 12 and 13, chapter . . ., Laws of 2001 (sections 12 and 13 of  
14 this act) shall be allocated, on an ongoing basis, to the division of  
15 alcohol and substance abuse solely for the treatment of nonviolent drug  
16 possession offenders at the state and local levels.

17 (2) The department of social and health services shall enter into  
18 an interagency agreement with the department of corrections to  
19 accomplish the intent and purpose of this act.

20 (3) The division of alcohol and substance abuse shall establish a  
21 method to ensure that funds shall be allocated to counties through a  
22 fair and equitable distribution formula that includes, but is not  
23 limited to, per capita convictions for controlled substance possession  
24 violations and substance abuse treatment caseload, as determined by the  
25 division of alcohol and substance abuse and the department of  
26 corrections, as necessary to carry out the purposes of this act. The  
27 secretary of the department of social and health services may reserve  
28 a portion of the fund to pay for direct contracts with drug treatment  
29 service providers in counties or areas in which the department director  
30 has determined that demand for drug treatment services is not  
31 adequately met by existing programs.

32 (4) The secretary of the department of corrections and the  
33 secretary of the department of social and health services shall adopt  
34 rules to implement this act.

35 NEW SECTION. **Sec. 15.** (1) The Washington state institute for  
36 public policy shall evaluate the effectiveness and financial impact of  
37 this act in meeting its stated purpose and intent including the

1 utilization of community custody in lieu of incarceration for  
2 nonviolent drug-possession offenders, improvement in public health  
3 through the reduction of drug abuse and dependence, the enhancement of  
4 public safety by reducing drug-related crime and reserving  
5 incarceration for serious and violent offenders, and taxpayer savings.

6 (2) The evaluation shall address whether:

7 (a) The eligible population has been diverted from incarceration to  
8 community custody and treatment;

9 (b) The extent to which offenders sentenced under section 10 or 11  
10 of this act successfully complete treatment and have their convictions  
11 set aside;

12 (c) This act has reduced drug abuse among the eligible population;

13 (d) This act has reduced criminal recidivism among the eligible  
14 population; and

15 (e) This act has resulted in a savings of taxpayer resources,  
16 including an assessment of savings from forestalled incarcerations.

17 NEW SECTION. **Sec. 16.** A new section is added to chapter 43.20A  
18 RCW to read as follows:

19 The department of social and health services shall annually audit  
20 the expenditures made by any county which is funded, in whole or in  
21 part, with funds provided by this act. Counties shall repay any funds  
22 that are not spent in accordance with the requirements of this act.

23 NEW SECTION. **Sec. 17.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 18.** This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the  
29 state government and its existing public institutions, and takes effect  
30 July 1, 2001.

--- END ---