
THIRD ENGROSSED SUBSTITUTE SENATE BILL 6151

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long and Hargrove)

READ FIRST TIME 04/06/01.

1 AN ACT Relating to the management of sex offenders in the civil
2 commitment and criminal justice systems; amending RCW 71.09.020,
3 36.70A.103, 36.70A.200, 9.94A.715, 9.94A.060, 9.94A.120, 9.94A.190,
4 9.94A.390, 9.94A.590, 9.94A.670, 9.95.005, 9.95.010, 9.95.011,
5 9.95.017, 9.95.020, 9.95.032, 9.95.052, 9.95.055, 9.95.064, 9.95.070,
6 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121,
7 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140,
8 9.95.190, 9.95.250, 9.95.280, 9.95.290, 9.95.300, 9.95.310, 9.95.320,
9 9.95.340, 9.95.350, 9.95.360, 9.95.370, 9.95.900, 9A.28.020, 9A.36.021,
10 9A.40.030, 9A.44.093, 9A.44.096, 9A.44.100, 9A.76.---, and 72.09.370;
11 reenacting and amending RCW 9.94A.030, 9.94A.320, 18.155.020, and
12 18.155.030; adding new sections to chapter 71.09 RCW; adding new
13 sections to chapter 72.09 RCW; adding new sections to chapter 9.94A
14 RCW; adding new sections to chapter 9.95 RCW; adding a new section to
15 chapter 4.24 RCW; creating new sections; repealing RCW 9.95.0011 and
16 9.95.145; prescribing penalties; providing an effective date; providing
17 expiration dates; and declaring an emergency.

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

PART I
GENERAL PROVISIONS

1
2
3 NEW SECTION. **Sec. 101.** The legislature intends the following
4 omnibus bill to address the management of sex offenders in the civil
5 commitment and criminal justice systems for purposes of public health,
6 safety, and welfare. Provisions address siting of and continued
7 operation of facilities for persons civilly committed under chapter
8 71.09 RCW and sentencing of persons who have committed sex offenses.
9 Other provisions address the need for sex offender treatment providers
10 with specific credentials. Additional provisions address the continued
11 operation or authorized expansion of criminal justice facilities at
12 McNeil Island, because these facilities are impacted by the civil
13 facilities on McNeil Island for persons committed under chapter 71.09
14 RCW.

15 **Sec. 102.** RCW 71.09.020 and 2001 c 286 s 4 are each amended to
16 read as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

19 (~~(1) ("Sexually violent predator" means any person who has been~~
20 ~~convicted of or charged with a crime of sexual violence and who suffers~~
21 ~~from a mental abnormality or personality disorder which makes the~~
22 ~~person likely to engage in predatory acts of sexual violence if not~~
23 ~~confined in a secure facility.~~

24 (~~(2) "Mental abnormality" means a congenital or acquired condition~~
25 ~~affecting the emotional or volitional capacity which predisposes the~~
26 ~~person to the commission of criminal sexual acts in a degree~~
27 ~~constituting such person a menace to the health and safety of others.))
28 "Department" means the department of social and health services.~~

29 (2) "Less restrictive alternative" means court-ordered treatment in
30 a setting less restrictive than total confinement which satisfies the
31 conditions set forth in RCW 71.09.092.

32 (3) "Likely to engage in predatory acts of sexual violence if not
33 confined in a secure facility" means that the person more probably than
34 not will engage in such acts if released unconditionally from detention
35 on the sexually violent predator petition. Such likelihood must be
36 evidenced by a recent overt act if the person is not totally confined
37 at the time the petition is filed under RCW 71.09.030.

1 (4) "Mental abnormality" means a congenital or acquired condition
2 affecting the emotional or volitional capacity which predisposes the
3 person to the commission of criminal sexual acts in a degree
4 constituting such person a menace to the health and safety of others.

5 (5) "Predatory" means acts directed towards: (a) Strangers; (b)
6 individuals with whom a relationship has been established or promoted
7 for the primary purpose of victimization; or (c) persons of casual
8 acquaintance with whom no substantial personal relationship exists.

9 (~~(5)~~) (6) "Recent overt act" means any act or threat that has
10 either caused harm of a sexually violent nature or creates a reasonable
11 apprehension of such harm in the mind of an objective person who knows
12 of the history and mental condition of the person engaging in the act.

13 (~~(6)~~) (7) "Risk potential activity" or "risk potential facility"
14 means an activity or facility that provides a higher incidence of risk
15 to the public from persons conditionally released from the special
16 commitment center. Risk potential activities and facilities include:
17 Public and private schools, school bus stops, licensed day care and
18 licensed preschool facilities, public parks, publicly dedicated trails,
19 sports fields, playgrounds, recreational and community centers,
20 churches, synagogues, temples, mosques, and public libraries.

21 (8) "Secretary" means the secretary of social and health services
22 or the secretary's designee.

23 (9) "Secure facility" means a residential facility for persons
24 civily confined under the provisions of this chapter that includes
25 security measures sufficient to protect the community. Such facilities
26 include total confinement facilities, secure community transition
27 facilities, and any residence used as a court-ordered placement under
28 RCW 71.09.096.

29 (10) "Secure community transition facility" means a residential
30 facility for persons civily committed and conditionally released to a
31 less restrictive alternative under this chapter. A secure community
32 transition facility has supervision and security, and either provides
33 or ensures the provision of sex offender treatment services. Secure
34 community transition facilities include but are not limited to the
35 facilities established pursuant to section 201 of this act and any
36 community-based facilities established under this chapter and operated
37 by the secretary or under contract with the secretary.

38 (11) "Sexually violent offense" means an act committed on, before,
39 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as

1 rape in the first degree, rape in the second degree by forcible
2 compulsion, rape of a child in the first or second degree, statutory
3 rape in the first or second degree, indecent liberties by forcible
4 compulsion, indecent liberties against a child under age fourteen,
5 incest against a child under age fourteen, or child molestation in the
6 first or second degree; (b) a felony offense in effect at any time
7 prior to July 1, 1990, that is comparable to a sexually violent offense
8 as defined in (a) of this subsection, or any federal or out-of-state
9 conviction for a felony offense that under the laws of this state would
10 be a sexually violent offense as defined in this subsection; (c) an act
11 of murder in the first or second degree, assault in the first or second
12 degree, assault of a child in the first or second degree, kidnapping in
13 the first or second degree, burglary in the first degree, residential
14 burglary, or unlawful imprisonment, which act, either at the time of
15 sentencing for the offense or subsequently during civil commitment
16 proceedings pursuant to this chapter ((71.09-RCW)), has been determined
17 beyond a reasonable doubt to have been sexually motivated, as that term
18 is defined in RCW 9.94A.030; or (d) an act as described in chapter
19 9A.28 RCW, that is an attempt, criminal solicitation, or criminal
20 conspiracy to commit one of the felonies designated in (a), (b), or (c)
21 of this subsection.

22 ~~((7) "Less restrictive alternative" means court-ordered treatment
23 in a setting less restrictive than total confinement which satisfies
24 the conditions set forth in RCW 71.09.092.~~

25 ~~(8) "Secretary" means the secretary of social and health services
26 or his or her designee.))~~

27 (12) "Sexually violent predator" means any person who has been
28 convicted of or charged with a crime of sexual violence and who suffers
29 from a mental abnormality or personality disorder which makes the
30 person likely to engage in predatory acts of sexual violence if not
31 confined in a secure facility.

32 (13) "Total confinement facility" means a facility that provides
33 supervision and sex offender treatment services in a total confinement
34 setting. Total confinement facilities include the special commitment
35 center and any similar facility designated as a secure facility by the
36 secretary.

37 **PART II**
38 **SITING AND OPERATION OF SECURE COMMUNITY TRANSITION FACILITIES**

1 NEW SECTION. **Sec. 201.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 (1)(a) The secretary is authorized to site, construct, occupy, and
4 operate a secure community transition facility on McNeil Island for
5 persons authorized to petition for a less restrictive alternative under
6 RCW 71.09.090(1) and who are conditionally released and a special
7 commitment center on McNeil Island with up to four hundred four beds as
8 a total confinement facility under this chapter, subject to
9 appropriated funding for those purposes. The secure community
10 transition facility shall be authorized for the number of beds needed
11 to ensure compliance with the orders of the superior courts under this
12 chapter and the federal district court for the western district of
13 Washington. The total number of beds shall be comprised of fifteen
14 transitional beds and nine long-term beds.

15 (b) For purposes of this subsection, "long-term beds" means beds
16 for persons whose progress toward a less restrictive alternative at a
17 level less secure than the secure community transition facility
18 established in this subsection and whose transition into more complete
19 community involvement is projected to take substantially longer than
20 the average resident of this facility.

21 (2) Notwithstanding RCW 36.70A.103 or any other law, this statute
22 preempts and supersedes local plans, development regulations,
23 permitting requirements, inspection requirements, and all other laws as
24 necessary to enable the secretary to site, construct, occupy, and
25 operate a secure community transition facility on McNeil Island and a
26 total confinement facility on McNeil Island.

27 (3) To the greatest extent possible, until June 30, 2003, persons
28 who were not civilly committed from the county in which the secure
29 community transition facility established pursuant to subsection (1) of
30 this section is located may not be conditionally released to a setting
31 in that same county less restrictive than that facility.

32 (4) The department must:

33 (a) Identify the minimum and maximum number of secure community
34 transition facility beds in addition to the facility established under
35 subsection (1) of this section that may be necessary for the period of
36 May 2004 through May 2007 and provide notice of these numbers to all
37 counties by August 31, 2001;

38 (b) In consultation with the joint select committee established in
39 section 225 of this act, develop and publish a notice of proposed rules

1 containing criteria for the siting and operation of secure community
2 transition facilities by October 1, 2001; and

3 (c) Provide a status report to the appropriate committees of the
4 legislature by December 1, 2002, on the development of facilities under
5 the incentive program established in section 204 of this act. The
6 report shall include a projection of the anticipated number of secure
7 community transition facility beds that will become operational between
8 May 2004 and May 2007. If it appears that an insufficient number of
9 beds will be operational, the department's report shall recommend a
10 progression of methods to facilitate siting in counties and cities
11 including, if necessary, preemption of local land use planning process
12 and other laws.

13 (5)(a) The total number of secure community transition facility
14 beds that may be required to be sited in a county between the effective
15 date of this section and June 30, 2008, may be no greater than the
16 total number of persons civilly committed from that county, or detained
17 at the special commitment center under a pending civil commitment
18 petition from that county where a finding of probable cause had been
19 made on April 1, 2001. The total number of secure community transition
20 facility beds required to be sited in each county between July 1, 2008,
21 and June 30, 2015, may be no greater than the total number of persons
22 civilly committed from that county or detained at the special
23 commitment center under a pending civil commitment petition from that
24 county where a finding of probable cause had been made as of July 1,
25 2008.

26 (b) Counties and cities that provide secure community transition
27 facility beds above the maximum number that they could be required to
28 site under this subsection are eligible for a bonus grant under the
29 incentive provisions in section 204 of this act. The county where the
30 special commitment center is located shall receive this bonus grant for
31 the number of beds in the facility established in subsection (1) of
32 this section in excess of the maximum number established by this
33 subsection.

34 (c) No secure community transition facilities in addition to the
35 one established in subsection (1) of this section may be required to be
36 sited in the county where the special commitment center is located
37 until after June 30, 2008, provided however, that the county and its
38 cities may elect to site additional secure community transition
39 facilities and shall be eligible under the incentive provisions of

1 section 204 of this act for any additional facilities meeting the
2 requirements of that section.

3 (6) In identifying potential sites within a county for the location
4 of a secure community transition facility, the department shall work
5 with and assist local governments to provide for the equitable
6 distribution of such facilities unless the local government
7 affirmatively decides to group similar facilities.

8 (7)(a) "Equitable distribution" means siting or locating secure
9 community transition facilities in a manner that will not cause a
10 disproportionate grouping of similar facilities either in any one
11 county, or in any one jurisdiction or community within a county, as
12 relevant; and

13 (b) "Jurisdiction" means a city, town, or geographic area of a
14 county in which district political or judicial authority may be
15 exercised.

16 NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09
17 RCW to read as follows:

18 The secretary is authorized to operate a correctional facility on
19 McNeil Island for the confinement of sex offenders and other offenders
20 sentenced by the courts, and to make necessary repairs, renovations,
21 additions, and improvements to state property for that purpose,
22 notwithstanding any local comprehensive plans, development regulations,
23 permitting requirements, or any other local laws. Operation of the
24 correctional facility and other state facilities authorized by this
25 section and other law includes access to adequate docking facilities on
26 state-owned tidelands at the town of Steilacoom.

27 **Sec. 203.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended
28 to read as follows:

29 State agencies shall comply with the local comprehensive plans and
30 development regulations and amendments thereto adopted pursuant to this
31 chapter except as otherwise provided in sections 201 (1) and (2) and
32 202 of this act.

33 The provisions of this act do not affect the state's authority to
34 site any other essential public facility under RCW 36.70A.200 in
35 conformance with local comprehensive plans and development regulations
36 adopted pursuant to chapter 36.70A RCW.

1 NEW SECTION. **Sec. 204.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 (1) Upon receiving the notification required by section 201 of this
4 act, counties must promptly notify the cities within the county of the
5 maximum number of secure community transition facility beds that may be
6 required and the projected number of beds to be needed in that county.

7 (2) The incentive grants provided under this section are subject to
8 the following provisions:

9 (a) Counties and the cities within the county must notify each
10 other of siting plans to promote the establishment and equitable
11 distribution of secure community transition facilities. In
12 coordinating and deciding upon the siting of secure community
13 transition facilities, great weight shall be given by the county and
14 cities within the county to the number and location of existing
15 residential facility beds operated by the department of corrections or
16 the mental health division of the department of social and health
17 services in the county;

18 (b) Development regulations, ordinances, plans, laws, and criteria
19 established for siting must be consistent with statutory requirements
20 and rules applicable to siting and operating secure community
21 transition facilities;

22 (c) The minimum size for any facility is three beds; and

23 (d) The department must approve any sites selected.

24 (3) Any county or city that makes a commitment to initiate the
25 process to site one or more secure community transition facilities by
26 February 1, 2002, shall receive a planning grant as proposed and
27 approved by the department of community, trade, and economic
28 development.

29 (4) Any county or city that has issued all necessary permits by May
30 1, 2003, for one or more secure community transition facilities that
31 comply with the requirements of this section shall receive an incentive
32 grant in the amount of fifty thousand dollars for each bed sited.

33 (5) To encourage the rapid permitting of sites, any county or city
34 that has issued all necessary permits by January 1, 2003, for one or
35 more secure community transition facilities that comply with the
36 requirements of this section shall receive a bonus in the amount of
37 twenty percent of the amount provided under subsection (4) of this
38 section.

1 (6) Any county or city that establishes secure community transition
2 facility beds in excess of the maximum number that could be required to
3 be sited in that county shall receive a bonus payment of one hundred
4 thousand dollars for each bed established in excess of the maximum
5 requirement.

6 (7) No payment shall be made under this section until all necessary
7 permits have been issued.

8 **Sec. 205.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
9 read as follows:

10 (1) The comprehensive plan of each county and city that is planning
11 under (~~this chapter~~) RCW 36.70A.040 shall include a process for
12 identifying and siting essential public facilities. Essential public
13 facilities include those facilities that are typically difficult to
14 site, such as airports, state education facilities and state or
15 regional transportation facilities as defined in RCW 47.06.140, state
16 and local correctional facilities, solid waste handling facilities, and
17 in-patient facilities including substance abuse facilities, mental
18 health facilities, (~~and~~) group homes, and secure community transition
19 facilities as defined in RCW 71.09.020.

20 (2) Each county and city planning under RCW 36.70A.040 shall, not
21 later than the deadline specified in RCW 36.70A.130, establish a
22 process, or amend its existing process, for identifying and siting
23 essential public facilities, and adopt or amend its development
24 regulations as necessary to provide for the siting of secure community
25 transition facilities consistent with statutory requirements and rules
26 applicable to these facilities.

27 (3) Any city or county not planning under RCW 36.70A.040 shall, not
28 later than the deadline specified in RCW 36.70A.130, establish a
29 process for siting secure community transition facilities and adopt or
30 amend its development regulations as necessary to provide for the
31 siting of such facilities consistent with statutory requirements and
32 rules applicable to these facilities.

33 (4) The office of financial management shall maintain a list of
34 those essential state public facilities that are required or likely to
35 be built within the next six years. The office of financial management
36 may at any time add facilities to the list.

1 (5) No local comprehensive plan or development regulation may
2 preclude the siting of essential public facilities. No county or city
3 may preclude the siting of secure community transition facilities.

4 NEW SECTION. Sec. 206. A new section is added to chapter 71.09
5 RCW to read as follows:

6 The provisions of this act shall not be construed to limit siting
7 of secure community transition facilities to residential neighborhoods.

8 NEW SECTION. Sec. 207. Beginning on the effective date of this
9 section, the state shall immediately enter into negotiations for a
10 mitigation agreement with: (1) The county in which the secure
11 community transition facility established pursuant to section 201(1) of
12 this act is located; (2) each community in which the persons from that
13 facility will reside or regularly spend time in pursuant to court
14 orders for regular work or education, or to receive social services, or
15 will regularly be transported through to reach those other communities;
16 and (3) educational institutions in the communities identified in
17 subsections (1) and (2) of this section. The negotiations must be
18 toward an agreement that will provide state funding, as appropriated
19 for this purpose, in an amount adequate to mitigate anticipated or
20 realized increased costs resulting from any increased risks to public
21 safety brought about by the presence of sexually violent predators in
22 those communities due to the siting of the secure community transition
23 facility established pursuant to section 201(1) of this act. This
24 section expires June 30, 2003.

25 NEW SECTION. Sec. 208. A new section is added to chapter 71.09
26 RCW to read as follows:

27 (1) The department shall make reasonable efforts to distribute the
28 impact of the employment, education, and social services needs of the
29 residents of the secure community transition facility established
30 pursuant to section 201(1) of this act among the adjoining counties and
31 not to concentrate the residents' use of resources in any one
32 community.

33 (2) The department shall develop policies to ensure that, to the
34 extent possible, placement of persons eligible in the future for
35 conditional release to a setting less restrictive than the facility

1 established pursuant to section 201(1) of this act will be equitably
2 distributed among the counties and within jurisdictions in the county.

3 NEW SECTION. **Sec. 209.** The department of social and health
4 services shall, by August 1, 2001, and prior to operating the secure
5 community transition facility established pursuant to section 201(1) of
6 this act, hold at least three public hearings in the affected
7 communities within the county where the facility is located.

8 The purpose of the public hearings is to seek input from county and
9 city officials, local law enforcement officials, and the public
10 regarding operations and security measures needed to adequately protect
11 the community from any increased risk to public safety brought about by
12 the presence of persons conditionally released from the special
13 commitment center in these communities due to the siting of the
14 facility. The department shall ensure that persons have a full
15 opportunity to speak to the issues to be addressed during each hearing.

16 NEW SECTION. **Sec. 210.** The secretary of social and health
17 services shall coordinate with the secretary of corrections and the
18 appropriate local or state law enforcement agency or agencies to
19 establish a twenty-four-hour law enforcement presence on McNeil Island
20 before any person is admitted to the secure community transition
21 facility established under section 201(1) of this act. Law enforcement
22 shall coordinate with the emergency response team for McNeil Island to
23 provide planning and coordination in the event of an escape from the
24 special commitment center or the secure community transition facility.

25 In addition, or if no law enforcement agency will provide a law
26 enforcement presence on the island, not more than ten correctional
27 employees, as selected by the secretary of corrections, who are members
28 of the emergency response team for the McNeil Island correctional
29 facility, shall have the powers and duties of a general authority peace
30 officer while acting in a law enforcement capacity. If there is no law
31 enforcement agency to provide the law enforcement presence, those
32 correctional employees selected as peace officers shall provide a
33 twenty-four-hour presence and shall not have correctional duties at the
34 correctional facility in addition to the emergency response team while
35 acting in a law enforcement capacity.

1 NEW SECTION. **Sec. 211.** A new section is added to chapter 71.09
2 RCW to read as follows:

3 (1) By August 1, 2001, the department must provide the appropriate
4 committees of the legislature with a transportation plan to address the
5 issues of coordinating the movement of residents of the secure
6 community transition facility established pursuant to section 201(1) of
7 this act between McNeil Island and the mainland with the movement of
8 others who must use the same docks or equipment within the funds
9 appropriated for this purpose.

10 (2) If the department does not provide a separate vessel for
11 transporting residents of the secure community transition facility
12 established in section 201(1) of this act between McNeil Island and the
13 mainland, the plan shall include at least the following components:

14 (a) The residents shall be separated from minors and vulnerable
15 adults, except vulnerable adults who have been found to be sexually
16 violent predators.

17 (b) The residents shall not be transported during times when
18 children are normally coming to and from the mainland for school.

19 (3) The department shall designate a separate waiting area at the
20 points of debarkation, and residents shall be required to remain in
21 this area while awaiting transportation.

22 (4) The department shall provide law enforcement agencies in the
23 counties and cities in which residents of the secure community
24 transition facility established pursuant to section 201(1) of this act
25 regularly participate in employment, education, or social services, or
26 through which these persons are regularly transported, with a copy of
27 the court's order of conditional release with respect to these persons.

28 NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09
29 RCW to read as follows:

30 When considering whether a person civilly committed under this
31 chapter and conditionally released to a secure community transition
32 facility is appropriate for release to a placement that is less
33 restrictive than that facility, the court shall comply with the
34 procedures set forth in RCW 71.09.090 through 71.09.096. In addition,
35 the court shall consider whether the person has progressed in treatment
36 to the point that a significant change in the person's routine,
37 including but not limited to a change of employment, education,
38 residence, or sex offender treatment provider will not cause the person

1 to regress to the point that the person presents a greater risk to the
2 community than can reasonably be addressed in the proposed placement.

3 NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09
4 RCW to read as follows:

5 (1) Except with respect to the secure community transition facility
6 established pursuant to section 201 of this act, the secretary shall
7 adopt rules that balance the average response time of emergency
8 services to the general area of a proposed secure community transition
9 facility against the proximity of the proposed site to risk potential
10 activities and facilities in existence at the time the site is listed
11 for consideration.

12 (2) In balancing the competing criteria of proximity and response
13 time the rule shall endeavor to achieve an average law enforcement
14 response time not greater than five minutes and in no case shall the
15 rule permit location of a facility adjacent to, immediately across a
16 street or parking lot from, or within the line of sight of a risk
17 potential activity or facility in existence at the time a site is
18 listed for consideration. "Within the line of sight" means that it is
19 possible to reasonably visually distinguish and recognize individuals.

20 (3) The rule shall require that great weight be given to sites that
21 are the farthest removed from any risk potential activity.

22 (4) The rule shall specify how distance from the location is
23 measured and any variations in the measurement based on the size of the
24 property within which a proposed facility is to be located.

25 (5) The rule shall establish a method to analyze and compare the
26 criteria for each site in terms of public safety and security, site
27 characteristics, and program components. In making a decision
28 regarding a site following the analysis and comparison, the secretary
29 shall give priority to public safety and security considerations. The
30 analysis and comparison of the criteria are to be documented and made
31 available at the public hearings prescribed in section 219 of this act.

32 NEW SECTION. **Sec. 214.** A new section is added to chapter 71.09
33 RCW to read as follows:

34 The secretary shall establish criteria for the siting of secure
35 community transition facilities, other than the secure community
36 transition facility established pursuant to section 201 of this act,
37 which shall include at least the following minimum requirements:

1 (1) Any real property listed for consideration for the location of
2 or use as a secure community transition facility must meet all of the
3 following criteria:

4 (a) The proximity and response time criteria established under
5 section 213 of this act;

6 (b) The site or building is available for lease for the anticipated
7 use period or for purchase;

8 (c) Security monitoring services and appropriate back-up systems
9 are available and reliable;

10 (d) Appropriate mental health and sex offender treatment providers
11 must be available within a reasonable commute; and

12 (e) Appropriate permitting for a secure community transition
13 facility must be possible under the zoning code of the local
14 jurisdiction.

15 (2) For sites which meet the criteria of subsection (1) of this
16 section, the department shall analyze and compare the criteria in
17 subsections (3) through (5) of this section using the method
18 established in section 213 of this act.

19 (3) Public safety and security criteria shall include at least the
20 following:

21 (a) Whether limited visibility between the facility and adjacent
22 properties can be achieved prior to placement of any person;

23 (b) The distance from, and number of, risk potential activities and
24 facilities, as measured using the rules adopted under section 213 of
25 this act;

26 (c) The existence of or ability to establish barriers between the
27 site and the risk potential facilities and activities;

28 (d) Suitability of the buildings to be used for the secure
29 community transition facility with regard to existing or feasibly
30 modified features; and

31 (e) The availability of electronic monitoring that allows a
32 resident's location to be determined with specificity.

33 (4) Site characteristics criteria shall include at least the
34 following:

35 (a) Reasonableness of rental, lease, or sale terms including length
36 and renewability of a lease or rental agreement;

37 (b) Traffic and access patterns associated with the real property;

38 (c) Feasibility of complying with zoning requirements within the
39 necessary time frame; and

1 (d) A contractor or contractors are available to install, monitor,
2 and repair the necessary security and alarm systems.

3 (5) Program characteristics criteria shall include at least the
4 following:

5 (a) Reasonable proximity to available medical, mental health, sex
6 offender, and chemical dependency treatment providers and facilities;

7 (b) Suitability of the location for programming, staffing, and
8 support considerations;

9 (c) Proximity to employment, educational, vocational, and other
10 treatment plan components.

11 (6) For purposes of this section "available" or "availability" of
12 qualified treatment providers includes provider qualifications and
13 willingness to provide services, average commute time, and cost of
14 services.

15 NEW SECTION. **Sec. 215.** A new section is added to chapter 71.09
16 RCW to read as follows:

17 (1) Security systems for all secure community transition facilities
18 shall meet the following minimum qualifications:

19 (a) The security panel must be a commercial grade panel with
20 tamper-proof switches and a key-lock to prevent unauthorized access.

21 (b) There must be an emergency electrical supply system which shall
22 include a battery back-up system and a generator.

23 (c) The system must include personal panic devices for all staff.

24 (d) The security system must be capable of being monitored and
25 signaled either by telephone through either a land or cellular
26 telephone system or by private radio network in the event of a total
27 dial-tone failure or through equivalent technologies.

28 (e) The department shall issue photo-identification badges to all
29 staff which must be worn at all times.

30 (2) Security systems for the secure community transition facility
31 established pursuant to section 201(1) of this act shall also include
32 a fence and provide the maximum protection appropriate in a civil
33 facility for persons in less than total confinement.

34 NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09
35 RCW to read as follows:

36 (1) Secure community transition facilities shall meet the following
37 minimum staffing requirements:

1 (a) At any time the census of a facility is six or fewer residents,
2 the facility shall maintain a minimum staffing ratio of one staff per
3 resident during normal waking hours and two awake staff per three
4 residents during normal sleeping hours.

5 (b) At any time the census of a facility is six or fewer residents,
6 all staff shall be classified as residential rehabilitation counselor
7 II or have a classification that indicates a higher level of skill,
8 experience, and training.

9 (c) Before being assigned to a facility, all staff shall have
10 training in sex offender issues, self-defense, and crisis de-escalation
11 skills in addition to departmental orientation and, as appropriate,
12 management training. All staff with resident treatment or care duties
13 must participate in ongoing in-service training.

14 (d) All staff must pass a departmental background check and the
15 check is not subject to the limitations in chapter 9.96A RCW. A person
16 who has been convicted of a felony, or any sex offense, may not be
17 employed at the secure community transition facility or be approved as
18 an escort for a resident of the facility.

19 (2) With respect to the facility established pursuant to section
20 201(1) of this act, the department shall, no later than December 1,
21 2001, provide a staffing plan to the appropriate committees of the
22 legislature that will cover the growth of that facility to its full
23 capacity.

24 NEW SECTION. **Sec. 217.** A new section is added to chapter 71.09
25 RCW to read as follows:

26 (1) Unless otherwise ordered by the court:

27 (a) Residents of a secure community transition facility shall wear
28 electronic monitoring devices at all times. To the extent that
29 electronic monitoring devices that employ global positioning system
30 technology are available and funds for this purpose are appropriated by
31 the legislature, the department shall use these devices.

32 (b) At least one staff member, or other court-authorized and
33 department-approved person must escort each resident when the resident
34 leaves the secure community transition facility for appointments,
35 employment, or other approved activities. Escorting persons must
36 supervise the resident closely and maintain close proximity to the
37 resident. The escort must immediately notify the department of any
38 serious violation, as defined in section 221 of this act, by the

1 resident and must immediately notify law enforcement of any violation
2 of law by the resident.

3 (2) Staff members of the special commitment center and any other
4 total confinement facility and any secure community transition facility
5 must be trained in self-defense and appropriate crisis responses
6 including incident de-escalation. Prior to escorting a person outside
7 of a facility, staff members must also have training in the offense
8 pattern of the offender they are escorting.

9 (3) Any escort must carry a cellular telephone or a similar device
10 at all times when escorting a resident of a secure community transition
11 facility.

12 (4) The department shall require training in offender pattern,
13 self-defense, and incident response for all court-authorized escorts
14 who are not employed by the department or the department of
15 corrections.

16 NEW SECTION. **Sec. 218.** A new section is added to chapter 71.09
17 RCW to read as follows:

18 Notwithstanding the provisions of section 217 of this act,
19 residents of the secure community transition facility established
20 pursuant to section 201(1) of this act must be escorted at any time the
21 resident leaves the facility.

22 NEW SECTION. **Sec. 219.** A new section is added to chapter 71.09
23 RCW to read as follows:

24 (1) Whenever the department operates, or the secretary enters into
25 a contract to operate, a secure community transition facility except
26 the secure community transition facility established pursuant to
27 section 201(1) of this act, the secure community transition facility
28 may be operated only after the public notification and opportunities
29 for review and comment as required by this section.

30 (2) The secretary shall establish a process for early and
31 continuous public participation in establishing or relocating secure
32 community transition facilities. The process shall include, at a
33 minimum, public meetings in the local communities affected, as well as
34 opportunities for written and oral comments, in the following manner:

35 (a) If there are more than three sites initially selected as
36 potential locations and the selection process by the secretary or a
37 service provider reduces the number of possible sites for a secure

1 community transition facility to no fewer than three, the secretary or
2 the chief operating officer of the service provider shall notify the
3 public of the possible siting and hold at least two public hearings in
4 each community where a secure community transition facility may be
5 sited.

6 (b) When the secretary or service provider has determined the
7 secure community transition facility's location, the secretary or the
8 chief operating officer of the service provider shall hold at least one
9 additional public hearing in the community where the secure community
10 transition facility will be sited.

11 (c) When the secretary has entered negotiations with a service
12 provider and only one site is under consideration, then at least two
13 public hearings shall be held.

14 (d) To provide adequate notice of, and opportunity for interested
15 persons to comment on, a proposed location, the secretary or the chief
16 operating officer of the service provider shall provide at least
17 fourteen days' advance notice of the meeting to all newspapers of
18 general circulation in the community, all radio and television stations
19 generally available to persons in the community, any school district in
20 which the secure community transition facility would be sited or whose
21 boundary is within two miles of a proposed secure community transition
22 facility, any library district in which the secure community transition
23 facility would be sited, local business or fraternal organizations that
24 request notification from the secretary or agency, and any person or
25 property owner within a one-half mile radius of the proposed secure
26 community transition facility. Before initiating this process, the
27 department of social and health services shall contact local government
28 planning agencies in the communities containing the proposed secure
29 community transition facility. The department of social and health
30 services shall coordinate with local government agencies to ensure that
31 opportunities are provided for effective citizen input and to reduce
32 the duplication of notice and meetings.

33 (3) If local government land use regulations require that a special
34 use or conditional use permit be submitted and approved before a secure
35 community transition facility can be sited, and the process for
36 obtaining such a permit includes public notice and hearing requirements
37 similar to those required under this section, the requirements of this
38 section shall not apply to the extent they would duplicate requirements
39 under the local land use regulations.

1 (4) This section applies only to secure community transition
2 facilities sited after the effective date of this section.

3 NEW SECTION. **Sec. 220.** A new section is added to chapter 71.09
4 RCW to read as follows:

5 (1) The secretary shall develop a process with local governments
6 that allows each community in which a secure community transition
7 facility is located to establish operational advisory boards of at
8 least seven persons for the secure community transition facilities.
9 The department may conduct community awareness activities to publicize
10 this opportunity. The operational advisory boards developed under this
11 section shall be implemented following the decision to locate a secure
12 community transition facility in a particular community.

13 (2) The operational advisory boards may review and make
14 recommendations regarding the security and operations of the secure
15 community transition facility and conditions or modifications necessary
16 with relation to any person who the secretary proposes to place in the
17 secure community transition facility.

18 (3) The facility management must consider the recommendations of
19 the community advisory boards. Where the facility management does not
20 implement an operational advisory board recommendation, the management
21 must provide a written response to the operational advisory board
22 stating its reasons for its decision not to implement the
23 recommendation.

24 (4) The operational advisory boards, their members, and any agency
25 represented by a member shall not be liable in any cause of action as
26 a result of its recommendations unless the advisory board acts with
27 gross negligence or bad faith in making a recommendation.

28 NEW SECTION. **Sec. 221.** A new section is added to chapter 71.09
29 RCW to read as follows:

30 (1) The secretary shall adopt a violation reporting policy for
31 persons conditionally released to less restrictive alternative
32 placements. The policy shall require written documentation by the
33 department and service providers of all violations of conditions set by
34 the department, the department of corrections, or the court and
35 establish criteria for returning a violator to the special commitment
36 center or a secure community transition facility with a higher degree
37 of security. Any conditionally released person who commits a serious

1 violation of conditions shall be returned to the special commitment
2 center, unless arrested by a law enforcement officer, and the court
3 shall be notified immediately and shall initiate proceedings under RCW
4 71.09.098 to revoke or modify the less restrictive alternative
5 placement. Nothing in this section limits the authority of the
6 department to return a person to the special commitment center based on
7 a violation that is not a serious violation as defined in this section.
8 For the purposes of this section, "serious violation" includes but is
9 not limited to:

10 (a) The commission of any criminal offense;

11 (b) Any unlawful use or possession of a controlled substance; and

12 (c) Any violation of conditions targeted to address the person's
13 documented pattern of offense that increases the risk to public safety.

14 (2) When a person is conditionally released to a less restrictive
15 alternative under this chapter and is under the supervision of the
16 department of corrections, notice of any violation of the person's
17 conditions of release must also be made to the department of
18 corrections.

19 (3) Whenever the secretary contracts with a service provider to
20 operate a secure community transition facility, the contract shall
21 include a requirement that the service provider must report to the
22 department of social and health services any known violation of
23 conditions committed by any resident of the secure community transition
24 facility.

25 (4) The secretary shall document in writing all violations,
26 penalties, actions by the department of social and health services to
27 remove persons from a secure community transition facility, and
28 contract terminations. The secretary shall compile this information
29 and submit it to the appropriate committees of the legislature on an
30 annual basis. The secretary shall give great weight to a service
31 provider's record of violations, penalties, actions by the department
32 of social and health services or the department of corrections to
33 remove persons from a secure community transition facility, and
34 contract terminations in determining whether to execute, renew, or
35 renegotiate a contract with a service provider.

36 NEW SECTION. **Sec. 222.** A new section is added to chapter 71.09
37 RCW to read as follows:

1 Whenever the secretary contracts with a provider to operate a
2 secure community transition facility, the secretary shall include in
3 the contract provisions establishing intermediate contract enforcement
4 remedies.

5 NEW SECTION. **Sec. 223.** A new section is added to chapter 71.09
6 RCW to read as follows:

7 A conditional release from a total confinement facility to a less
8 restrictive alternative is a release that subjects the conditionally
9 released person to the registration requirements specified in RCW
10 9A.44.130 and to community notification under RCW 4.24.550.

11 When a person is conditionally released to the secure community
12 transition facility established pursuant to section 201(1) of this act,
13 the sheriff must provide each household on McNeil Island with the
14 community notification information provided for under RCW 4.24.550.

15 NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09
16 RCW to read as follows:

17 When a person civilly committed under this chapter is conditionally
18 released to a less restrictive alternative placement at a facility
19 owned or operated under contract with the state, any employer who hires
20 the person for a position or any educational institution that enrolls
21 the person for a program is eligible for an incentive grant from the
22 state up to five thousand dollars per year that the person remains
23 employed or enrolled on at least a half-time basis in a job or program
24 that meets requirements approved by the court. The provisions of this
25 section may not establish employer or educational institution liability
26 for the subsequent criminal acts of a conditionally released person for
27 the decision to hire or enroll that person. An employer or educational
28 institution that accepts an incentive grant under this section shall
29 not be civilly liable for the subsequent criminal acts of a
30 conditionally released person unless the employer's or educational
31 institution's conduct constitutes gross negligence or intentional
32 misconduct. An employer that hires a conditionally released person
33 must notify all other employees of the conditionally released person's
34 status. Notification for conditionally released persons who enroll in
35 an institution of higher education shall be made pursuant to the
36 provisions of RCW 9A.44.130 related to sex offenders enrolled in
37 institutions of higher education and RCW 4.24.550. This section

1 applies only to conditionally released persons whose court approved
2 treatment plan includes permission or a requirement for the person to
3 obtain education or employment and to employment positions or
4 educational programs that meet the requirements of the court-approved
5 treatment plan.

6 NEW SECTION. **Sec. 225.** (1) A joint select committee on the
7 equitable distribution of secure community transition facilities is
8 established.

9 (2) The joint select committee shall consist of the following
10 persons:

11 (a) One member from each of the two largest caucuses of the senate,
12 appointed by the president of the senate, at least one member being a
13 member of the senate human services and corrections committee;

14 (b) One member from each of the two largest caucuses of the house
15 of representatives, appointed by the co-speakers of the house of
16 representatives, at least one member being a member of the house
17 criminal justice and corrections committee;

18 (c) One member from the department of social and health services;

19 (d) One member from the Washington state association of counties;

20 (e) One member from the association of Washington cities;

21 (f) One member representing crime victims, appointed jointly by the
22 president of the senate and the co-speakers of the house of
23 representatives;

24 (g) One person selected by the governor; and

25 (h) Two persons representing local law enforcement, one
26 representing cities and one representing counties.

27 (3) The chair of the joint select committee shall be a legislative
28 member chosen by the joint select committee members.

29 (4) The joint select committee shall review and make
30 recommendations regarding:

31 (a) Any necessary specifications or revisions to the policy of
32 equitable distribution of secure community transition facilities;

33 (b) Any necessary revisions to the provisions related to siting and
34 operating secure community transition facilities in sections 213
35 through 218 and 222 of this act; and

36 (c) Except with respect to the facility established pursuant to
37 section 201(1) of this act, a method for determining possible
38 mitigation measures for compensating communities for any increased

1 risks to public safety brought about by the siting of a secure
2 community transition facility in a community.

3 (5) The joint select committee shall present a report of its
4 findings and recommendations to the governor and the appropriate
5 committees of the legislature, including any proposed legislation, not
6 later than November 15, 2001.

7 (6) The joint select committee may, where feasible, consult with
8 individuals from the public and private sector in carrying out its
9 duties under this section.

10 (7) Nonlegislative members of the joint select committee shall
11 serve without compensation, but shall be reimbursed for travel expenses
12 as provided in RCW 43.03.050 and 43.03.060. Legislative members of the
13 joint select committee shall be reimbursed for travel expenses as
14 provided in RCW 44.04.120.

15 (8) Staff of senate committee services and the office of program
16 research of the house of representatives shall provide support to the
17 joint select committee.

18 (9) This section expires March 1, 2002.

19 NEW SECTION. **Sec. 226.** A new section is added to chapter 71.09
20 RCW to read as follows:

21 Nothing in this act shall operate to restrict a court's authority
22 to make less restrictive alternative placements to a committed person's
23 individual residence or to a setting less restrictive than a secure
24 community transition facility. A court-ordered less restrictive
25 alternative placement to a committed person's individual residence is
26 not a less restrictive alternative placement to a secure community
27 transition facility.

28 **PART III**
29 **SENTENCING STRUCTURE**

30 **Sec. 301.** RCW 9.94A.030 and 2001 c 287 s 4 and 2001 c 95 s 1 are
31 each reenacted and amended to read as follows:

32 Unless the context clearly requires otherwise, the definitions in
33 this section apply throughout this chapter.

34 (1) "Board" means the indeterminate sentence review board created
35 under chapter 9.95 RCW.

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

9 ~~((+2))~~ (3) "Commission" means the sentencing guidelines
10 commission.

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

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

25 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
26 period of community custody included as part of a sentence under RCW
27 9.94A.715, as established by the commission or the legislature under
28 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

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

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

1 (~~(8)~~) (9) "Community supervision" means a period of time during
2 which a convicted offender is subject to crime-related prohibitions and
3 other sentence conditions imposed by a court pursuant to this chapter
4 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
5 offender has a chemical dependency that has contributed to his or her
6 offense, the conditions of supervision may, subject to available
7 resources, include treatment. For purposes of the interstate compact
8 for out-of-state supervision of parolees and probationers, RCW
9 9.95.270, community supervision is the functional equivalent of
10 probation and should be considered the same as probation by other
11 states.

12 (~~(9)~~) (10) "Confinement" means total or partial confinement.

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

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

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

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

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

38 (~~(15)~~) (16) "Department" means the department of corrections.

1 (~~(16)~~) (17) "Determinate sentence" means a sentence that states
2 with exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community service work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through earned release can reduce the actual period of confinement
7 shall not affect the classification of the sentence as a determinate
8 sentence.

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

21 (~~(18)~~) (19) "Drug offender sentencing alternative" is a
22 sentencing option available to persons convicted of a felony offense
23 other than a violent offense or a sex offense and who are eligible for
24 the option under RCW 9.94A.660.

25 (~~(19)~~) (20) "Drug offense" means:

26 (a) Any felony violation of chapter 69.50 RCW except possession of
27 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
28 controlled substance (RCW 69.50.403);

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

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

35 (~~(20)~~) (21) "Earned release" means earned release from
36 confinement as provided in RCW 9.94A.150.

37 (~~(21)~~) (22) "Escape" means:

38 (a) (~~Escape by a~~) Sexually violent predator escape (RCW 9A.76.---
39 (section 1, chapter 287, Laws of 2001, as amended by section 360,

1 chapter ... (this act), Laws of 2001 2nd sp. sess.)), escape in the
2 first degree (RCW 9A.76.110), escape in the second degree (RCW
3 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
4 willful failure to return from work release (RCW 72.65.070), or willful
5 failure to be available for supervision by the department while in
6 community custody (RCW 72.09.310); or

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

10 (~~((22))~~) (23) "Felony traffic offense" means:

11 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
12 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
13 and-run injury-accident (RCW 46.52.020(4)); or

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

17 (~~((23))~~) (24) "Fine" means a specific sum of money ordered by the
18 sentencing court to be paid by the offender to the court over a
19 specific period of time.

20 (~~((24))~~) (25) "First-time offender" means any person who has no
21 prior convictions for a felony and is eligible for the first-time
22 offender waiver under RCW 9.94A.650.

23 (~~((25))~~) (26) "Home detention" means a program of partial
24 confinement available to offenders wherein the offender is confined in
25 a private residence subject to electronic surveillance.

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

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

1 (ii) A prior conviction for indecent liberties under RCW
2 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
3 if: (A) The crime was committed against a child under the age of
4 fourteen; or (B) the relationship between the victim and perpetrator is
5 included in the definition of indecent liberties under RCW
6 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
7 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
8 through July 27, 1997.

9 (~~(28)~~) (29) "Nonviolent offense" means an offense which is not a
10 violent offense.

11 (~~(29)~~) (30) "Offender" means a person who has committed a felony
12 established by state law and is eighteen years of age or older or is
13 less than eighteen years of age but whose case is under superior court
14 jurisdiction under RCW 13.04.030 or has been transferred by the
15 appropriate juvenile court to a criminal court pursuant to RCW
16 13.40.110. Throughout this chapter, the terms "offender" and
17 "defendant" are used interchangeably.

18 (~~(30)~~) (31) "Partial confinement" means confinement for no more
19 than one year in a facility or institution operated or utilized under
20 contract by the state or any other unit of government, or, if home
21 detention or work crew has been ordered by the court, in an approved
22 residence, for a substantial portion of each day with the balance of
23 the day spent in the community. Partial confinement includes work
24 release, home detention, work crew, and a combination of work crew and
25 home detention.

26 (~~(31)~~) (32) "Persistent offender" is an offender who:

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

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

37 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
38 of a child in the first degree, child molestation in the first degree,
39 rape in the second degree, rape of a child in the second degree, or

1 indecent liberties by forcible compulsion; (B) any of the following
2 offenses with a finding of sexual motivation: Murder in the first
3 degree, murder in the second degree, homicide by abuse, kidnapping in
4 the first degree, kidnapping in the second degree, assault in the first
5 degree, assault in the second degree, assault of a child in the first
6 degree, or burglary in the first degree(~~(, with a finding of sexual~~
7 ~~motivation))~~; or (C) an attempt to commit any crime listed in this
8 subsection (~~(+31+))~~ (32)(b)(i); and

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

19 (~~(+32+))~~ (33) "Postrelease supervision" is that portion of an
20 offender's community placement that is not community custody.

21 (~~(+33+))~~ (34) "Restitution" means a specific sum of money ordered
22 by the sentencing court to be paid by the offender to the court over a
23 specified period of time as payment of damages. The sum may include
24 both public and private costs.

25 (~~(+34+))~~ (35) "Risk assessment" means the application of an
26 objective instrument supported by research and adopted by the
27 department for the purpose of assessing an offender's risk of
28 reoffense, taking into consideration the nature of the harm done by the
29 offender, place and circumstances of the offender related to risk, the
30 offender's relationship to any victim, and any information provided to
31 the department by victims. The results of a risk assessment shall not
32 be based on unconfirmed or unconfirmable allegations.

33 (~~(+35+))~~ (36) "Serious traffic offense" means:

34 (a) Driving while under the influence of intoxicating liquor or any
35 drug (RCW 46.61.502), actual physical control while under the influence
36 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
37 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
38 or

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

4 (~~(36)~~) (37) "Serious violent offense" is a subcategory of violent
5 offense and means:

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

7 (ii) Homicide by abuse;

8 (iii) Murder in the second degree;

9 (iv) Manslaughter in the first degree;

10 (v) Assault in the first degree;

11 (vi) Kidnapping in the first degree;

12 (vii) Rape in the first degree;

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

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

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

19 (~~(37)~~) (38) "Sex offense" means:

20 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
21 RCW 9A.44.130(11);

22 (ii) A violation of RCW 9A.64.020;

23 (iii) A felony that is a violation of chapter 9.68A RCW other than
24 RCW 9.68A.070 or 9.68A.080; or

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

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

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

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

35 (~~(38)~~) (39) "Sexual motivation" means that one of the purposes
36 for which the defendant committed the crime was for the purpose of his
37 or her sexual gratification.

38 (~~(39)~~) (40) "Standard sentence range" means the sentencing
39 court's discretionary range in imposing a nonappealable sentence.

1 (~~(40)~~) (41) "Statutory maximum sentence" means the maximum length
2 of time for which an offender may be confined as punishment for a crime
3 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
4 the crime, or other statute defining the maximum penalty for a crime.

5 (~~(41)~~) (42) "Total confinement" means confinement inside the
6 physical boundaries of a facility or institution operated or utilized
7 under contract by the state or any other unit of government for twenty-
8 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 (~~(42)~~) (43) "Transition training" means written and verbal
10 instructions and assistance provided by the department to the offender
11 during the two weeks prior to the offender's successful completion of
12 the work ethic camp program. The transition training shall include
13 instructions in the offender's requirements and obligations during the
14 offender's period of community custody.

15 (~~(43)~~) (44) "Victim" means any person who has sustained
16 emotional, psychological, physical, or financial injury to person or
17 property as a direct result of the crime charged.

18 (~~(44)~~) (45) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

34 (xiii) Vehicular assault; and

35 (xiv) Vehicular homicide, when proximately caused by the driving of
36 any vehicle by any person while under the influence of intoxicating
37 liquor or any drug as defined by RCW 46.61.502, or by the operation of
38 any vehicle in a reckless manner;

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

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

7 (~~(45)~~) (46) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.135.

10 (~~(46)~~) (47) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.137 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (~~(47)~~) (48) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 302.** RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read
21 as follows:

22 (1) When a court sentences a person to the custody of the
23 department for a sex offense not sentenced under section 303 of this
24 act, a violent offense, any crime against persons under RCW
25 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW,
26 committed on or after July 1, 2000, the court shall in addition to the
27 other terms of the sentence, sentence the offender to community custody
28 for the community custody range established under RCW 9.94A.040 or up
29 to the period of earned release awarded pursuant to RCW 9.94A.150 (1)
30 and (2), whichever is longer. The community custody shall begin: (a)
31 Upon completion of the term of confinement; (b) at such time as the
32 offender is transferred to community custody in lieu of earned release
33 in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to
34 offenders sentenced under RCW 9.94A.660, upon failure to complete or
35 administrative termination from the special drug offender sentencing
36 alternative program.

37 (2)(a) Unless a condition is waived by the court, the conditions of
38 community custody shall include those provided for in RCW 9.94A.700(4).

1 The conditions may also include those provided for in RCW 9.94A.700(5).
2 The court may also order the offender to participate in rehabilitative
3 programs or otherwise perform affirmative conduct reasonably related to
4 the circumstances of the offense, the offender's risk of reoffending,
5 or the safety of the community, and the department shall enforce such
6 conditions pursuant to subsection (6) of this section.

7 (b) As part of any sentence that includes a term of community
8 custody imposed under this subsection, the court shall also require the
9 offender to comply with any conditions imposed by the department under
10 RCW 9.94A.720. The department shall assess the offender's risk of
11 reoffense and may establish and modify additional conditions of the
12 offender's community custody based upon the risk to community safety.
13 In addition, the department may require the offender to participate in
14 rehabilitative programs, or otherwise perform affirmative conduct, and
15 to obey all laws.

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

22 (3) If an offender violates conditions imposed by the court or the
23 department pursuant to this section during community custody, the
24 department may transfer the offender to a more restrictive confinement
25 status and impose other available sanctions as provided in RCW
26 9.94A.205 and 9.94A.207.

27 (4) Except for terms of community custody under RCW 9.94A.670, the
28 department shall discharge the offender from community custody on a
29 date determined by the department, which the department may modify,
30 based on risk and performance of the offender, within the range or at
31 the end of the period of earned release, whichever is later.

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

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

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

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

20 NEW SECTION. **Sec. 303.** A new section is added to chapter 9.94A
21 RCW to read as follows:

22 (1) An offender who is not a persistent offender shall be sentenced
23 under this section if the offender:

24 (a) Is convicted of:

25 (i) Rape in the first degree, rape in the second degree, rape of a
26 child in the first degree, child molestation in the first degree, rape
27 of a child in the second degree, or indecent liberties by forcible
28 compulsion;

29 (ii) Any of the following offenses with a finding of sexual
30 motivation: Murder in the first degree, murder in the second degree,
31 homicide by abuse, kidnapping in the first degree, kidnapping in the
32 second degree, assault in the first degree, assault in the second
33 degree, assault of a child in the first degree, or burglary in the
34 first degree; or

35 (iii) An attempt to commit any crime listed in this subsection

36 (1)(a);

37 committed on or after the effective date of this section; or

1 (b) Has a prior conviction for an offense listed in RCW
2 9.94A.030(32)(b), and is convicted of any sex offense which was
3 committed after the effective date of this section.

4 For purposes of this subsection (1)(b), failure to register is not
5 a sex offense.

6 (2) An offender convicted of rape of a child in the first or second
7 degree or child molestation in the first degree who was seventeen years
8 of age or younger at the time of the offense shall not be sentenced
9 under this section.

10 (3) Upon a finding that the offender is subject to sentencing under
11 this section, the court shall impose a sentence to a maximum term
12 consisting of the statutory maximum sentence for the offense and a
13 minimum term either within the standard sentence range for the offense,
14 or outside the standard sentence range pursuant to RCW 9.94A.390, if
15 the offender is otherwise eligible for such a sentence.

16 (4) A person sentenced under subsection (3) of this section shall
17 serve the sentence in a facility or institution operated, or utilized
18 under contract, by the state.

19 (5) When a court sentences a person to the custody of the
20 department under this section, the court shall, in addition to the
21 other terms of the sentence, sentence the offender to community custody
22 under the supervision of the department and the authority of the board
23 for any period of time the person is released from total confinement
24 before the expiration of the maximum sentence.

25 (6)(a) Unless a condition is waived by the court, the conditions of
26 community custody shall include those provided for in RCW 9.94A.700(4).
27 The conditions may also include those provided for in RCW 9.94A.700(5).
28 The court may also order the offender to participate in rehabilitative
29 programs or otherwise perform affirmative conduct reasonably related to
30 the circumstances of the offense, the offender's risk of reoffending,
31 or the safety of the community, and the department and the board shall
32 enforce such conditions pursuant to sections 304, 307, and 308 of this
33 act.

34 (b) As part of any sentence under this section, the court shall
35 also require the offender to comply with any conditions imposed by the
36 board under sections 304 and 306 through 309 of this act.

37 NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A
38 RCW to read as follows:

1 (1) When an offender is sentenced under section 303 of this act,
2 the department shall assess the offender's risk of recidivism and shall
3 recommend to the board any additional or modified conditions of the
4 offender's community custody based upon the risk to community safety.
5 In addition, the department shall make a recommendation with regard to,
6 and the board may require the offender to participate in,
7 rehabilitative programs, or otherwise perform affirmative conduct, and
8 obey all laws. The board must consider and may impose department-
9 recommended conditions.

10 (2) The department may not recommend and the board may not impose
11 conditions that are contrary to those ordered by the court and may not
12 contravene or decrease court-imposed conditions. The board shall
13 notify the offender in writing of any such conditions or modifications.

14 (3) In setting, modifying, and enforcing conditions of community
15 custody, the department shall be deemed to be performing a quasi-
16 judicial function.

17 (4) If an offender violates conditions imposed by the court, the
18 department, or the board during community custody, the board or the
19 department may transfer the offender to a more restrictive confinement
20 status and impose other available sanctions as provided in section 309
21 of this act.

22 (5) By the close of the next business day, after receiving notice
23 of a condition imposed by the board or the department, an offender may
24 request an administrative hearing under rules adopted by the board.
25 The condition shall remain in effect unless the hearing examiner finds
26 that it is not reasonably related to any of the following:

- 27 (a) The crime of conviction;
- 28 (b) The offender's risk of reoffending; or
- 29 (c) The safety of the community.

30 (6) An offender released by the board under section 306 of this act
31 shall be subject to the supervision of the department until the
32 expiration of the maximum term of the sentence. The department shall
33 monitor the offender's compliance with conditions of community custody
34 imposed by the court, department, or board, and promptly report any
35 violations to the board. Any violation of conditions of community
36 custody established or modified by the board shall be subject to the
37 provisions of sections 307 through 310 of this act.

38 (7) If the department finds that an emergency exists requiring the
39 immediate imposition of conditions of release in addition to those set

1 by the board under section 306 of this act and subsection (1) of this
2 section in order to prevent the offender from committing a crime, the
3 department may impose additional conditions. The department may not
4 impose conditions that are contrary to those set by the board or the
5 court and may not contravene or decrease court-imposed or board-imposed
6 conditions. Conditions imposed under this subsection shall take effect
7 immediately after notice to the offender by personal service, but shall
8 not remain in effect longer than seven working days unless approved by
9 the board under subsection (1) of this section within seven working
10 days.

11 NEW SECTION. **Sec. 305.** A new section is added to chapter 72.09
12 RCW to read as follows:

13 The department shall provide offenders sentenced under section 303
14 of this act with the opportunity for sex offender treatment during
15 incarceration.

16 NEW SECTION. **Sec. 306.** A new section is added to chapter 9.95 RCW
17 to read as follows:

18 (1)(a) Before the expiration of the minimum term, as part of the
19 end of sentence review process under RCW 72.09.340, 72.09.345, and
20 where appropriate, 72.09.370, the department shall conduct, and the
21 offender shall participate in, an examination of the offender,
22 incorporating methodologies that are recognized by experts in the
23 prediction of sexual dangerousness, and including a prediction of the
24 probability that the offender will engage in sex offenses if released.

25 (b) The board may contract for an additional, independent
26 examination, subject to the standards in this section.

27 (2) The board shall impose the conditions and instructions provided
28 for in RCW 9.94A.720. The board shall consider the department's
29 recommendations and may impose conditions in addition to those
30 recommended by the department. The board may impose or modify
31 conditions of community custody following notice to the offender.

32 (3) No later than ninety days before expiration of the minimum
33 term, but after the board receives the results from the end of sentence
34 review process and the recommendations for additional or modified
35 conditions of community custody from the department, the board shall
36 conduct a hearing to determine whether it is more likely than not that
37 the offender will engage in sex offenses if released on conditions to

1 be set by the board. The board may consider an offender's failure to
2 participate in an evaluation under subsection (1) of this section in
3 determining whether to release the offender. The board shall order the
4 offender released, under such affirmative and other conditions as the
5 board determines appropriate, unless the board determines by a
6 preponderance of the evidence that, despite such conditions, it is more
7 likely than not that the offender will commit sex offenses if released.
8 If the board does not order the offender released, the board shall
9 establish a new minimum term, not to exceed an additional two years.

10 NEW SECTION. Sec. 307. A new section is added to chapter 9.95 RCW
11 to read as follows:

12 (1) Whenever the board or a community corrections officer of this
13 state has reason to believe an offender released under section 306 of
14 this act has violated a condition of community custody or the laws of
15 this state, any community corrections officer may arrest or cause the
16 arrest and detention of the offender pending a determination by the
17 board whether sanctions should be imposed or the offender's community
18 custody should be revoked. The community corrections officer shall
19 report all facts and circumstances surrounding the alleged violation to
20 the board, with recommendations.

21 (2) If the board or the department causes the arrest or detention
22 of an offender for a violation that does not amount to a new crime and
23 the offender is arrested or detained by local law enforcement or in a
24 local jail, the board or department, whichever caused the arrest or
25 detention, shall be financially responsible for local costs. Jail bed
26 costs shall be allocated at the rate established under RCW
27 9.94A.207(3).

28 NEW SECTION. Sec. 308. A new section is added to chapter 9.95 RCW
29 to read as follows:

30 Any offender released under section 306 of this act who is arrested
31 and detained in physical custody by the authority of a community
32 corrections officer, or upon the written order of the board, shall not
33 be released from custody on bail or personal recognizance, except upon
34 approval of the board and the issuance by the board of an order
35 reinstating the offender's release on the same or modified conditions.
36 All chiefs of police, marshals of cities and towns, sheriffs of
37 counties, and all police, prison, and peace officers and constables

1 shall execute any such order in the same manner as any ordinary
2 criminal process.

3 NEW SECTION. **Sec. 309.** A new section is added to chapter 9.95 RCW
4 to read as follows:

5 (1) If an offender released by the board under section 306 of this
6 act violates any condition or requirement of community custody, the
7 board may transfer the offender to a more restrictive confinement
8 status to serve up to the remaining portion of the sentence, less
9 credit for any period actually spent in community custody or in
10 detention awaiting disposition of an alleged violation and subject to
11 the limitations of subsection (2) of this section.

12 (2) Following the hearing specified in subsection (3) of this
13 section, the board may impose sanctions such as work release, home
14 detention with electronic monitoring, work crew, community service,
15 inpatient treatment, daily reporting, curfew, educational or counseling
16 sessions, supervision enhanced through electronic monitoring, or any
17 other sanctions available in the community, or may suspend or revoke
18 the release to community custody whenever an offender released by the
19 board under section 306 of this act violates any condition or
20 requirement of community custody.

21 (3) If an offender released by the board under section 306 of this
22 act is accused of violating any condition or requirement of community
23 custody, he or she is entitled to a hearing before the board prior to
24 the imposition of sanctions. The hearing shall be considered as
25 offender disciplinary proceedings and shall not be subject to chapter
26 34.05 RCW. The board shall develop hearing procedures and a structure
27 of graduated sanctions consistent with the hearing procedures and
28 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
29 suspend the offender's release to community custody and confine the
30 offender in a correctional institution owned, operated by, or operated
31 under contract with the state prior to the hearing unless the offender
32 has been arrested and confined for a new criminal offense.

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

35 (a) Hearings shall be conducted by members of the board unless the
36 board enters into an agreement with the department to use the hearing
37 officers established under RCW 9.94A.205;

1 (b) The board shall provide the offender with written notice of the
2 violation, the evidence relied upon, and the reasons the particular
3 sanction was imposed. The notice shall include a statement of the
4 rights specified in this subsection, and the offender's right to file
5 a personal restraint petition under court rules after the final
6 decision of the board;

7 (c) The hearing shall be held unless waived by the offender, and
8 shall be electronically recorded. For offenders not in total
9 confinement, the hearing shall be held within fifteen working days, but
10 not less than twenty-four hours after notice of the violation. For
11 offenders in total confinement, the hearing shall be held within five
12 working days, but not less than twenty-four hours after notice of the
13 violation;

14 (d) The offender shall have the right to: (i) Be present at the
15 hearing; (ii) have the assistance of a person qualified to assist the
16 offender in the hearing, appointed by the hearing examiner if the
17 offender has a language or communications barrier; (iii) testify or
18 remain silent; (iv) call witnesses and present documentary evidence;
19 (v) question witnesses who appear and testify; and (vi) be represented
20 by counsel if revocation of the release to community custody is a
21 possible sanction for the violation; and

22 (e) The sanction shall take effect if affirmed by the hearing
23 examiner. Within seven days after the hearing examiner's decision, the
24 offender may appeal the decision to a panel of three reviewing
25 examiners designated by the chair of the board or by the chair's
26 designee. The sanction shall be reversed or modified if a majority of
27 the panel finds that the sanction was not reasonably related to any of
28 the following: (i) The crime of conviction; (ii) the violation
29 committed; (iii) the offender's risk of reoffending; or (iv) the safety
30 of the community.

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

33 NEW SECTION. **Sec. 310.** A new section is added to chapter 9.95 RCW
34 to read as follows:

35 In the event the board suspends release status of an offender
36 released under section 306 of this act by reason of an alleged
37 violation of a condition of release, or pending disposition of a new
38 criminal charge, the board may nullify the suspension order and

1 reinstate release under previous conditions or any new conditions the
2 board determines advisable. Before the board may nullify a suspension
3 order and reinstate release, it shall determine that the best interests
4 of society and the offender shall be served by such reinstatement
5 rather than return to confinement.

6 **Sec. 311.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to
7 read as follows:

8 (1) The commission consists of twenty voting members, one of whom
9 the governor shall designate as chairperson. With the exception of ex
10 officio voting members, the voting members of the commission shall be
11 appointed by the governor, subject to confirmation by the senate.

12 (2) The voting membership consists of the following:

13 (a) The head of the state agency having general responsibility for
14 adult correction programs, as an ex officio member;

15 (b) The director of financial management or designee, as an ex
16 officio member;

17 (c) (~~Until the indeterminate sentence review board ceases to exist~~
18 ~~pursuant to RCW 9.95.0011,~~) The chair of the indeterminate sentence
19 review board, as an ex officio member;

20 (d) The head of the state agency, or the agency head's designee,
21 having responsibility for juvenile corrections programs, as an ex
22 officio member;

23 (e) Two prosecuting attorneys;

24 (f) Two attorneys with particular expertise in defense work;

25 (g) Four persons who are superior court judges;

26 (h) One person who is the chief law enforcement officer of a county
27 or city;

28 (i) Four members of the public who are not prosecutors, defense
29 attorneys, judges, or law enforcement officers, one of whom is a victim
30 of crime or a crime victims' advocate;

31 (j) One person who is an elected official of a county government,
32 other than a prosecuting attorney or sheriff;

33 (k) One person who is an elected official of a city government;

34 (l) One person who is an administrator of juvenile court services.

35 In making the appointments, the governor shall endeavor to assure
36 that the commission membership includes adequate representation and
37 expertise relating to both the adult criminal justice system and the
38 juvenile justice system. In making the appointments, the governor

1 shall seek the recommendations of Washington prosecutors in respect to
2 the prosecuting attorney members, of the Washington state bar
3 association in respect to the defense attorney members, of the
4 association of superior court judges in respect to the members who are
5 judges, of the Washington association of sheriffs and police chiefs in
6 respect to the member who is a law enforcement officer, of the
7 Washington state association of counties in respect to the member who
8 is a county official, of the association of Washington cities in
9 respect to the member who is a city official, of the office of crime
10 victims advocacy and other organizations of crime victims in respect to
11 the member who is a victim of crime or a crime victims' advocate, and
12 of the Washington association of juvenile court administrators in
13 respect to the member who is an administrator of juvenile court
14 services.

15 (3)(a) All voting members of the commission, except ex officio
16 voting members, shall serve terms of three years and until their
17 successors are appointed and confirmed.

18 (b) The governor shall stagger the terms of the members appointed
19 under subsection (2)(j), (k), and (l) of this section by appointing one
20 of them for a term of one year, one for a term of two years, and one
21 for a term of three years.

22 (4) The speaker of the house of representatives and the president
23 of the senate may each appoint two nonvoting members to the commission,
24 one from each of the two largest caucuses in each house. The members
25 so appointed shall serve two-year terms, or until they cease to be
26 members of the house from which they were appointed, whichever occurs
27 first.

28 (5) The members of the commission shall be reimbursed for travel
29 expenses as provided in RCW 43.03.050 and 43.03.060. Legislative
30 members shall be reimbursed by their respective houses as provided
31 under RCW 44.04.120(~~(, as now existing or hereafter amended)~~). Members
32 shall be compensated in accordance with RCW 43.03.250.

33 **Sec. 312.** RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read
34 as follows:

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

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

1 (i) Unless another term of confinement applies, the court shall
2 impose a sentence within the standard sentence range established in RCW
3 9.94A.310;

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

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

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

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

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

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

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

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

15 (x) Section 303 of this act, relating to certain sex offenses;

16 (xi) RCW 9.94A.390, relating to exceptional sentences;

17 (~~(xi)~~) (xii) RCW 9.94A.400, relating to consecutive and
18 concurrent sentences.

19 (b) If a standard sentence range has not been established for the
20 offender's crime, the court shall impose a determinate sentence which
21 may include not more than one year of confinement; community service
22 work; until July 1, 2000, a term of community supervision not to exceed
23 one year and on and after July 1, 2000, a term of community custody not
24 to exceed one year, subject to conditions and sanctions as authorized
25 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
26 The court may impose a sentence which provides more than one year of
27 confinement if the court finds reasons justifying an exceptional
28 sentence as provided in RCW 9.94A.390.

29 (3) If the court imposes a sentence requiring confinement of thirty
30 days or less, the court may, in its discretion, specify that the
31 sentence be served on consecutive or intermittent days. A sentence
32 requiring more than thirty days of confinement shall be served on
33 consecutive days. Local jail administrators may schedule court-ordered
34 intermittent sentences as space permits.

35 (4) If a sentence imposed includes payment of a legal financial
36 obligation, it shall be imposed as provided in RCW 9.94A.140,
37 9.94A.142, and 9.94A.145.

38 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
39 court may not impose a sentence providing for a term of confinement or

1 community supervision, community placement, or community custody which
2 exceeds the statutory maximum for the crime as provided in chapter
3 9A.20 RCW.

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

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

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

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

24 (10) In any sentence of partial confinement, the court may require
25 the offender to serve the partial confinement in work release, in a
26 program of home detention, on work crew, or in a combined program of
27 work crew and home detention.

28 (11) In sentencing an offender convicted of a crime of domestic
29 violence, as defined in RCW 10.99.020, if the offender has a minor
30 child, or if the victim of the offense for which the offender was
31 convicted has a minor child, the court may, as part of any term of
32 community supervision, community placement, or community custody, order
33 the offender to participate in a domestic violence perpetrator program
34 approved under RCW 26.50.150.

35 **Sec. 313.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
36 as follows:

37 (1) A sentence that includes a term or terms of confinement
38 totaling more than one year shall be served in a facility or

1 institution operated, or utilized under contract, by the state. Except
2 as provided in subsection (3) or (5) of this section, a sentence of not
3 more than one year of confinement shall be served in a facility
4 operated, licensed, or utilized under contract, by the county, or if
5 home detention or work crew has been ordered by the court, in the
6 residence of either the offender or a member of the offender's
7 immediate family.

8 (2) If a county uses a state partial confinement facility for the
9 partial confinement of a person sentenced to confinement for not more
10 than one year, the county shall reimburse the state for the use of the
11 facility as provided in this subsection. The office of financial
12 management shall set the rate of reimbursement based upon the average
13 per diem cost per offender in the facility. The office of financial
14 management shall determine to what extent, if any, reimbursement shall
15 be reduced or eliminated because of funds provided by the legislature
16 to the department for the purpose of covering the cost of county use of
17 state partial confinement facilities. The office of financial
18 management shall reestablish reimbursement rates each even-numbered
19 year.

20 (3) A person who is sentenced for a felony to a term of not more
21 than one year, and who is committed or returned to incarceration in a
22 state facility on another felony conviction, either under the
23 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
24 shall serve all terms of confinement, including a sentence of not more
25 than one year, in a facility or institution operated, or utilized under
26 contract, by the state, consistent with the provisions of RCW
27 9.94A.400.

28 (4) Notwithstanding any other provision of this section, a sentence
29 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
30 of over one year, regardless of length, shall be served in a facility
31 or institution operated, or utilized under contract, by the state.

32 (5) Sentences imposed pursuant to section 303 of this act shall be
33 served in a facility or institution operated, or utilized under
34 contract, by the state.

35 **Sec. 314.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
36 as follows:

37 The court may impose a sentence outside the standard sentence range
38 for an offense if it finds, considering the purpose of this chapter,

1 that there are substantial and compelling reasons justifying an
2 exceptional sentence. Whenever a sentence outside the standard
3 sentence range is imposed, the court shall set forth the reasons for
4 its decision in written findings of fact and conclusions of law. A
5 sentence outside the standard sentence range shall be a determinate
6 sentence unless it is imposed on an offender sentenced under section
7 303 of this act. An exceptional sentence imposed on an offender
8 sentenced under section 303 of this act shall be to a minimum term set
9 by the court and a maximum term equal to the statutory maximum sentence
10 for the offense of conviction under chapter 9A.20 RCW.

11 If the sentencing court finds that an exceptional sentence outside
12 the standard sentence range should be imposed, the sentence is subject
13 to review only as provided for in RCW 9.94A.210(4).

14 A departure from the standards in RCW 9.94A.400 (1) and (2)
15 governing whether sentences are to be served consecutively or
16 concurrently is an exceptional sentence subject to the limitations in
17 this section, and may be appealed by the offender or the state as set
18 forth in RCW 9.94A.210 (2) through (6).

19 The following are illustrative factors which the court may consider
20 in the exercise of its discretion to impose an exceptional sentence.
21 The following are illustrative only and are not intended to be
22 exclusive reasons for exceptional sentences.

23 (1) Mitigating Circumstances

24 (a) To a significant degree, the victim was an initiator, willing
25 participant, aggressor, or provoker of the incident.

26 (b) Before detection, the defendant compensated, or made a good
27 faith effort to compensate, the victim of the criminal conduct for any
28 damage or injury sustained.

29 (c) The defendant committed the crime under duress, coercion,
30 threat, or compulsion insufficient to constitute a complete defense but
31 which significantly affected his or her conduct.

32 (d) The defendant, with no apparent predisposition to do so, was
33 induced by others to participate in the crime.

34 (e) The defendant's capacity to appreciate the wrongfulness of his
35 or her conduct, or to conform his or her conduct to the requirements of
36 the law, was significantly impaired. Voluntary use of drugs or alcohol
37 is excluded.

1 (f) The offense was principally accomplished by another person and
2 the defendant manifested extreme caution or sincere concern for the
3 safety or well-being of the victim.

4 (g) The operation of the multiple offense policy of RCW 9.94A.400
5 results in a presumptive sentence that is clearly excessive in light of
6 the purpose of this chapter, as expressed in RCW 9.94A.010.

7 (h) The defendant or the defendant's children suffered a continuing
8 pattern of physical or sexual abuse by the victim of the offense and
9 the offense is a response to that abuse.

10 (2) Aggravating Circumstances

11 (a) The defendant's conduct during the commission of the current
12 offense manifested deliberate cruelty to the victim.

13 (b) The defendant knew or should have known that the victim of the
14 current offense was particularly vulnerable or incapable of resistance
15 due to extreme youth, advanced age, disability, or ill health.

16 (c) The current offense was a violent offense, and the defendant
17 knew that the victim of the current offense was pregnant.

18 (d) The current offense was a major economic offense or series of
19 offenses, so identified by a consideration of any of the following
20 factors:

21 (i) The current offense involved multiple victims or multiple
22 incidents per victim;

23 (ii) The current offense involved attempted or actual monetary loss
24 substantially greater than typical for the offense;

25 (iii) The current offense involved a high degree of sophistication
26 or planning or occurred over a lengthy period of time; or

27 (iv) The defendant used his or her position of trust, confidence,
28 or fiduciary responsibility to facilitate the commission of the current
29 offense.

30 (e) The current offense was a major violation of the Uniform
31 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to
32 trafficking in controlled substances, which was more onerous than the
33 typical offense of its statutory definition: The presence of ANY of
34 the following may identify a current offense as a major VUCSA:

35 (i) The current offense involved at least three separate
36 transactions in which controlled substances were sold, transferred, or
37 possessed with intent to do so;

1 (ii) The current offense involved an attempted or actual sale or
2 transfer of controlled substances in quantities substantially larger
3 than for personal use;

4 (iii) The current offense involved the manufacture of controlled
5 substances for use by other parties;

6 (iv) The circumstances of the current offense reveal the offender
7 to have occupied a high position in the drug distribution hierarchy;

8 (v) The current offense involved a high degree of sophistication or
9 planning, occurred over a lengthy period of time, or involved a broad
10 geographic area of disbursement; or

11 (vi) The offender used his or her position or status to facilitate
12 the commission of the current offense, including positions of trust,
13 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
14 other medical professional).

15 (f) The current offense included a finding of sexual motivation
16 pursuant to RCW 9.94A.127.

17 (g) The offense was part of an ongoing pattern of sexual abuse of
18 the same victim under the age of eighteen years manifested by multiple
19 incidents over a prolonged period of time.

20 (h) The current offense involved domestic violence, as defined in
21 RCW 10.99.020, and one or more of the following was present:

22 (i) The offense was part of an ongoing pattern of psychological,
23 physical, or sexual abuse of the victim manifested by multiple
24 incidents over a prolonged period of time;

25 (ii) The offense occurred within sight or sound of the victim's or
26 the offender's minor children under the age of eighteen years; or

27 (iii) The offender's conduct during the commission of the current
28 offense manifested deliberate cruelty or intimidation of the victim.

29 (i) The operation of the multiple offense policy of RCW 9.94A.400
30 results in a presumptive sentence that is clearly too lenient in light
31 of the purpose of this chapter, as expressed in RCW 9.94A.010.

32 (j) The defendant's prior unscored misdemeanor or prior unscored
33 foreign criminal history results in a presumptive sentence that is
34 clearly too lenient in light of the purpose of this chapter, as
35 expressed in RCW 9.94A.010.

36 (k) The offense resulted in the pregnancy of a child victim of
37 rape.

38 (l) The defendant knew that the victim of the current offense was
39 a youth who was not residing with a legal custodian and the defendant

1 established or promoted the relationship for the primary purpose of
2 victimization.

3 **Sec. 315.** RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read
4 as follows:

5 (1) The following minimum terms of total confinement are mandatory
6 and shall not be varied or modified under RCW 9.94A.390:

7 (a) An offender convicted of the crime of murder in the first
8 degree shall be sentenced to a term of total confinement not less than
9 twenty years.

10 (b) An offender convicted of the crime of assault in the first
11 degree or assault of a child in the first degree where the offender
12 used force or means likely to result in death or intended to kill the
13 victim shall be sentenced to a term of total confinement not less than
14 five years.

15 (c) An offender convicted of the crime of rape in the first degree
16 shall be sentenced to a term of total confinement not less than five
17 years.

18 (d) An offender convicted of the crime of sexually violent predator
19 escape shall be sentenced to a minimum term of total confinement not
20 less than sixty months.

21 (2) During such minimum terms of total confinement, no offender
22 subject to the provisions of this section is eligible for community
23 custody, earned release time, furlough, home detention, partial
24 confinement, work crew, work release, or any other form of early
25 release authorized under RCW 9.94A.150, or any other form of authorized
26 leave of absence from the correctional facility while not in the direct
27 custody of a corrections officer. The provisions of this subsection
28 shall not apply: (a) In the case of an offender in need of emergency
29 medical treatment; (b) for the purpose of commitment to an inpatient
30 treatment facility in the case of an offender convicted of the crime of
31 rape in the first degree; or (c) for an extraordinary medical placement
32 when authorized under RCW 9.94A.150(4).

33 **Sec. 316.** RCW 9.94A.670 and 2000 c 28 s 20 are each amended to
34 read as follows:

35 (1) Unless the context clearly requires otherwise, the definitions
36 in this subsection apply to this section only.

1 (a) "Sex offender treatment provider" or "treatment provider" means
2 a certified sex offender treatment provider as defined in RCW
3 18.155.020.

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

9 (2) An offender is eligible for the special sex offender sentencing
10 alternative if:

11 (a) The offender has been convicted of a sex offense other than a
12 violation of RCW 9A.44.050 or a sex offense that is also a serious
13 violent offense;

14 (b) The offender has no prior convictions for a sex offense as
15 defined in RCW 9.94A.030 or any other felony sex offenses in this or
16 any other state; and

17 (c) The offender's standard sentence range for the offense includes
18 the possibility of confinement for less than eleven years.

19 (3) If the court finds the offender is eligible for this
20 alternative, the court, on its own motion or the motion of the state or
21 the offender, may order an examination to determine whether the
22 offender is amenable to treatment.

23 (a) The report of the examination shall include at a minimum the
24 following:

25 (i) The offender's version of the facts and the official version of
26 the facts;

27 (ii) The offender's offense history;

28 (iii) An assessment of problems in addition to alleged deviant
29 behaviors;

30 (iv) The offender's social and employment situation; and

31 (v) Other evaluation measures used.

32 The report shall set forth the sources of the examiner's information.

33 (b) The examiner shall assess and report regarding the offender's
34 amenability to treatment and relative risk to the community. A
35 proposed treatment plan shall be provided and shall include, at a
36 minimum:

37 (i) Frequency and type of contact between offender and therapist;

38 (ii) Specific issues to be addressed in the treatment and
39 description of planned treatment modalities;

1 (iii) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members
3 and others;

4 (iv) Anticipated length of treatment; and

5 (v) Recommended crime-related prohibitions.

6 (c) The court on its own motion may order, or on a motion by the
7 state shall order, a second examination regarding the offender's
8 amenability to treatment. The examiner shall be selected by the party
9 making the motion. The offender shall pay the cost of any second
10 examination ordered unless the court finds the defendant to be indigent
11 in which case the state shall pay the cost.

12 (4) After receipt of the reports, the court shall consider whether
13 the offender and the community will benefit from use of this
14 alternative and consider the victim's opinion whether the offender
15 should receive a treatment disposition under this section. If the
16 court determines that this alternative is appropriate, the court shall
17 then impose a sentence or, pursuant to section 303 of this act, a
18 minimum term of sentence, within the standard sentence range. If the
19 sentence imposed is less (~~then~~ [~~than~~]) than eleven years of
20 confinement, the court may suspend the execution of the sentence and
21 impose the following conditions of suspension:

22 (a) The court shall place the offender on community custody for the
23 length of the suspended sentence, the length of the maximum term
24 imposed pursuant to section 303 of this act, or three years, whichever
25 is greater, and require the offender to comply with any conditions
26 imposed by the department under RCW 9.94A.720.

27 (b) The court shall order treatment for any period up to three
28 years in duration. The court, in its discretion, shall order
29 outpatient sex offender treatment or inpatient sex offender treatment,
30 if available. A community mental health center may not be used for
31 such treatment unless it has an appropriate program designed for sex
32 offender treatment. The offender shall not change sex offender
33 treatment providers or treatment conditions without first notifying the
34 prosecutor, the community corrections officer, and the court. If any
35 party or the court objects to a proposed change, the offender shall not
36 change providers or conditions without court approval after a hearing.

37 (5) As conditions of the suspended sentence, the court may impose
38 one or more of the following:

1 (a) Up to six months of confinement, not to exceed the sentence
2 range of confinement for that offense;

3 (b) Crime-related prohibitions;

4 (c) Require the offender to devote time to a specific employment or
5 occupation;

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

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

11 (f) Pay all court-ordered legal financial obligations as provided
12 in RCW 9.94A.030;

13 (g) Perform community service work; or

14 (h) Reimburse the victim for the cost of any counseling required as
15 a result of the offender's crime.

16 (6) At the time of sentencing, the court shall set a treatment
17 termination hearing for three months prior to the anticipated date for
18 completion of treatment.

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

26 (8) Prior to the treatment termination hearing, the treatment
27 provider and community corrections officer shall submit written reports
28 to the court and parties regarding the offender's compliance with
29 treatment and monitoring requirements, and recommendations regarding
30 termination from treatment, including proposed community custody
31 conditions. Either party may request, and the court may order, another
32 evaluation regarding the advisability of termination from treatment.
33 The offender shall pay the cost of any additional evaluation ordered
34 unless the court finds the offender to be indigent in which case the
35 state shall pay the cost. At the treatment termination hearing the
36 court may: (a) Modify conditions of community custody, and either (b)
37 terminate treatment, or (c) extend treatment for up to the remaining
38 period of community custody.

1 (9) If a violation of conditions occurs during community custody,
2 the department shall either impose sanctions as provided for in RCW
3 9.94A.205(2)(a) or refer the violation to the court and recommend
4 revocation of the suspended sentence as provided for in subsections (6)
5 and (8) of this section.

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

13 (11) Examinations and treatment ordered pursuant to this subsection
14 shall only be conducted by sex offender treatment providers certified
15 by the department of health pursuant to chapter 18.155 RCW unless the
16 court finds that:

17 (a) The offender has already moved to another state or plans to
18 move to another state for reasons other than circumventing the
19 certification requirements; or

20 (b)(i) No certified providers are available for treatment within a
21 reasonable geographical distance of the offender's home; and

22 (ii) The evaluation and treatment plan comply with this section and
23 the rules adopted by the department of health.

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

27 NEW SECTION. **Sec. 317.** A new section is added to chapter 9.95 RCW
28 to read as follows:

29 (1) "Board" means the indeterminate sentence review board.

30 (2) "Community custody" means that portion of an offender's
31 sentence subject to controls including crime-related prohibitions and
32 affirmative conditions from the court, the board, or the department of
33 corrections based on risk to community safety, that is served under
34 supervision in the community, and which may be modified or revoked for
35 violations of release conditions.

36 (3) "Crime-related prohibition" has the meaning defined in RCW
37 9.94A.030.

38 (4) "Department" means the department of corrections.

1 (5) "Parole" means that portion of a person's sentence for a crime
2 committed before July 1, 1984, served on conditional release in the
3 community subject to board controls and revocation and under
4 supervision of the department.

5 (6) "Secretary" means the secretary of the department of
6 corrections or his or her designee.

7 **Sec. 318.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read
8 as follows:

9 The board shall meet at ~~((the penitentiary and the reformatory))~~
10 major state correctional institutions at such times as may be necessary
11 for a full and complete study of the cases of all convicted persons
12 whose durations of confinement are to be determined by it ~~((or))~~; whose
13 community custody supervision is under the board's authority; or whose
14 applications for parole come before it. Other times and places of
15 meetings may also be fixed by the board.

16 The superintendents of the different institutions shall provide
17 suitable quarters for the board and assistants while in the discharge
18 of their duties.

19 **Sec. 319.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read
20 as follows:

21 When a person, whose crime was committed before July 1, 1984, is
22 convicted of any felony, except treason, murder in the first degree, or
23 carnal knowledge of a child under ten years, and a new trial is not
24 granted, the court shall sentence such person to the penitentiary, or,
25 if the law allows and the court sees fit to exercise such discretion,
26 to the reformatory, and shall fix the maximum term of such person's
27 sentence only.

28 The maximum term to be fixed by the court shall be the maximum
29 provided by law for the crime of which such person was convicted, if
30 the law provides for a maximum term. If the law does not provide a
31 maximum term for the crime of which such person was convicted the court
32 shall fix such maximum term, which may be for any number of years up to
33 and including life imprisonment but in any case where the maximum term
34 is fixed by the court it shall be fixed at not less than twenty years.

35 **Sec. 320.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read
36 as follows:

1 (1) When the court commits a convicted person to the department of
2 corrections on or after July 1, 1986, for an offense committed before
3 July 1, 1984, the court shall, at the time of sentencing or revocation
4 of probation, fix the minimum term. The term so fixed shall not exceed
5 the maximum sentence provided by law for the offense of which the
6 person is convicted.

7 The court shall attempt to set the minimum term reasonably
8 consistent with the purposes, standards, and sentencing ranges adopted
9 under RCW 9.94A.040, but the court is subject to the same limitations
10 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
11 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
12 court's minimum term decision is subject to review to the same extent
13 as a minimum term decision by the parole board before July 1, 1986.

14 Thereafter, the expiration of the minimum term set by the court
15 minus any time credits earned under RCW 9.95.070 and 9.95.110
16 constitutes the parole eligibility review date, at which time the board
17 may consider the convicted person for parole under RCW 9.95.100 and
18 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
19 board's authority to reduce or increase the minimum term, once set by
20 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
21 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

22 (2) Not less than ninety days prior to the expiration of the
23 minimum term of a person sentenced under section 303 of this act, for
24 a sex offense committed on or after July 1, 2001, less any time credits
25 permitted by statute, the board shall review the person for conditional
26 release to community custody as provided in section 306 of this act.
27 If the board does not release the person, it shall set a new minimum
28 term not to exceed an additional two years. The board shall review the
29 person again not less than ninety days prior to the expiration of the
30 new minimum term.

31 **Sec. 321.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to
32 read as follows:

33 (1) The board shall cause to be prepared criteria for duration of
34 confinement, release on parole, and length of parole for persons
35 committed to prison for crimes committed before July 1, 1984.

36 The proposed criteria should take into consideration RCW
37 9.95.009(2). Before submission to the governor, the board shall
38 solicit comments and review on their proposed criteria for parole

1 release. These proposed criteria shall be submitted for consideration
2 by the 1987 legislature.

3 (2) Persons committed to the department of corrections and who are
4 under the authority of the board for crimes committed on or after July
5 1, 2001, are subject to the provisions for duration of confinement,
6 release to community custody, and length of community custody
7 established in sections 303 through 310 of this act.

8 **Sec. 322.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read
9 as follows:

10 If the sentence of a person so convicted is not suspended by the
11 court, the superintendent of (~~the penitentiary or the superintendent~~
12 ~~of the reformatory~~) a major state correctional institution shall
13 receive such person, if committed to his or her institution, and
14 imprison (~~him~~) the person until released under the provisions of this
15 chapter, under section 306 of this act, upon the completion of the
16 statutory maximum sentence, or through the action of the governor.

17 **Sec. 323.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read
18 as follows:

19 Such statement shall be signed by the prosecuting attorney and
20 approved by the judge by whom the judgment was rendered and shall be
21 delivered to the sheriff, traveling guard, department of corrections
22 personnel, or other officer executing the sentence, and a copy of such
23 statement shall be furnished to the defendant or his or her attorney.
24 Such officer shall deliver the statement, at the time of the prisoner's
25 commitment, to the superintendent of the institution to which such
26 prisoner has been (~~sentenced and~~) committed. The superintendent
27 shall make such statement available for use by the board (~~of prison~~
28 ~~terms and paroles~~)).

29 **Sec. 324.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to
30 read as follows:

31 At any time after the board (or the court after July 1, 1986) has
32 determined the minimum term of confinement of any person subject to
33 confinement in a state correctional institution for a crime committed
34 before July 1, 1984, the board may request the superintendent of such
35 correctional institution to conduct a full review of such person's
36 prospects for rehabilitation and report to the board the facts of such

1 review and the resulting findings. Upon the basis of such report and
2 such other information and investigation that the board deems
3 appropriate, the board may redetermine and refix such convicted
4 person's minimum term of confinement whether the term was set by the
5 board or the court.

6 The board shall not reduce a person's minimum term of confinement
7 unless the board has received from the department of corrections all
8 institutional conduct reports relating to the person.

9 **Sec. 325.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read
10 as follows:

11 The indeterminate sentence review board is hereby granted
12 authority, in the event of a declaration by the governor that a war
13 emergency exists, including a general mobilization, and for the
14 duration thereof only, to reduce downward the minimum term, as set by
15 the board, of any inmate under the jurisdiction of the board confined
16 in a state correctional facility, who will be accepted by and inducted
17 into the armed services: PROVIDED, That a reduction downward shall not
18 be made under this section for those inmates who are confined for
19 treason, murder in the first degree or carnal knowledge of a female
20 child under ten years: AND PROVIDED FURTHER, That no such inmate shall
21 be released under this section who is (~~found to be a sexual psychopath~~
22 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being
23 considered for civil commitment as a sexually violent predator under
24 chapter 71.09 RCW or was sentenced under section 303 of this act for a
25 crime committed on or after July 1, 2001.

26 **Sec. 326.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read
27 as follows:

28 (1) In order to minimize the trauma to the victim, the court may
29 attach conditions on release of (~~a defendant~~) an offender under RCW
30 9.95.062, convicted of a crime committed before July 1, 1984, regarding
31 the whereabouts of the defendant, contact with the victim, or other
32 conditions.

33 (2) Offenders released under section 306 of this act are subject to
34 crime-related prohibitions and affirmative conditions established by
35 the court, the department of corrections, or the board pursuant to RCW
36 9.94A.715 and sections 303 through 310 of this act.

1 **Sec. 327.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to
2 read as follows:

3 (1) Every prisoner, convicted of a crime committed before July 1,
4 1984, who has a favorable record of conduct at the penitentiary or the
5 reformatory, and who performs in a faithful, diligent, industrious,
6 orderly and peaceable manner the work, duties, and tasks assigned to
7 him or her to the satisfaction of the superintendent of the
8 penitentiary or reformatory, and in whose behalf the superintendent of
9 the penitentiary or reformatory files a report certifying that his or
10 her conduct and work have been meritorious and recommending allowance
11 of time credits to him or her, shall upon, but not until, the adoption
12 of such recommendation by the indeterminate sentence review board, be
13 allowed time credit reductions from the term of imprisonment fixed by
14 the board.

15 (2) Offenders sentenced under section 303 of this act for a crime
16 committed on or after July 1, 2001, are subject to the earned release
17 provisions for sex offenders established in RCW 9.94A.150.

18 **Sec. 328.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read
19 as follows:

20 In case any (~~convicted~~) person convicted of a crime committed
21 before July 1, 1984, and under the jurisdiction of the indeterminate
22 sentence review board undergoing sentence in a state correctional
23 (~~facility~~) institution commits any infractions of the rules and
24 regulations of the institution, the board may revoke any order
25 theretofore made determining the length of time such convicted person
26 shall be imprisoned, including the forfeiture of all or a portion of
27 credits earned or to be earned, pursuant to the provisions of RCW
28 9.95.110, and make a new order determining the length of time the
29 person shall serve, not exceeding the maximum penalty provided by law
30 for the crime for which the person was convicted, or the maximum fixed
31 by the court. Such revocation and redetermination shall not be had
32 except upon a hearing before the indeterminate sentence review board.
33 At such hearing the convicted person shall be present and entitled to
34 be heard and may present evidence and witnesses in his or her behalf.

35 **Sec. 329.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to
36 read as follows:

1 (1) The board shall require of every able bodied (~~convicted person~~
2 ~~imprisoned in the penitentiary or the reformatory~~) offender confined
3 in a state correctional institution for a crime committed before July
4 1, 1984, as many hours of faithful labor in each and every day during
5 his or her term of imprisonment as shall be prescribed by the rules and
6 regulations of the institution in which he or she is confined.

7 (2) Offenders sentenced under section 303 of this act for crimes
8 committed on or after July 1, 2001, shall perform work or other
9 programming as required by the department of corrections during their
10 term of confinement.

11 **Sec. 330.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to
12 read as follows:

13 Any (~~convicted~~) person convicted of a felony committed before
14 July 1, 1984, and undergoing sentence in (~~the penitentiary or the~~
15 reformatory) a state correctional institution, not sooner released
16 under the provisions of this chapter, shall, in accordance with the
17 provisions of law, be discharged from custody on serving the maximum
18 punishment provided by law for the offense of which such person was
19 convicted, or the maximum term fixed by the court where the law does
20 not provide for a maximum term. The board shall not, however, until
21 his or her maximum term expires, release a prisoner, unless in its
22 opinion his or her rehabilitation has been complete and he or she is a
23 fit subject for release.

24 **Sec. 331.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to
25 read as follows:

26 (1) The board may permit (~~a convicted person~~) an offender
27 convicted of a crime committed before July 1, 1984, to leave the
28 buildings and enclosures of (~~the penitentiary or the reformatory~~) a
29 state correctional institution on parole, after such convicted person
30 has served the period of confinement fixed for him or her by the board,
31 less time credits for good behavior and diligence in work: PROVIDED,
32 That in no case shall an inmate be credited with more than one-third of
33 his or her sentence as fixed by the board.

34 The board may establish rules and regulations under which (~~a~~
35 ~~convicted person~~) an offender may be allowed to leave the confines of
36 (~~the penitentiary or the reformatory~~) a state correctional

1 institution on parole, and may return such person to the confines of
2 the institution from which he or she was paroled, at its discretion.

3 (2) The board may permit an offender convicted of a crime committed
4 on or after July 1, 2001, and sentenced under section 303 of this act,
5 to leave a state correctional institution on community custody
6 according to the provisions of sections 303 through 310 of this act.
7 The person may be returned to the institution following a violation of
8 his or her conditions of release to community custody pursuant to the
9 hearing provisions of section 309 of this act.

10 **Sec. 332.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read
11 as follows:

12 The indeterminate sentence review board is hereby granted authority
13 to parole any person sentenced to the custody of the department of
14 corrections, under a mandatory life sentence for a crime committed
15 ~~((prior to))~~ before July 1, 1984, except those persons sentenced to
16 life without the possibility of parole. No such person shall be
17 granted parole unless the person has been continuously confined therein
18 for a period of twenty consecutive years less earned good time:
19 PROVIDED, That no such person shall be released under parole who is
20 ~~((found to be a sexual psychopath under the provisions of and as~~
21 ~~defined by chapter 71.06 RCW))~~ subject to civil commitment as a
22 sexually violent predator under chapter 71.09 RCW.

23 **Sec. 333.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to
24 read as follows:

25 Whenever the board or a ~~((probation and parole))~~ community
26 corrections officer of this state has reason to believe a ~~((convicted))~~
27 person convicted of a crime committed before July 1, 1984, has breached
28 a condition of his or her parole or violated the law of any state where
29 he or she may then be or the rules and regulations of the board, any
30 ~~((probation and parole))~~ community corrections officer of this state
31 may arrest or cause the arrest and detention and suspension of parole
32 of such convicted person pending a determination by the board whether
33 the parole of such convicted person shall be revoked. All facts and
34 circumstances surrounding the violation by such convicted person shall
35 be reported to the board by the ~~((probation and parole))~~ community
36 corrections officer, with recommendations. The board, after
37 consultation with the secretary of corrections, shall make all rules

1 and regulations concerning procedural matters, which shall include the
2 time when state (~~(probation and parole)~~) community corrections officers
3 shall file with the board reports required by this section, procedures
4 pertaining thereto and the filing of such information as may be
5 necessary to enable the board to perform its functions under this
6 section. On the basis of the report by the (~~(probation and parole)~~)
7 community corrections officer, or at any time upon its own discretion,
8 the board may revise or modify the conditions of parole or order the
9 suspension of parole by the issuance of a written order bearing its
10 seal, which order shall be sufficient warrant for all peace officers to
11 take into custody any convicted person who may be on parole and retain
12 such person in their custody until arrangements can be made by the
13 board for his or her return to a state correctional institution for
14 convicted felons. Any such revision or modification of the conditions
15 of parole or the order suspending parole shall be personally served
16 upon the parolee.

17 Any parolee arrested and detained in physical custody by the
18 authority of a state (~~(probation and parole)~~) community corrections
19 officer, or upon the written order of the board, shall not be released
20 from custody on bail or personal recognizance, except upon approval of
21 the board and the issuance by the board of an order of reinstatement on
22 parole on the same or modified conditions of parole.

23 All chiefs of police, marshals of cities and towns, sheriffs of
24 counties, and all police, prison, and peace officers and constables
25 shall execute any such order in the same manner as any ordinary
26 criminal process.

27 Whenever a paroled prisoner is accused of a violation of his or her
28 parole, other than the commission of, and conviction for, a felony or
29 misdemeanor under the laws of this state or the laws of any state where
30 he or she may then be, he or she shall be entitled to a fair and
31 impartial hearing of such charges within thirty days from the time that
32 he or she is served with charges of the violation of conditions of
33 (~~(his)~~) parole after his or her arrest and detention. The hearing
34 shall be held before one or more members of the board at a place or
35 places, within this state, reasonably near the site of the alleged
36 violation or violations of parole.

37 In the event that the board suspends a parole by reason of an
38 alleged parole violation or in the event that a parole is suspended
39 pending the disposition of a new criminal charge, the board shall have

1 the power to nullify the order of suspension and reinstate the
2 individual to parole under previous conditions or any new conditions
3 that the board may determine advisable. Before the board shall nullify
4 an order of suspension and reinstate a parole they shall have
5 determined that the best interests of society and the individual shall
6 best be served by such reinstatement rather than a return to a penal
7 institution.

8 **Sec. 334.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to
9 read as follows:

10 (1) For offenders convicted of crimes committed before July 1,
11 1984, within fifteen days from the date of notice to the department of
12 corrections of the arrest and detention of the alleged parole violator,
13 he or she shall be personally served by a state ((probation and
14 parole)) community corrections officer with a copy of the factual
15 allegations of the violation of the conditions of parole, and, at the
16 same time shall be advised of his or her right to an on-site parole
17 revocation hearing and of his or her rights and privileges as provided
18 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after
19 service of the allegations of violations of the conditions of parole
20 and the advice of rights may waive the on-site parole revocation
21 hearing as provided in RCW 9.95.120, and admit one or more of the
22 alleged violations of the conditions of parole. If the board accepts
23 the waiver it shall either, (1) reinstate the parolee on parole under
24 the same or modified conditions, or (2) revoke the parole of the
25 parolee and enter an order of parole revocation and return to state
26 custody. A determination of a new minimum sentence shall be made
27 within thirty days of return to state custody which shall not exceed
28 the maximum sentence as provided by law for the crime of which the
29 parolee was originally convicted or the maximum fixed by the court.

30 If the waiver made by the parolee is rejected by the board it shall
31 hold an on-site parole revocation hearing under the provisions of RCW
32 9.95.120 through 9.95.126.

33 (2) Offenders sentenced under section 303 of this act are subject
34 to the violation hearing process established in section 309 of this
35 act.

36 **Sec. 335.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to
37 read as follows:

1 (1) At any on-site parole revocation hearing for a person convicted
2 of a crime committed before July 1, 1984, the alleged parole violator
3 shall be entitled to be represented by an attorney of his or her own
4 choosing and at his or her own expense, except, upon the presentation
5 of satisfactory evidence of indigency and the request for the
6 appointment of an attorney by the alleged parole violator, the board
7 may cause the appointment of an attorney to represent the alleged
8 parole violator to be paid for at state expense, and, in addition, the
9 board may assume all or such other expenses in the presentation of
10 evidence on behalf of the alleged parole violator as it may have
11 authorized: PROVIDED, That funds are available for the payment of
12 attorneys' fees and expenses. Attorneys for the representation of
13 alleged parole violators in on-site hearings shall be appointed by the
14 superior courts for the counties wherein the on-site parole revocation
15 hearing is to be held and such attorneys shall be compensated in such
16 manner and in such amount as shall be fixed in a schedule of fees
17 adopted by rule of the board.

18 (2) The rights of offenders sentenced under section 303 of this act
19 are defined in section 309 of this act.

20 **Sec. 336.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to
21 read as follows:

22 In conducting on-site parole or community custody revocation
23 hearings or community custody violations hearings, the board shall have
24 the authority to administer oaths and affirmations, examine witnesses,
25 receive evidence, and issue subpoenas for the compulsory attendance of
26 witnesses and the production of evidence for presentation at such
27 hearings. Subpoenas issued by the board shall be effective throughout
28 the state. Witnesses in attendance at any on-site parole or community
29 custody revocation hearing shall be paid the same fees and allowances,
30 in the same manner and under the same conditions as provided for
31 witnesses in the courts of the state in accordance with chapter 2.40
32 RCW (~~as now or hereafter amended~~). If any person fails or refuses to
33 obey a subpoena issued by the board, or obeys the subpoena but refuses
34 to testify concerning any matter under examination at the hearing, the
35 board may petition the superior court of the county where the hearing
36 is being conducted for enforcement of the subpoena: PROVIDED, That an
37 offer to pay statutory fees and mileage has been made to the witness at
38 the time of the service of the subpoena. The petition shall be

1 accompanied by a copy of the subpoena and proof of service, and shall
2 set forth in what specific manner the subpoena has not been complied
3 with, and shall ask an order of the court to compel the witness to
4 appear and testify before the board. The court, upon such petition,
5 shall enter an order directing the witness to appear before the court
6 at a time and place to be fixed in such order and then and there to
7 show cause why he or she has not responded to the subpoena or has
8 refused to testify. A copy of the order shall be served upon the
9 witness. If it appears to the court that the subpoena was properly
10 issued and that the particular questions which the witness refuses to
11 answer are reasonable and relevant, the court shall enter an order that
12 the witness appear at the time and place fixed in the order and testify
13 or produce the required papers, and on failing to obey ((said)) the
14 order, the witness shall be dealt with as for contempt of court.

15 **Sec. 337.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to
16 read as follows:

17 At all on-site parole revocation hearings for offenders convicted
18 of crimes committed before July 1, 1984, the ((probation and parole))
19 community corrections officers of the department of corrections, having
20 made the allegations of the violations of the conditions of parole, may
21 be represented by the attorney general. The attorney general may make
22 independent recommendations to the board about whether the violations
23 constitute sufficient cause for the revocation of the parole and the
24 return of the parolee to a state correctional institution for convicted
25 felons. The hearings shall be open to the public unless the board for
26 specifically stated reasons closes the hearing in whole or in part.
27 The hearings shall be recorded either manually or by a mechanical
28 recording device. An alleged parole violator may be requested to
29 testify and any such testimony shall not be used against him or her in
30 any criminal prosecution. The board shall adopt rules governing the
31 formal and informal procedures authorized by this chapter and make
32 rules of practice before the board in on-site parole revocation
33 hearings, together with forms and instructions.

34 **Sec. 338.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read
35 as follows:

36 After the on-site parole revocation hearing for a person convicted
37 of a crime committed before July 1, 1984, has been concluded, the

1 members of the board having heard the matter shall enter their decision
2 of record within ten days, and make findings and conclusions upon the
3 allegations of the violations of the conditions of parole. If the
4 member, or members having heard the matter, should conclude that the
5 allegations of violation of the conditions of parole have not been
6 proven by a preponderance of the evidence, or, those which have been
7 proven by a preponderance of the evidence are not sufficient cause for
8 the revocation of parole, then the parolee shall be reinstated on
9 parole on the same or modified conditions of parole. For parole
10 violations not resulting in new convictions, modified conditions of
11 parole may include sanctions according to an administrative sanction
12 grid. If the member or members having heard the matter should conclude
13 that the allegations of violation of the conditions of parole have been
14 proven by a preponderance of the evidence and constitute sufficient
15 cause for the revocation of parole, then such member or members shall
16 enter an order of parole revocation and return the parole violator to
17 state custody. Within thirty days of the return of such parole
18 violator to a state correctional institution (~~((for convicted felons))~~)
19 the board shall enter an order determining a new minimum term not
20 exceeding the maximum penalty provided by law for the crime for which
21 the parole violator was originally convicted or the maximum fixed by
22 the court.

23 **Sec. 339.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read
24 as follows:

25 All officers and employees of the state, counties, cities and
26 political subdivisions of this state shall cooperate with the board
27 (~~((of prison terms and paroles))~~) in making available suitable facilities
28 for conducting parole or community custody revocation hearings.

29 **Sec. 340.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read
30 as follows:

31 From and after the suspension, cancellation, or revocation of the
32 parole of any (~~((convicted person))~~) offender convicted of a crime
33 committed before July 1, 1984, and until his or her return to custody
34 the (~~((convicted person))~~) offender shall be deemed an escapee and a
35 fugitive from justice. The indeterminate sentence review board may
36 deny credit against the maximum sentence any time during which he or
37 she is an escapee and fugitive from justice.

1 **Sec. 341.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read
2 as follows:

3 (1) The ~~((indeterminate sentence review))~~ board shall cause a
4 complete record to be kept of every prisoner under the jurisdiction of
5 the board released on parole or community custody. Such records shall
6 be organized in accordance with the most modern methods of filing and
7 indexing so that there will be always immediately available complete
8 information about each such prisoner. Subject to information sharing
9 provisions related to mentally ill offenders, the end of sentence
10 review committee, and the department of corrections, the board may make
11 rules as to the privacy of such records and their use by others than
12 the board and its staff. ~~((In determining the rules regarding~~
13 ~~dissemination of information regarding convicted))~~ Sex offenders
14 convicted of crimes committed before July 1, 1984, who are under the
15 board's jurisdiction((7)) shall be subject to the determinations of the
16 end of sentence review committee regarding risk level and subject to
17 sex offender registration and community notification. The board
18 ~~((shall consider the provisions of section 116, chapter 3, Laws of 1990~~
19 ~~and RCW 4.24.550 and))~~ shall be immune from liability for the release
20 of information concerning sex offenders as provided in RCW 4.24.550.

21 The superintendents of state correctional facilities and all
22 officers and employees thereof and all other public officials shall at
23 all times cooperate with the board and furnish to the board, its
24 officers, and employees such information as may be necessary to enable
25 it to perform its functions, and such superintendents and other
26 employees shall at all times give the members of the board, its
27 officers, and employees free access to all prisoners confined in the
28 state correctional facilities.

29 (2) Offenders sentenced under section 303 of this act shall be
30 subject to the determinations of the end of sentence review committee
31 regarding risk level and subject to sex offender registration and
32 community notification.

33 (3) The end of sentence review committee shall make law enforcement
34 notifications for offenders under board jurisdiction on the same basis
35 that it notifies law enforcement regarding offenders sentenced under
36 chapter 9.94A RCW for crimes committed after July 1, 1984.

37 **Sec. 342.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read
38 as follows:

1 The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall
2 apply to all convicted persons serving time in a state correctional
3 facility for crimes committed before July 1, 1984, to the end that at
4 all times the same provisions relating to sentences, imprisonments, and
5 paroles of prisoners shall apply to all inmates thereof.

6 **Sec. 343.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to
7 read as follows:

8 In order to carry out the provisions of this chapter 9.95 RCW the
9 parole officers working under the supervision of the secretary of
10 corrections shall be known as ((~~probation and parole~~)) community
11 corrections officers.

12 **Sec. 344.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to
13 read as follows:

14 The board may deputize any person (regularly employed by another
15 state) to act as an officer and agent of this state in effecting the
16 return of any person convicted of a crime committed before July 1,
17 1984, who has violated the terms and conditions of parole or probation
18 as granted by this state. In any matter relating to the return of such
19 a person, any agent so deputized shall have all the powers of a police
20 officer of this state.

21 **Sec. 345.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read
22 as follows:

23 Any deputization pursuant to this statute with regard to an
24 offender convicted of a crime committed before July 1, 1984, shall be
25 in writing and any person authorized to act as an agent of this state
26 pursuant hereto shall carry formal evidence of his or her deputization
27 and shall produce the same upon demand.

28 **Sec. 346.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to
29 read as follows:

30 The board may enter into contracts with similar officials of any
31 other state or states for the purpose of sharing an equitable portion
32 of the cost of effecting the return of any person who has violated the
33 terms and conditions of parole ((~~or~~)), probation, or community custody
34 as granted by this state.

1 **Sec. 347.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read
2 as follows:

3 The purpose of RCW 9.95.310 through 9.95.370 is to provide
4 necessary assistance, other than assistance which is authorized to be
5 provided under the vocational rehabilitation laws, Title 28A RCW, under
6 the public assistance laws, Title 74 RCW or the (~~department of~~)
7 employment security department or other state agency, for parolees,
8 inmates assigned to work/training release facilities, discharged
9 prisoners and persons convicted of a felony committed before July 1,
10 1984, and granted probation in need and whose capacity to earn a living
11 under these circumstances is impaired; and to help such persons attain
12 self-care and/or self-support for rehabilitation and restoration to
13 independence as useful citizens as rapidly as possible thereby reducing
14 the number of returnees to the institutions of this state to the
15 benefit of such person and society as a whole.

16 **Sec. 348.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read
17 as follows:

18 The secretary of corrections or his or her designee may provide to
19 any parolee, inmate assigned to a work/training release facility,
20 discharged prisoner and persons convicted of a felony committed before
21 July 1, 1984, and granted probation in need and without necessary
22 means, from any funds legally available therefor, such reasonable sums
23 as he or she deems necessary for the subsistence of such person and his
24 or her family until such person has become gainfully employed. Such
25 aid may be made under such terms and conditions, and through local
26 parole or probation officers if necessary, as the secretary of
27 corrections or his or her designee may require and shall be
28 supplementary to any moneys which may be provided under public
29 assistance or from any other source.

30 **Sec. 349.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read
31 as follows:

32 Any funds in the hands of the department of corrections, or which
33 may come into its hands, which belong to discharged prisoners, inmates
34 assigned to work/training release facilities, parolees or persons
35 convicted of a felony and granted probation who absconded, or whose
36 whereabouts are unknown, shall be deposited in the community services
37 revolving fund. Said funds shall be used to defray the expenses of

1 clothing and other necessities and for transporting discharged
2 prisoners, inmates assigned to work/training release facilities,
3 parolees and persons convicted of a felony and granted probation who
4 are without means to secure the same. All payments disbursed from
5 these funds shall be repaid, whenever possible, by discharged
6 prisoners, inmates assigned to work/training release facilities,
7 parolees and persons convicted of a felony and granted probation for
8 whose benefit they are made. Whenever any money belonging to such
9 persons is so paid into the revolving fund, it shall be repaid to them
10 in accordance with law if a claim therefor is filed with the department
11 of corrections within five years of deposit into said fund and upon a
12 clear showing of a legal right of such claimant to such money. This
13 section applies to persons convicted of a felony committed before July
14 1, 1984.

15 **Sec. 350.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read
16 as follows:

17 All money or other property paid or delivered to a (~~probation or~~
18 ~~parole~~) community corrections officer or employee of the department of
19 corrections by or for the benefit of any discharged prisoner, inmate
20 assigned to a work/training release facility, parolee or persons
21 convicted of a felony and granted probation shall be immediately
22 transmitted to the department of corrections and it shall enter the
23 same upon its books to his or her credit. Such money or other property
24 shall be used only under the direction of the department of
25 corrections.

26 If such person absconds, the money shall be deposited in the
27 revolving fund created by RCW 9.95.360, and any other property, if not
28 called for within one year, shall be sold by the department of
29 corrections and the proceeds credited to the revolving fund.

30 If any person, files a claim within five years after the deposit or
31 crediting of such funds, and satisfies the department of corrections
32 that he or she is entitled thereto, the department may make a finding
33 to that effect and may make payment to the claimant in the amount to
34 which he or she is entitled.

35 This section applies to persons convicted of a felony committed
36 before July 1, 1984.

1 **Sec. 351.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read
2 as follows:

3 The department of corrections shall create, maintain, and
4 administer outside the state treasury a permanent revolving fund to be
5 known as the "community services revolving fund" into which shall be
6 deposited all moneys received by it under RCW 9.95.310 through 9.95.370
7 and any appropriation made for the purposes of RCW 9.95.310 through
8 9.95.370. All expenditures from this revolving fund shall be made by
9 check or voucher signed by the secretary of corrections or his or her
10 designee. The community services revolving fund shall be deposited by
11 the department of corrections in such banks or financial institutions
12 as it may select which shall give to the department a surety bond
13 executed by a surety company authorized to do business in this state,
14 or collateral eligible as security for deposit of state funds in at
15 least the full amount of deposit.

16 This section applies to persons convicted of a felony committed
17 before July 1, 1984.

18 **Sec. 352.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to
19 read as follows:

20 The secretary of corrections or his or her designee shall enter
21 into a written agreement with every person receiving funds under RCW
22 9.95.310 through 9.95.370 that such person will repay such funds under
23 the terms and conditions in said agreement. No person shall receive
24 funds until such an agreement is validly made. This section applies to
25 persons convicted of a felony committed before July 1, 1984.

26 **Sec. 353.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to
27 read as follows:

28 (1) Except as provided in subsection (2) of this section, the
29 following sections of law do not apply to any felony offense committed
30 on or after July 1, 1984: RCW ((9.95.003, 9.95.005, 9.95.007,)
31 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020, 9.95.030,
32 9.95.031, 9.95.032,)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,
33 ((9.95.070,)) 9.95.080, ((9.95.090,)) 9.95.100, ((9.95.110,)) 9.95.115,
34 9.95.116, 9.95.120, ((9.95.121, 9.95.122, 9.95.123,)) 9.95.124,
35 9.95.125, ((9.95.126,)) 9.95.130, ((9.95.140, 9.95.150, 9.95.160,
36 9.95.170,)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,
37 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,

1 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,
2 ((and)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

3 (2) The following sections apply to any felony offense committed
4 before July 1, 1984, and to any offense sentenced under section 303 of
5 this act and committed on or after July 1, 2001: RCW 9.95.003,
6 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055,
7 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110,
8 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,
9 9.95.170, 9.95.300, and 9.96.050.

10 **Sec. 354.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
11 read as follows:

12 (1) A person is guilty of an attempt to commit a crime if, with
13 intent to commit a specific crime, he or she does any act which is a
14 substantial step toward the commission of that crime.

15 (2) If the conduct in which a person engages otherwise constitutes
16 an attempt to commit a crime, it is no defense to a prosecution of such
17 attempt that the crime charged to have been attempted was, under the
18 attendant circumstances, factually or legally impossible of commission.

19 (3) An attempt to commit a crime is a:

20 (a) Class A felony when the crime attempted is murder in the first
21 degree, murder in the second degree, ~~((or))~~ arson in the first degree,
22 child molestation in the first degree, indecent liberties by forcible
23 compulsion, rape in the first degree, rape in the second degree, rape
24 of a child in the first degree, or rape of a child in the second
25 degree;

26 (b) Class B felony when the crime attempted is a class A felony
27 other than ~~((murder in the first degree, murder in the second degree,~~
28 ~~or arson in the first degree))~~ an offense listed in (a) of this
29 subsection;

30 (c) Class C felony when the crime attempted is a class B felony;

31 (d) Gross misdemeanor when the crime attempted is a class C felony;

32 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
33 misdemeanor.

34 **Sec. 355.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to
35 read as follows:

36 (1) A person is guilty of assault in the second degree if he or
37 she, under circumstances not amounting to assault in the first degree:

1 (a) Intentionally assaults another and thereby recklessly inflicts
2 substantial bodily harm; or

3 (b) Intentionally and unlawfully causes substantial bodily harm to
4 an unborn quick child by intentionally and unlawfully inflicting any
5 injury upon the mother of such child; or

6 (c) Assaults another with a deadly weapon; or

7 (d) With intent to inflict bodily harm, administers to or causes to
8 be taken by another, poison or any other destructive or noxious
9 substance; or

10 (e) With intent to commit a felony, assaults another; or

11 (f) Knowingly inflicts bodily harm which by design causes such pain
12 or agony as to be the equivalent of that produced by torture.

13 (2) Assault in the second degree is a class B felony, except that
14 assault in the second degree with a finding of sexual motivation under
15 RCW 9.94A.127 or 13.40.135 is a class A felony.

16 **Sec. 356.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
17 each amended to read as follows:

18 (1) A person is guilty of kidnapping in the second degree if he or
19 she intentionally abducts another person under circumstances not
20 amounting to kidnapping in the first degree.

21 (2) In any prosecution for kidnapping in the second degree, it is
22 a defense if established by the defendant by a preponderance of the
23 evidence that (a) the abduction does not include the use of or intent
24 to use or threat to use deadly force, and (b) the actor is a relative
25 of the person abducted, and (c) the actor's sole intent is to assume
26 custody of that person. Nothing contained in this paragraph shall
27 constitute a defense to a prosecution for, or preclude a conviction of,
28 any other crime.

29 (3) Kidnapping in the second degree is a class B felony, except
30 that kidnapping in the second degree with a finding of sexual
31 motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

32 **Sec. 357.** RCW 9A.44.093 and 1994 c 271 s 306 are each amended to
33 read as follows:

34 (1) A person is guilty of sexual misconduct with a minor in the
35 first degree when: (a) The person has, or knowingly causes another
36 person under the age of eighteen to have, sexual intercourse with
37 another person who is at least sixteen years old but less than eighteen

1 years old and not married to the perpetrator, if the perpetrator is at
2 least sixty months older than the victim, is in a significant
3 relationship to the victim, and abuses a supervisory position within
4 that relationship in order to engage in or cause another person under
5 the age of eighteen to engage in sexual intercourse with the victim; or
6 (b) the person is a school employee who has, or knowingly causes
7 another person under the age of eighteen to have, sexual intercourse
8 with a registered student of the school who is at least sixteen years
9 old and not married to the employee, if the employee is at least sixty
10 months older than the student.

11 (2) Sexual misconduct with a minor in the first degree is a class
12 C felony.

13 (3) For the purposes of this section, "school employee" means an
14 employee of a common school defined in RCW 28A.150.020, or a grade
15 kindergarten through twelve employee of a private school under chapter
16 28A.195 RCW, who is not enrolled as a student of the common school or
17 private school.

18 **Sec. 358.** RCW 9A.44.096 and 1994 c 271 s 307 are each amended to
19 read as follows:

20 (1) A person is guilty of sexual misconduct with a minor in the
21 second degree when: (a) The person has, or knowingly causes another
22 person under the age of eighteen to have, sexual contact with another
23 person who is at least sixteen years old but less than eighteen years
24 old and not married to the perpetrator, if the perpetrator is at least
25 sixty months older than the victim, is in a significant relationship to
26 the victim, and abuses a supervisory position within that relationship
27 in order to engage in or cause another person under the age of eighteen
28 to engage in sexual contact with the victim; or (b) the person is a
29 school employee who has, or knowingly causes another person under the
30 age of eighteen to have, sexual contact with a registered student of
31 the school who is at least sixteen years old and not married to the
32 employee, if the employee is at least sixty months older than the
33 student.

34 (2) Sexual misconduct with a minor in the second degree is a gross
35 misdemeanor.

36 (3) For the purposes of this section, "school employee" means an
37 employee of a common school defined in RCW 28A.150.020, or a grade
38 kindergarten through twelve employee of a private school under chapter

1 28A.195 RCW, who is not enrolled as a student of the common school or
2 private school.

3 **Sec. 359.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
4 read as follows:

5 (1) A person is guilty of indecent liberties when he or she
6 knowingly causes another person who is not his or her spouse to have
7 sexual contact with him or her or another:

8 (a) By forcible compulsion;

9 (b) When the other person is incapable of consent by reason of
10 being mentally defective, mentally incapacitated, or physically
11 helpless;

12 (c) When the victim is developmentally disabled and the perpetrator
13 is a person who is not married to the victim and who has supervisory
14 authority over the victim;

15 (d) When the perpetrator is a health care provider, the victim is
16 a client or patient, and the sexual contact occurs during a treatment
17 session, consultation, interview, or examination. It is an affirmative
18 defense that the defendant must prove by a preponderance of the
19 evidence that the client or patient consented to the sexual contact
20 with the knowledge that the sexual contact was not for the purpose of
21 treatment;

22 (e) When the victim is a resident of a facility for mentally
23 disordered or chemically dependent persons and the perpetrator is a
24 person who is not married to the victim and has supervisory authority
25 over the victim; or

26 (f) When the victim is a frail elder or vulnerable adult and the
27 perpetrator is a person who is not married to the victim and who has a
28 significant relationship with the victim.

29 (2) Indecent liberties is a class B felony, except that indecent
30 liberties by forcible compulsion is a class A felony.

31 **Sec. 360.** RCW 9A.76.--- and 2001 c 287 s 1 are each amended to
32 read as follows:

33 (1) A person is guilty of ~~((escape by a))~~ sexually violent predator
34 escape if ~~((, having been committed to the department of social and~~
35 ~~health services as a sexually violent predator under chapter 71.09 RCW,~~
36 ~~he or she:~~

37 ~~(a) Escapes from custody;~~

1 ~~(b) Escapes from a commitment facility;~~
2 ~~(c) Escapes from a less restrictive alternative facility; or~~
3 ~~(d) While on conditional release and residing in a location other~~
4 ~~than at a commitment center or less restrictive alternative facility,~~
5 ~~leaves or remains absent from the state of Washington without prior~~
6 ~~court authorization)):~~

7 (a) Having been found to be a sexually violent predator and
8 confined to the special commitment center or another secure facility
9 under court order, the person escapes from the secure facility;

10 (b) Having been found to be a sexually violent predator and being
11 under an order of conditional release, the person leaves or remains
12 absent from the state of Washington without prior court authorization;
13 or

14 (c) Having been found to be a sexually violent predator and being
15 under an order of conditional release, the person: (i) Without
16 authorization, leaves or remains absent from his or her residence,
17 place of employment, educational institution, or authorized outing;
18 (ii) tampers with his or her electronic monitoring device or removes it
19 without authorization; or (iii) escapes from his or her escort.

20 (2) ((Escape by a)) Sexually violent predator escape is a class
21 ((B)) A felony with a minimum sentence of sixty months, and shall be
22 sentenced under section 303 of this act.

23 **Sec. 361.** RCW 9.94A.320 and 2001 c 310 s 4, 2001 c 287 s 3, 2001
24 c 224 s 3, 2001 c 222 s 24, and 2001 c 207 s 3 are each reenacted and
25 amended to read as follows:

26 TABLE 2

27 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

28 XVI	Aggravated Murder 1 (RCW 10.95.020)
29 XV	Homicide by abuse (RCW 9A.32.055)
30	Malicious explosion 1 (RCW 70.74.280(1))
31	Murder 1 (RCW 9A.32.030)
32 XIV	Murder 2 (RCW 9A.32.050)
33 XIII	Malicious explosion 2 (RCW 70.74.280(2))
34	Malicious placement of an explosive 1 (RCW
35	70.74.270(1))

1 XII Assault 1 (RCW 9A.36.011)
2 Assault of a Child 1 (RCW 9A.36.120)
3 Malicious placement of an imitation device
4 1 (RCW 70.74.272(1)(a))
5 Rape 1 (RCW 9A.44.040)
6 Rape of a Child 1 (RCW 9A.44.073)

7 XI Manslaughter 1 (RCW 9A.32.060)
8 Rape 2 (RCW 9A.44.050)
9 Rape of a Child 2 (RCW 9A.44.076)

10 X Child Molestation 1 (RCW 9A.44.083)
11 ((~~Escape by a~~) Sexually Violent Predator
12 Escape (RCW 9A.76.--- (section 1,
13 chapter 287, Laws of 2001, as amended
14 by section 360, chapter ... (this
15 act), Laws of 2001 2nd sp. sess.))
16 Indecent Liberties (with forcible
17 compulsion) (RCW 9A.44.100(1)(a))
18 Kidnapping 1 (RCW 9A.40.020)
19 Leading Organized Crime (RCW
20 9A.82.060(1)(a))
21 Malicious explosion 3 (RCW 70.74.280(3))
22 Manufacture of methamphetamine (RCW
23 69.50.401(a)(1)(ii))
24 Over 18 and deliver heroin,
25 methamphetamine, a narcotic from
26 Schedule I or II, or flunitrazepam
27 from Schedule IV to someone under 18
28 (RCW 69.50.406)

29 IX Assault of a Child 2 (RCW 9A.36.130)
30 Controlled Substance Homicide (RCW
31 69.50.415)
32 Explosive devices prohibited (RCW
33 70.74.180)
34 Homicide by Watercraft, by being under the
35 influence of intoxicating liquor or
36 any drug (RCW 79A.60.050)
37 Inciting Criminal Profiteering (RCW
38 9A.82.060(1)(b))

1 Malicious placement of an explosive 2 (RCW
2 70.74.270(2))
3 Over 18 and deliver narcotic from Schedule
4 III, IV, or V or a nonnarcotic, except
5 flunitrazepam or methamphetamine, from
6 Schedule I-V to someone under 18 and 3
7 years junior (RCW 69.50.406)
8 Robbery 1 (RCW 9A.56.200)
9 Sexual Exploitation (RCW 9.68A.040)
10 Vehicular Homicide, by being under the
11 influence of intoxicating liquor or
12 any drug (RCW 46.61.520)

13 VIII Arson 1 (RCW 9A.48.020)
14 Deliver or possess with intent to deliver
15 m e t h a m p h e t a m i n e (R C W
16 69.50.401(a)(1)(ii))
17 Hit and Run--Death (RCW 46.52.020(4)(a))
18 Homicide by Watercraft, by the operation of
19 any vessel in a reckless manner (RCW
20 79A.60.050)
21 Manslaughter 2 (RCW 9A.32.070)
22 Manufacture, deliver, or possess with
23 intent to deliver amphetamine (RCW
24 69.50.401(a)(1)(ii))
25 Manufacture, deliver, or possess with
26 intent to deliver heroin or cocaine
27 (RCW 69.50.401(a)(1)(i))
28 Possession of Ephedrine, Pseudoephedrine,
29 or Anhydrous Ammonia with intent to
30 manufacture methamphetamine (RCW
31 69.50.440)
32 Promoting Prostitution 1 (RCW 9A.88.070)
33 Selling for profit (controlled or
34 counterfeit) any controlled substance
35 (RCW 69.50.410)
36 Theft of Anhydrous Ammonia (RCW 69.55.010)
37 Vehicular Homicide, by the operation of any
38 vehicle in a reckless manner (RCW
39 46.61.520)

1 VII Burglary 1 (RCW 9A.52.020)
2 Child Molestation 2 (RCW 9A.44.086)
3 Dealing in depictions of minor engaged in
4 sexually explicit conduct (RCW
5 9.68A.050)
6 Drive-by Shooting (RCW 9A.36.045)
7 Homicide by Watercraft, by disregard for
8 the safety of others (RCW 79A.60.050)
9 Indecent Liberties (without forcible
10 compulsion) (RCW 9A.44.100(1) (b) and
11 (c))
12 Introducing Contraband 1 (RCW 9A.76.140)
13 Involving a minor in drug dealing (RCW
14 69.50.401(f))
15 Malicious placement of an explosive 3 (RCW
16 70.74.270(3))
17 Sending, bringing into state depictions of
18 minor engaged in sexually explicit
19 conduct (RCW 9.68A.060)
20 Unlawful Possession of a Firearm in the
21 first degree (RCW 9.41.040(1)(a))
22 Use of a Machine Gun in Commission of a
23 Felony (RCW 9.41.225)
24 Vehicular Homicide, by disregard for the
25 safety of others (RCW 46.61.520)

26 VI Bail Jumping with Murder 1 (RCW
27 9A.76.170(~~(+2)~~) (3)(a))
28 Bribery (RCW 9A.68.010)
29 Incest 1 (RCW 9A.64.020(1))
30 Intimidating a Judge (RCW 9A.72.160)
31 Intimidating a Juror/Witness (RCW
32 9A.72.110, 9A.72.130)
33 Malicious placement of an imitation device
34 2 (RCW 70.74.272(1)(b))
35 Manufacture, deliver, or possess with
36 intent to deliver narcotics from
37 Schedule I or II (except heroin or
38 cocaine) or flunitrazepam from
39 Schedule IV (RCW 69.50.401(a)(1)(i))

1 Rape of a Child 3 (RCW 9A.44.079)
2 Theft of a Firearm (RCW 9A.56.300)
3 Unlawful Storage of Anhydrous Ammonia (RCW
4 69.55.020)

5 V Abandonment of dependent person 1 (RCW
6 9A.42.060)

7 Advancing money or property for
8 extortionate extension of credit (RCW
9 9A.82.030)

10 Bail Jumping with class A Felony (RCW
11 9A.76.170((+2+)) (3)(b))

12 Child Molestation 3 (RCW 9A.44.089)

13 Criminal Mistreatment 1 (RCW 9A.42.020)

14 Custodial Sexual Misconduct 1 (RCW
15 9A.44.160)

16 Delivery of imitation controlled substance
17 by person eighteen or over to person
18 under eighteen (RCW 69.52.030(2))

19 Domestic Violence Court Order Violation
20 (RCW 10.99.040, 10.99.050, 26.09.300,
21 26.10.220, 26.26.138, 26.50.110,
22 26.52.070, or 74.34.145)

23 Extortion 1 (RCW 9A.56.120)

24 Extortionate Extension of Credit (RCW
25 9A.82.020)

26 Extortionate Means to Collect Extensions of
27 Credit (RCW 9A.82.040)

28 Incest 2 (RCW 9A.64.020(2))

29 Kidnapping 2 (RCW 9A.40.030)

30 Perjury 1 (RCW 9A.72.020)

31 Persistent prison misbehavior (RCW
32 9.94.070)

33 Possession of a Stolen Firearm (RCW
34 9A.56.310)

35 Rape 3 (RCW 9A.44.060)

36 Rendering Criminal Assistance 1 (RCW
37 9A.76.070)

38 Sexual Misconduct with a Minor 1 (RCW
39 9A.44.093)

1 Sexually Violating Human Remains (RCW
2 9A.44.105)
3 Stalking (RCW 9A.46.110)
4 IV Arson 2 (RCW 9A.48.030)
5 Assault 2 (RCW 9A.36.021)
6 Assault by Watercraft (RCW 79A.60.060)
7 Bribing a Witness/Bribe Received by Witness
8 (RCW 9A.72.090, 9A.72.100)
9 Commercial Bribery (RCW 9A.68.060)
10 Counterfeiting (RCW 9.16.035(4))
11 Escape 1 (RCW 9A.76.110)
12 Hit and Run--Injury (RCW 46.52.020(4)(b))
13 Hit and Run with Vessel--Injury Accident
14 (RCW 79A.60.200(3))
15 Indecent Exposure to Person Under Age
16 Fourteen (subsequent sex offense) (RCW
17 9A.88.010)
18 Influencing Outcome of Sporting Event (RCW
19 9A.82.070)
20 Knowingly Trafficking in Stolen Property
21 (RCW 9A.82.050(2))
22 Malicious Harassment (RCW 9A.36.080)
23 Manufacture, deliver, or possess with
24 intent to deliver narcotics from
25 Schedule III, IV, or V or nonnarcotics
26 from Schedule I-V (except marijuana,
27 amphetamine, methamphetamines, or
28 flunitrazepam) (RCW 69.50.401(a)(1)
29 (iii) through (v))
30 Residential Burglary (RCW 9A.52.025)
31 Robbery 2 (RCW 9A.56.210)
32 Theft of Livestock 1 (RCW 9A.56.080)
33 Threats to Bomb (RCW 9.61.160)
34 Use of Proceeds of Criminal Profiteering
35 (RCW 9A.82.080 (1) and (2))
36 Vehicular Assault (RCW 46.61.522)
37 Willful Failure to Return from Furlough
38 (RCW 72.66.060)

1 III Abandonment of dependent person 2 (RCW
2 9A.42.070)
3 Assault 3 (RCW 9A.36.031)
4 Assault of a Child 3 (RCW 9A.36.140)
5 Bail Jumping with class B or C Felony (RCW
6 9A.76.170(~~(+2)~~)) (3)(c))
7 Burglary 2 (RCW 9A.52.030)
8 Communication with a Minor for Immoral
9 Purposes (RCW 9.68A.090)
10 Criminal Gang Intimidation (RCW 9A.46.120)
11 Criminal Mistreatment 2 (RCW 9A.42.030)
12 Custodial Assault (RCW 9A.36.100)
13 Delivery of a material in lieu of a
14 controlled substance (RCW
15 69.50.401(c))
16 Escape 2 (RCW 9A.76.120)
17 Extortion 2 (RCW 9A.56.130)
18 Harassment (RCW 9A.46.020)
19 Intimidating a Public Servant (RCW
20 9A.76.180)
21 Introducing Contraband 2 (RCW 9A.76.150)
22 Maintaining a Dwelling or Place for
23 Controlled Substances (RCW
24 69.50.402(a)(6))
25 Malicious Injury to Railroad Property (RCW
26 81.60.070)
27 Manufacture, deliver, or possess with
28 intent to deliver marijuana (RCW
29 69.50.401(a)(1)(iii))
30 Manufacture, distribute, or possess with
31 intent to distribute an imitation
32 controlled substance (RCW
33 69.52.030(1))
34 Patronizing a Juvenile Prostitute (RCW
35 9.68A.100)
36 Perjury 2 (RCW 9A.72.030)
37 Possession of Incendiary Device (RCW
38 9.40.120)

1 Possession of Machine Gun or Short-Barreled
2 Shotgun or Rifle (RCW 9.41.190)
3 Promoting Prostitution 2 (RCW 9A.88.080)
4 Recklessly Trafficking in Stolen Property
5 (RCW 9A.82.050(1))
6 Securities Act violation (RCW 21.20.400)
7 Tampering with a Witness (RCW 9A.72.120)
8 Telephone Harassment (subsequent conviction
9 or threat of death) (RCW 9.61.230)
10 Theft of Livestock 2 (RCW 9A.56.080)
11 Unlawful Imprisonment (RCW 9A.40.040)
12 Unlawful possession of firearm in the
13 second degree (RCW 9.41.040(1)(b))
14 Unlawful Use of Building for Drug Purposes
15 (RCW 69.53.010)
16 Willful Failure to Return from Work Release
17 (RCW 72.65.070)

18 II Computer Trespass 1 (RCW 9A.52.110)
19 Counterfeiting (RCW 9.16.035(3))
20 Create, deliver, or possess a counterfeit
21 controlled substance (RCW
22 69.50.401(b))
23 Escape from Community Custody (RCW
24 72.09.310)
25 Health Care False Claims (RCW 48.80.030)
26 Malicious Mischief 1 (RCW 9A.48.070)
27 Possession of controlled substance that is
28 either heroin or narcotics from
29 Schedule I or II or flunitrazepam from
30 Schedule IV (RCW 69.50.401(d))
31 Possession of phencyclidine (PCP) (RCW
32 69.50.401(d))
33 Possession of Stolen Property 1 (RCW
34 9A.56.150)
35 Theft 1 (RCW 9A.56.030)
36 Theft of Rental, Leased, or Lease-purchased
37 Property (valued at one thousand five
38 hundred dollars or more) (RCW
39 9A.56.096(4))

1 Trafficking in Insurance Claims (RCW
2 48.30A.015)
3 Unlawful Practice of Law (RCW 2.48.180)
4 Unlicensed Practice of a Profession or
5 Business (RCW 18.130.190(7))
6 I Attempting to Elude a Pursuing Police
7 Vehicle (RCW 46.61.024)
8 False Verification for Welfare (RCW
9 74.08.055)
10 Forged Prescription (RCW 69.41.020)
11 Forged Prescription for a Controlled
12 Substance (RCW 69.50.403)
13 Forgery (RCW 9A.60.020)
14 Malicious Mischief 2 (RCW 9A.48.080)
15 Possess Controlled Substance that is a
16 Narcotic from Schedule III, IV, or V
17 or Non-narcotic from Schedule I-V
18 (except phencyclidine or
19 flunitrazepam) (RCW 69.50.401(d))
20 Possession of Stolen Property 2 (RCW
21 9A.56.160)
22 Reckless Burning 1 (RCW 9A.48.040)
23 Taking Motor Vehicle Without Permission
24 (RCW 9A.56.070)
25 Theft 2 (RCW 9A.56.040)
26 Theft of Rental, Leased, or Lease-purchased
27 Property (valued at two hundred fifty
28 dollars or more but less than one
29 thousand five hundred dollars) (RCW
30 9A.56.096(4))
31 Unlawful Issuance of Checks or Drafts (RCW
32 9A.56.060)
33 Unlawful Use of Food Stamps (RCW 9.91.140
34 (2) and (3))
35 Vehicle Prowl 1 (RCW 9A.52.095)

36 **Sec. 362.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to
37 read as follows:

1 (1) The secretary shall identify offenders in confinement or
2 partial confinement who: (a) Are reasonably believed to be dangerous
3 to themselves or others; and (b) have a mental disorder. In
4 determining an offender's dangerousness, the secretary shall consider
5 behavior known to the department and factors, based on research, that
6 are linked to an increased risk for dangerousness of mentally ill
7 offenders and shall include consideration of an offender's chemical
8 dependency or abuse.

9 (2) Prior to release of an offender identified under this section,
10 a team consisting of representatives of the department of corrections,
11 the division of mental health, and, as necessary, the indeterminate
12 sentence review board, other divisions or administrations within the
13 department of social and health services, specifically including the
14 division of alcohol and substance abuse and the division of
15 developmental disabilities, the appropriate regional support network,
16 and the providers, as appropriate, shall develop a plan, as determined
17 necessary by the team, for delivery of treatment and support services
18 to the offender upon release. The team may include a school district
19 representative for offenders under the age of twenty-one. The team
20 shall consult with the offender's counsel, if any, and, as appropriate,
21 the offender's family and community. The team shall notify the crime
22 victim/witness program, which shall provide notice to all people
23 registered to receive notice under RCW 9.94A.155 of the proposed
24 release plan developed by the team. Victims, witnesses, and other
25 interested people notified by the department may provide information
26 and comments to the department on potential safety risk to specific
27 individuals or classes of individuals posed by the specific offender.
28 The team may recommend: (a) That the offender be evaluated by the
29 county designated mental health professional, as defined in chapter
30 71.05 RCW; (b) department-supervised community treatment; or (c)
31 voluntary community mental health or chemical dependency or abuse
32 treatment.

33 (3) Prior to release of an offender identified under this section,
34 the team shall determine whether or not an evaluation by a county
35 designated mental health professional is needed. If an evaluation is
36 recommended, the supporting documentation shall be immediately
37 forwarded to the appropriate county designated mental health
38 professional. The supporting documentation shall include the
39 offender's criminal history, history of judicially required or

1 administratively ordered involuntary antipsychotic medication while in
2 confinement, and any known history of involuntary civil commitment.

3 (4) If an evaluation by a county designated mental health
4 professional is recommended by the team, such evaluation shall occur
5 not more than ten days, nor less than five days, prior to release.

6 (5) A second evaluation by a county designated mental health
7 professional shall occur on the day of release if requested by the
8 team, based upon new information or a change in the offender's mental
9 condition, and the initial evaluation did not result in an emergency
10 detention or a summons under chapter 71.05 RCW.

11 (6) If the county designated mental health professional determines
12 an emergency detention under chapter 71.05 RCW is necessary, the
13 department shall release the offender only to a state hospital or to a
14 consenting evaluation and treatment facility. The department shall
15 arrange transportation of the offender to the hospital or facility.

16 (7) If the county designated mental health professional believes
17 that a less restrictive alternative treatment is appropriate, he or she
18 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,
19 to require the offender to appear at an evaluation and treatment
20 facility. If a summons is issued, the offender shall remain within the
21 corrections facility until completion of his or her term of confinement
22 and be transported, by corrections personnel on the day of completion,
23 directly to the identified evaluation and treatment facility.

24 (8) The secretary shall adopt rules to implement this section.

25 NEW SECTION. **Sec. 363.** A new section is added to chapter 9.95 RCW
26 to read as follows:

27 The indeterminate sentence review board, in fulfilling its duties
28 under the provisions of this act, shall be considered a parole board as
29 that concept was treated in law under the state's indeterminate
30 sentencing statutes.

31 **PART IV**

32 **SEX OFFENDER TREATMENT PROVIDERS**

33 **Sec. 401.** RCW 18.155.020 and 2000 c 171 s 33 and 2000 c 28 s 38
34 are each reenacted and amended to read as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter:

1 (1) "Certified sex offender treatment provider" means a licensed,
2 certified, or registered health professional who is certified to
3 examine and treat sex offenders pursuant to chapters 9.94A and 13.40
4 RCW ((9.94A.670 and 13.40.160)) and sexually violent predators under
5 chapter 71.09 RCW.

6 (2) "Department" means the department of health.

7 (3) "Secretary" means the secretary of health.

8 (4) "Sex offender treatment provider" means a person who counsels
9 or treats sex offenders accused of or convicted of a sex offense as
10 defined by RCW 9.94A.030.

11 **Sec. 402.** RCW 18.155.030 and 2000 c 171 s 34 and 2000 c 28 s 39
12 are each reenacted and amended to read as follows:

13 (1) No person shall represent himself or herself as a certified sex
14 offender treatment provider without first applying for and receiving a
15 certificate pursuant to this chapter.

16 (2) Only a certified sex offender treatment provider may perform or
17 provide the following services:

18 (a) Evaluations conducted for the purposes of and pursuant to RCW
19 9.94A.670 and 13.40.160;

20 (b) Treatment of convicted sex offenders who are sentenced and
21 ordered into treatment pursuant to ((RCW 9.94A.670)) chapter 9.94A RCW
22 and adjudicated juvenile sex offenders who are ordered into treatment
23 pursuant to ((RCW 13.40.160)) chapter 13.40 RCW;

24 (c) Except as provided under subsection (3) of this section,
25 treatment of sexually violent predators who are conditionally released
26 to a less restrictive alternative pursuant to chapter 71.09 RCW.

27 (3) A certified sex offender treatment provider may not perform or
28 provide treatment of sexually violent predators under subsection (2)(c)
29 of this section if the certified sex offender treatment provider has
30 been:

31 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

32 (b) Convicted in any other jurisdiction of an offense that under
33 the laws of this state would be classified as a sex offense as defined
34 in RCW 9.94A.030; or

35 (c) Suspended or otherwise restricted from practicing any health
36 care profession by competent authority in any state, federal, or
37 foreign jurisdiction.

1 NEW SECTION. **Sec. 403.** A new section is added to chapter 4.24 RCW
2 to read as follows:

3 (1) A certified sex offender treatment provider, acting in the
4 course of his or her duties, providing treatment to a person who has
5 been released to a less restrictive alternative under chapter 71.09 RCW
6 or to a level III sex offender on community custody as a court or
7 department ordered condition of sentence is not negligent because he or
8 she treats a high risk offender; sex offenders are known to have a risk
9 of reoffense. The treatment provider is not liable for civil damages
10 resulting from the reoffense of a client unless the treatment
11 provider's acts or omissions constituted gross negligence or willful or
12 wanton misconduct. This limited liability provision does not eliminate
13 the treatment provider's duty to warn of and protect from a client's
14 threatened violent behavior if the client communicates a serious threat
15 of physical violence against a reasonably ascertainable victim or
16 victims. This limited liability provision applies only to the conduct
17 of certified sex offender treatment providers and not the conduct of
18 the state.

19 (2) Sex offender treatment providers who provide services to the
20 department of corrections by identifying risk factors and notifying the
21 department of risks for the subset of high risk offenders who are not
22 amenable to treatment and who are under court order for treatment or
23 supervision are practicing within the scope of their profession.

24 NEW SECTION. **Sec. 404.** A new section is added to chapter 71.09
25 RCW to read as follows:

26 (1) Examinations and treatment of sexually violent predators who
27 are conditionally released to a less restrictive alternative under this
28 chapter shall be conducted only by sex offender treatment providers
29 certified by the department of health under chapter 18.155 RCW unless
30 the court or the department of social and health services finds that:
31 (a) The court-ordered less restrictive alternative placement is located
32 in another state; (b) the treatment provider is employed by the
33 department; or (c)(i) all certified treatment providers become
34 unavailable to provide treatment within a reasonable geographic
35 distance of the person's home, as determined in rules adopted by the
36 department of social and health services; and (ii) the evaluation and
37 treatment plan comply with the rules adopted by the department of
38 social and health services.

1 A treatment provider approved by the department of social and
2 health services under (c) of this subsection, who is not certified by
3 the department of health, shall consult with a certified provider
4 during the person's period of treatment to ensure compliance with the
5 rules adopted by the department of health. The frequency and content
6 of the consultation shall be based on the recommendation of the
7 certified provider.

8 (2) A treatment provider, whether or not he or she is employed or
9 approved by the department of social and health services under
10 subsection (1) of this section or otherwise certified, may not perform
11 or provide treatment of sexually violent predators under this section
12 if the treatment provider has been:

13 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

14 (b) Convicted in any other jurisdiction of an offense that under
15 the laws of this state would be classified as a sex offense as defined
16 in RCW 9.94A.030; or

17 (c) Suspended or otherwise restricted from practicing any health
18 care profession by competent authority in any state, federal, or
19 foreign jurisdiction.

20 (3) Nothing in this section prohibits a qualified expert from
21 examining or evaluating a sexually violent predator who has been
22 conditionally released for purposes of presenting an opinion in court
23 proceedings.

24 PART V

25 TECHNICAL PROVISIONS

26 NEW SECTION. **Sec. 501.** The following acts or parts of acts are
27 each repealed:

28 (1) RCW 9.95.0011 (Indeterminate sentence review board--Report--
29 Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986
30 c 224 s 12; and

31 (2) RCW 9.95.145 (Sex offenders--Release of information--
32 Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

33 NEW SECTION. **Sec. 502.** The secretary of corrections, the
34 secretary of social and health services, and the indeterminate sentence
35 review board may adopt rules to implement this act.

1 NEW SECTION. **Sec. 503.** (1) Sections 301 through 363 of this act
2 shall not affect the validity of any sentence imposed under any other
3 law for any offense committed before, on, or after the effective date
4 of this section.

5 (2) Sections 301 through 363 of this act shall apply to offenses
6 committed on or after the effective date of this section.

7 NEW SECTION. **Sec. 504.** If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 remainder of the act or the application of the provision to other
10 persons or circumstances is not affected.

11 NEW SECTION. **Sec. 505.** This act is necessary for the immediate
12 preservation of the public peace, health, or safety, or support of the
13 state government and its existing public institutions, and takes effect
14 immediately, except for sections 301 through 363 and 501 of this act
15 which take effect September 1, 2001.

--- END ---