
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 04/06/2001. Referred to Committee on .

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

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

17 NEW SECTION. **Sec. 1.** (1) The legislature, in an effort to protect
18 the safety of Washington state residents, has authorized the civil
19 commitment of sexually violent predators and funded a program for the

1 treatment of such persons at the special commitment center on McNeil
2 Island. As a result of the treatment funded by the legislature, some
3 of the persons judged to be sexually violent predators have progressed
4 to the point where they have secured court orders permitting them to be
5 housed in a setting less restrictive than the present special
6 commitment center at McNeil Island, subject to appropriate strict
7 supervision.

8 Housing in an appropriately managed less restrictive setting on
9 McNeil Island is a step in the treatment of some of the persons
10 committed to the special commitment center, and without this step for
11 those judged by court order to be eligible, the special commitment
12 center may fail to fulfill its statutory and constitutional purpose.

13 Therefore, the legislature intends by this act to ensure the prompt
14 siting and timely operation of a secure community transition facility
15 on McNeil Island in furtherance of the treatment, management of these
16 offenders in the community, and other purposes of chapter 71.09 RCW.

17 (2) The legislature finds that there are some sex offenders who
18 might become eligible for civil commitment but who are more
19 appropriately managed through the criminal justice system, both because
20 they may be inappropriate for civil commitment and because the
21 legislature has a fiscal responsibility to the people of Washington to
22 manage community safety in the most cost-effective manner to meet the
23 needs of the public and the offenders.

24 Consequently, the legislature intends to address the sentencing and
25 supervision of offenders who commit certain sex offenses.

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

28 (1) The secretary is authorized to site and operate a thirty-six
29 bed secure community transition facility as a step-down facility for
30 sexually violent predators on court-ordered conditional release from
31 the special commitment center as provided under RCW 71.09.090, on
32 McNeil Island.

33 (2) Notwithstanding RCW 36.70A.103 or any other law, until December
34 31, 2003, to the extent siting a secure community transition facility
35 on McNeil Island is inconsistent with local comprehensive plans and/or
36 development regulations, this statute preempts and supersedes those
37 local plans and regulations.

1 (3) Nothing in this section limits the state's authority to site an
2 essential public facility under RCW 36.70A.200 in conformance with
3 local comprehensive plans and development regulations.

4 (4) The number of residents at the secure community transition
5 facility established by this section shall not exceed thirty-six
6 persons.

7 (5) No additional secure community transition facilities for more
8 than three persons may be sited in a county where the special
9 commitment center and the secure community transition facility
10 established pursuant to this section are located.

11 NEW SECTION. **Sec. 3.** Beginning on the effective date of this
12 section, the state shall immediately enter into negotiations for a
13 mitigation agreement with the county in which the secure community
14 treatment facility established pursuant to this section is located, and
15 with each community in which the persons will reside or regularly spend
16 time in the community pursuant to court orders for regular work or
17 education, or to receive social services, or will regularly be
18 transported through to reach those communities. The negotiations must
19 be toward an agreement that will provide state funding, as appropriated
20 for this purpose, in an amount adequate to mitigate anticipated or
21 realized increased costs in law enforcement resulting from any
22 increased risks to public safety brought about by the presence of
23 sexually violent predators in those communities due to the siting of
24 the step-down facility established pursuant to section 2 of this act.

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

27 When a person is released to a less restrictive alternative
28 placement at a facility owned or operated under contract with the
29 state, any employer who hires the person for a position or any
30 educational institution that enrolls the person for a program is
31 eligible for an incentive grant from the state up to five thousand
32 dollars per year that the person remains employed or enrolled on at
33 least a half-time basis that meets court requirements approved by the
34 court. This provision applies only to conditionally released persons
35 whose court approved treatment plan includes permission or a
36 requirement for the person to obtain education or employment and to

1 employment positions or educational programs that meet the requirements
2 of the court-approved treatment plan.

3 NEW SECTION. **Sec. 5.** On or before December 1, 2002, the
4 department of social and health services shall submit a report to the
5 appropriate committees of the legislature regarding policies for the
6 subsequent placement of sexually violent predators on court-ordered
7 conditional release residing in the secure community transition
8 facility established pursuant to section 2 of this act. The report
9 shall address the following:

10 (1) The anticipated number of persons who may be eligible for
11 conditional release to a setting less restrictive than the facility
12 established pursuant to section 2 of this act during the 2003-2005 and
13 2005-2007 biennia;

14 (2) The anticipated need, if any, for secure community transition
15 facilities smaller than the facility established pursuant to section 2
16 of this act;

17 (3) Policies that will be implemented to ensure that placement of
18 persons eligible in the future for conditional release to a setting
19 less restrictive than the facility established pursuant to section 2 of
20 this act will be equitably distributed among the counties, and within
21 each county, among jurisdictions in the county.

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

24 When considering whether a person civilly committed under this
25 chapter and conditionally released to a less restrictive alternative
26 placement as a resident of a step-down facility is appropriate for
27 release to a less restrictive alternative placement that is less
28 restrictive than a step-down facility, the court shall consider whether
29 the person has progressed in treatment to the point that a significant
30 change in the person's routine, including but not limited to a change
31 of employment, education, residence, or sex offender treatment provider
32 will cause the person to regress to the point that the person presents
33 a greater risk to the community than can reasonably be addressed in the
34 proposed placement.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 71.09 RCW
36 to read as follows:

1 The department shall make reasonable efforts to distribute the
2 impact of the employment, education, and social services needs of the
3 residents of the step-down facility among the adjoining counties and
4 not to concentrate the residents' use of resources in any one
5 community.

6 NEW SECTION. Sec. 8. The department of social and health services
7 shall, by August 1, 2001, and prior to operating the secure community
8 transition facility established pursuant to section 2 of this act, hold
9 at least three public hearings in the affected communities within the
10 county where the facility is located.

11 The purpose of the public hearings is to seek input from county and
12 city officials, local law enforcement officials, and the public
13 regarding operations and security measures needed to adequately protect
14 the community from any increased risk to public safety brought about by
15 the presence of sexually violent predators in these communities due to
16 the siting of the facility.

17 **Sec. 9.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended to
18 read as follows:

19 State agencies shall comply with the local comprehensive plans and
20 development regulations and amendments thereto adopted pursuant to this
21 chapter except as otherwise provided in section 2 of this act.

22 **Sec. 10.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to read
23 as follows:

24 Unless the context clearly requires otherwise, the definitions in
25 this section apply throughout this chapter.

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

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

35 "Department" means the department of social and health services.

1 (2) "Less restrictive alternative" means court-ordered treatment in
2 a setting less restrictive than total confinement.

3 (3) "Likely to engage in predatory acts of sexual violence" means
4 that the person more probably than not will engage in such acts. Such
5 likelihood must be evidenced by a recent overt act if the person is not
6 totally confined at the time the petition is filed under RCW 71.09.030.

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

11 (5) "Predatory" means acts directed towards strangers or
12 individuals with whom a relationship has been established or promoted
13 for the primary purpose of victimization.

14 (~~(5)~~) (6) "Recent overt act" means any act that has either caused
15 harm of a sexually violent nature or creates a reasonable apprehension
16 of such harm.

17 (~~(6)~~) (7) "Secretary" means the secretary of social and health
18 services or the secretary's designee.

19 (8) "Secure facility" means a residential facility for persons
20 civilly confined under the provisions of this chapter. A secure
21 facility is a facility that provides supervision and sex offender
22 treatment services in a total confinement setting. Secure facilities
23 include the special commitment center and any similar facility for
24 males or females designated as a secure facility by the secretary.

25 (9) "Secure community transition facility" means a residential
26 facility for persons civilly committed and conditionally released to a
27 less restrictive alternative under this chapter. A secure community
28 transition facility has supervision and security, and either provides
29 or ensures the provision of sex offender treatment services. Secure
30 community transition facilities include but are not limited to the
31 step-down facility established under section 2 of this act and any
32 community-based housing established under this chapter and operated by
33 the secretary or under contract with the secretary.

34 (10) "Sexually violent offense" means an act committed on, before,
35 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
36 rape in the first degree, rape in the second degree by forcible
37 compulsion, rape of a child in the first or second degree, statutory
38 rape in the first or second degree, indecent liberties by forcible
39 compulsion, indecent liberties against a child under age fourteen,

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

18 ~~((7) "Less restrictive alternative" means court-ordered treatment
19 in a setting less restrictive than total confinement.~~

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

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

27 (12) "Step-down facility" means any secure community transition
28 facility that provides residence for more than five persons.

29 NEW SECTION. Sec. 11. The secretary of social and health services
30 shall coordinate with the secretary of corrections and the appropriate
31 local or state law enforcement agency or agencies to establish a
32 twenty-four-hour law enforcement presence on McNeil Island before any
33 person is admitted to the step-down facility established under section
34 2 of this act. Law enforcement shall coordinate with the emergency
35 response team for McNeil Island to provide planning and coordination in
36 the event of an escape from the special commitment center or the step-
37 down facility.

1 In addition, or if no law enforcement agency will provide a law
2 enforcement presence on the island, not more than ten correctional
3 employees, as selected by the secretary of corrections, who are members
4 of the emergency response team for the McNeil Island correctional
5 facility, may have the powers and duties of a peace officer while
6 acting in the apprehension of residents who have escaped from the
7 special commitment center or the step-down facility established
8 pursuant to section 2 of this act. If there is no law enforcement
9 agency to provide the law enforcement presence, those correctional
10 employees selected as peace officers shall provide a twenty-four-hour
11 presence and shall not have correctional duties at the correctional
12 facility in addition to the emergency response team.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter 71.09 RCW
14 to read as follows:

15 Security systems for the step-down facility established pursuant to
16 section 2 of this act shall include a fence and provide the maximum
17 protection appropriate in a civil facility for persons in less than
18 total confinement.

19 NEW SECTION. **Sec. 13.** A new section is added to chapter 71.09 RCW
20 to read as follows:

21 The step-down facility established pursuant to section 2 of this
22 act shall meet the following minimum staffing requirements:

23 (1) At any time the facility has six or fewer residents, a minimum
24 staffing ratio of one staff per resident during normal waking hours and
25 two awake staff per three residents during normal sleeping hours. By
26 December 1, 2001, the department will provide a staffing plan to the
27 appropriate committees of the legislature that will cover the growth of
28 the facility to its full capacity.

29 (2) At any time the facility has six or fewer residents, all staff
30 shall be classified as residential rehabilitation counselor II or have
31 a classification that indicates a higher level of skill, experience,
32 and training. Before being assigned to the step-down facility all
33 staff shall have training in sex offender issues, self-defense, and
34 crisis de-escalation skills in addition to departmental orientation
35 and, as appropriate management training. All staff with resident
36 treatment or care duties must participate in ongoing in-service
37 training.

1 (3) All staff must pass a departmental background check and the
2 check is not subject to the limitations in chapter 9.96A RCW.

3 NEW SECTION. **Sec. 14.** A new section is added to chapter 71.09 RCW
4 to read as follows:

5 Residents of the step-down facility established in section 2 of
6 this act must be separated from minors and vulnerable adults when being
7 transported between the mainland and McNeil Island.

8 By July 1, 2001, the department must provide the appropriate
9 committees of the legislature with a transportation plan to address the
10 issues of coordinating the movement of residents of the step-down
11 facility between McNeil Island and the mainland with the movement of
12 others who must use the same docks or equipment within the funds
13 appropriated for this purpose.

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

16 (1) The secretary shall develop a process with local governments
17 that allows each community in which a secure community transition
18 facility is located to establish operational advisory boards of at
19 least seven persons for the secure community transition facilities.
20 The department may conduct community awareness activities to publicize
21 this opportunity. The operational advisory boards developed under this
22 section shall be implemented following the decision to locate a secure
23 community transition facility in a particular community.

24 (2) The operational advisory boards may review and make
25 recommendations regarding the security and operations of the secure
26 community transition facility and conditions or modifications necessary
27 with relation to any person who the secretary proposes to place in the
28 secure community transition facility.

29 (3) The facility management must consider the recommendations of
30 the community advisory boards. Where the facility management does not
31 implement an operational advisory board recommendation, the management
32 must provide a written response to the operational advisory board
33 stating its reasons for its decision not to implement the
34 recommendation.

35 (4) The operational advisory boards, their members, and any agency
36 represented by a member shall not be liable in any cause of action as

1 a result of its recommendations unless the advisory board acts with
2 gross negligence or bad faith in making a recommendation.

3 (5) Members of a board shall be reimbursed for travel expenses as
4 provided in RCW 43.03.050 and 43.03.060.

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

7 (1) The secretary shall adopt a violation reporting policy for
8 persons conditionally released to less restrictive alternative
9 placements in secure community transition facilities. The policy shall
10 require written documentation by the department and service providers
11 of all violations of conditions set by the department, the department
12 of corrections, or the court and establish criteria for returning a
13 violator to the special commitment center or a step-down facility. Any
14 conditionally released person who commits a serious violation of
15 conditions shall be returned to the special commitment center, unless
16 arrested by a law enforcement officer, and the court shall be notified
17 immediately and shall initiate proceedings under RCW 71.09.098 to
18 revoke or modify the less restrictive alternative placement. Nothing
19 in this section limits the authority of the department to return a
20 person to the special commitment center based on a violation that is
21 not a serious violation as defined in this section. For the purposes
22 of this section, "serious violation" includes but is not limited to:

- 23 (a) The commission of any criminal offense;
24 (b) Any unlawful use or possession of a controlled substance; and
25 (c) Any violation of conditions targeted to address the person's
26 documented pattern of offense that increases the risk to public safety.

27 When a person is released to a less restrictive alternative in a
28 secure community transition facility under this chapter and is under
29 the supervision of the department of corrections, notice of any
30 violation of the person's conditions of release must also be made to
31 the department of corrections.

32 (2) The secretary shall document in writing all violations,
33 penalties, actions by the department to remove persons from a secure
34 community transition facility, and contract terminations.

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

37 (1) Unless otherwise ordered by the court:

1 (a) Residents of the step-down facility established pursuant to
2 section 2 of this act must wear electronic monitoring devices at all
3 times; and

4 (b) At least one staff member, or other court-authorized and
5 department-approved person must escort each resident when the resident
6 leaves the step-down facility for appointments, employment, or other
7 approved activities. Escorting persons must supervise the resident
8 closely and maintain close proximity to the resident.

9 (2) Staff members of the special commitment center and any other
10 secure facility and any secure community transition facility must be
11 trained in self-defense and appropriate crisis responses including
12 incident de-escalation. Prior to escorting a person outside of a
13 facility, staff members must also have training in the offense pattern
14 of the offender they are escorting.

15 (3) Any escort must carry a cellular telephone or a similar device
16 at all times when escorting a resident of the step-down facility.

17 (4) The department shall make available training in offender
18 pattern, self-defense, and incident response to any court-authorized
19 escort who is not employed by the department or the department of
20 corrections.

21 **Sec. 18.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

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

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

35 ~~((+2))~~ (3) "Commission" means the sentencing guidelines
36 commission.

37 ~~((+3))~~ (4) "Community corrections officer" means an employee of
38 the department who is responsible for carrying out specific duties in

1 supervision of sentenced offenders and monitoring of sentence
2 conditions.

3 ~~((+4))~~ (5) "Community custody" means that portion of an offender's
4 sentence of confinement in lieu of earned release time or imposed
5 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
6 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
7 community subject to controls placed on the offender's movement and
8 activities by the department. For offenders placed on community
9 custody for crimes committed on or after July 1, 2000, the department
10 shall assess the offender's risk of reoffense and may establish and
11 modify conditions of community custody, in addition to those imposed by
12 the court, based upon the risk to community safety.

13 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
14 period of community custody included as part of a sentence under RCW
15 9.94A.715, as established by the commission or the legislature under
16 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

17 ~~((+6))~~ (7) "Community placement" means that period during which
18 the offender is subject to the conditions of community custody and/or
19 postrelease supervision, which begins either upon completion of the
20 term of confinement (postrelease supervision) or at such time as the
21 offender is transferred to community custody in lieu of earned release.
22 Community placement may consist of entirely community custody, entirely
23 postrelease supervision, or a combination of the two.

24 ~~((+7))~~ (8) "Community service" means compulsory service, without
25 compensation, performed for the benefit of the community by the
26 offender.

27 ~~((+8))~~ (9) "Community supervision" means a period of time during
28 which a convicted offender is subject to crime-related prohibitions and
29 other sentence conditions imposed by a court pursuant to this chapter
30 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
31 offender has a chemical dependency that has contributed to his or her
32 offense, the conditions of supervision may, subject to available
33 resources, include treatment. For purposes of the interstate compact
34 for out-of-state supervision of parolees and probationers, RCW
35 9.95.270, community supervision is the functional equivalent of
36 probation and should be considered the same as probation by other
37 states.

38 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

1 (~~(10)~~) (11) "Conviction" means an adjudication of guilt pursuant
2 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
3 guilty, and acceptance of a plea of guilty.

4 (~~(11)~~) (12) "Crime-related prohibition" means an order of a court
5 prohibiting conduct that directly relates to the circumstances of the
6 crime for which the offender has been convicted, and shall not be
7 construed to mean orders directing an offender affirmatively to
8 participate in rehabilitative programs or to otherwise perform
9 affirmative conduct. However, affirmative acts necessary to monitor
10 compliance with the order of a court may be required by the department.

11 (~~(12)~~) (13) "Criminal history" means the list of a defendant's
12 prior convictions and juvenile adjudications, whether in this state, in
13 federal court, or elsewhere. The history shall include, where known,
14 for each conviction (a) whether the defendant has been placed on
15 probation and the length and terms thereof; and (b) whether the
16 defendant has been incarcerated and the length of incarceration.

17 (~~(13)~~) (14) "Day fine" means a fine imposed by the sentencing
18 court that equals the difference between the offender's net daily
19 income and the reasonable obligations that the offender has for the
20 support of the offender and any dependents.

21 (~~(14)~~) (15) "Day reporting" means a program of enhanced
22 supervision designed to monitor the offender's daily activities and
23 compliance with sentence conditions, and in which the offender is
24 required to report daily to a specific location designated by the
25 department or the sentencing court.

26 (~~(15)~~) (16) "Department" means the department of corrections.

27 (~~(16)~~) (17) "Determinate sentence" means a sentence that states
28 with exactitude the number of actual years, months, or days of total
29 confinement, of partial confinement, of community supervision, the
30 number of actual hours or days of community service work, or dollars or
31 terms of a legal financial obligation. The fact that an offender
32 through earned release can reduce the actual period of confinement
33 shall not affect the classification of the sentence as a determinate
34 sentence.

35 (~~(17)~~) (18) "Disposable earnings" means that part of the earnings
36 of an offender remaining after the deduction from those earnings of any
37 amount required by law to be withheld. For the purposes of this
38 definition, "earnings" means compensation paid or payable for personal
39 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the
2 payments exempt from garnishment, attachment, or other process to
3 satisfy a court-ordered legal financial obligation, specifically
4 includes periodic payments pursuant to pension or retirement programs,
5 or insurance policies of any type, but does not include payments made
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
7 or Title 74 RCW.

8 ~~((18))~~ (19) "Drug offender sentencing alternative" is a
9 sentencing option available to persons convicted of a felony offense
10 other than a violent offense or a sex offense and who are eligible for
11 the option under RCW 9.94A.660.

12 ~~((19))~~ (20) "Drug offense" means:

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

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

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

22 ~~((20))~~ (21) "Earned release" means earned release from
23 confinement as provided in RCW 9.94A.150.

24 ~~((21))~~ (22) "Escape" means:

25 (a) Escape in the first degree (RCW 9A.76.110), escape in the
26 second degree (RCW 9A.76.120), willful failure to return from furlough
27 (RCW 72.66.060), willful failure to return from work release (RCW
28 72.65.070), or willful failure to be available for supervision by the
29 department while in community custody (RCW 72.09.310); or

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

33 ~~((22))~~ (23) "Felony traffic offense" means:

34 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
35 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
36 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (~~(23)~~) (24) "Fine" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specific period of time.

4 (~~(24)~~) (25) "First-time offender" means any person who has no
5 prior convictions for a felony and is eligible for the first-time
6 offender waiver under RCW 9.94A.650.

7 (~~(25)~~) (26) "Home detention" means a program of partial
8 confinement available to offenders wherein the offender is confined in
9 a private residence subject to electronic surveillance.

10 (~~(26)~~) (27) "Legal financial obligation" means a sum of money
11 that is ordered by a superior court of the state of Washington for
12 legal financial obligations which may include restitution to the
13 victim, statutorily imposed crime victims' compensation fees as
14 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
15 drug funds, court-appointed attorneys' fees, and costs of defense,
16 fines, and any other financial obligation that is assessed to the
17 offender as a result of a felony conviction. Upon conviction for
18 vehicular assault while under the influence of intoxicating liquor or
19 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
20 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
21 legal financial obligations may also include payment to a public agency
22 of the expense of an emergency response to the incident resulting in
23 the conviction, subject to RCW 38.52.430.

24 (~~(27)~~) (28) "Most serious offense" means any of the following
25 felonies or a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

1 (m) Promoting prostitution in the first degree;
2 (n) Rape in the third degree;
3 (o) Robbery in the second degree;
4 (p) Sexual exploitation;
5 (q) Vehicular assault;
6 (r) Vehicular homicide, when proximately caused by the driving of
7 any vehicle by any person while under the influence of intoxicating
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
9 any vehicle in a reckless manner;
10 (s) Any other class B felony offense with a finding of sexual
11 motivation;
12 (t) Any other felony with a deadly weapon verdict under RCW
13 9.94A.125;
14 (u) Any felony offense in effect at any time prior to December 2,
15 1993, that is comparable to a most serious offense under this
16 subsection, or any federal or out-of-state conviction for an offense
17 that under the laws of this state would be a felony classified as a
18 most serious offense under this subsection;
19 (v)(i) A prior conviction for indecent liberties under RCW
20 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
21 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
22 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
23 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
24 (ii) A prior conviction for indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
26 if: (A) The crime was committed against a child under the age of
27 fourteen; or (B) the relationship between the victim and perpetrator is
28 included in the definition of indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
30 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
31 through July 27, 1997.
32 (~~(+28+)~~) (29) "Nonviolent offense" means an offense which is not a
33 violent offense.
34 (~~(+29+)~~) (30) "Offender" means a person who has committed a felony
35 established by state law and is eighteen years of age or older or is
36 less than eighteen years of age but whose case is under superior court
37 jurisdiction under RCW 13.04.030 or has been transferred by the
38 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 ~~((+30+))~~ (31) "Partial confinement" means confinement for no more
4 than one year in a facility or institution operated or utilized under
5 contract by the state or any other unit of government, or, if home
6 detention or work crew has been ordered by the court, in an approved
7 residence, for a substantial portion of each day with the balance of
8 the day spent in the community. Partial confinement includes work
9 release, home detention, work crew, and a combination of work crew and
10 home detention.

11 ~~((+31+))~~ (32) "Persistent offender" is an offender who:

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

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.360; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) any of the following
26 offenses with a finding of sexual motivation: Murder in the first
27 degree, murder in the second degree, homicide by abuse, kidnapping in
28 the first degree, kidnapping in the second degree, assault in the first
29 degree, assault in the second degree, assault of a child in the first
30 degree, or burglary in the first degree~~((, with a finding of sexual~~
31 ~~motivation))~~; or (C) an attempt to commit any crime listed in this
32 subsection ~~((+31+))~~ (32)(b)(i); and

33 (ii) Has, before the commission of the offense under (b)(i) of this
34 subsection, been convicted as an offender on at least one occasion,
35 whether in this state or elsewhere, of an offense listed in (b)(i) of
36 this subsection. A conviction for rape of a child in the first degree
37 constitutes a conviction under (b)(i) of this subsection only when the
38 offender was sixteen years of age or older when the offender committed
39 the offense. A conviction for rape of a child in the second degree

1 constitutes a conviction under (b)(i) of this subsection only when the
2 offender was eighteen years of age or older when the offender committed
3 the offense.

4 ~~((+32+))~~ (33) "Postrelease supervision" is that portion of an
5 offender's community placement that is not community custody.

6 ~~((+33+))~~ (34) "Predatory" means acts directed towards:

7 (a) Strangers;

8 (b) Individuals with whom a relationship has been established or
9 promoted for the primary purpose of victimization; or

10 (c) Persons of casual acquaintance with whom no substantial
11 relationship exists.

12 (35) "Restitution" means a specific sum of money ordered by the
13 sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

16 ~~((+34+))~~ (36) "Risk assessment" means the application of an
17 objective instrument supported by research and adopted by the
18 department for the purpose of assessing an offender's risk of
19 reoffense, taking into consideration the nature of the harm done by the
20 offender, place and circumstances of the offender related to risk, the
21 offender's relationship to any victim, and any information provided to
22 the department by victims. The results of a risk assessment shall not
23 be based on unconfirmed or unconfirmable allegations.

24 ~~((+35+))~~ (37) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any
26 drug (RCW 46.61.502), actual physical control while under the influence
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
29 or

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

33 ~~((+36+))~~ (38) "Serious violent offense" is a subcategory of violent
34 offense and means:

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

36 (ii) Homicide by abuse;

37 (iii) Murder in the second degree;

38 (iv) Manslaughter in the first degree;

39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or

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

9 (~~(37)~~) (39) "Sex offense" means:

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

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

12 (ii) RCW 9A.64.020;

13 (iii) RCW 9.68A.090; or

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

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

19 (c) A felony with a finding of sexual motivation under RCW
20 9.94A.127 or 13.40.135; or

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

24 (~~(38)~~) (40) "Sexual motivation" means that one of the purposes
25 for which the defendant committed the crime was for the purpose of his
26 or her sexual gratification.

27 (~~(39)~~) (41) "Standard sentence range" means the sentencing
28 court's discretionary range in imposing a nonappealable sentence.

29 (~~(40)~~) (42) "Statutory maximum sentence" means the maximum length
30 of time for which an offender may be confined as punishment for a crime
31 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
32 the crime, or other statute defining the maximum penalty for a crime.

33 (~~(41)~~) (43) "Total confinement" means confinement inside the
34 physical boundaries of a facility or institution operated or utilized
35 under contract by the state or any other unit of government for twenty-
36 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

37 (~~(42)~~) (44) "Transition training" means written and verbal
38 instructions and assistance provided by the department to the offender
39 during the two weeks prior to the offender's successful completion of

1 the work ethic camp program. The transition training shall include
2 instructions in the offender's requirements and obligations during the
3 offender's period of community custody.

4 (~~(43)~~) (45) "Victim" means any person who has sustained
5 emotional, psychological, physical, or financial injury to person or
6 property as a direct result of the crime charged.

7 (~~(44)~~) (46) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

23 (xiii) Vehicular assault; and

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

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

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

34 (~~(45)~~) (47) "Work crew" means a program of partial confinement
35 consisting of civic improvement tasks for the benefit of the community
36 that complies with RCW 9.94A.135.

37 (~~(46)~~) (48) "Work ethic camp" means an alternative incarceration
38 program as provided in RCW 9.94A.137 designed to reduce recidivism and
39 lower the cost of corrections by requiring offenders to complete a

1 comprehensive array of real-world job and vocational experiences,
2 character-building work ethics training, life management skills
3 development, substance abuse rehabilitation, counseling, literacy
4 training, and basic adult education.

5 ~~((47))~~ (49) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **Sec. 19.** RCW 9.94A.715 and 2000 c 28 s 25 are each amended to read
9 as follows:

10 (1) When a court sentences a person to the custody of the
11 department for a sex offense not sentenced under section 20 of this
12 act, a violent offense, any crime against persons under RCW
13 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not
14 sentenced under RCW 9.94A.660, committed on or after July 1, 2000, the
15 court shall in addition to the other terms of the sentence, sentence
16 the offender to community custody for the community custody range
17 established under RCW 9.94A.040 or up to the period of earned release
18 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.
19 The community custody shall begin either upon completion of the term of
20 confinement or at such time as the offender is transferred to community
21 custody in lieu of earned release in accordance with RCW 9.94A.150 (1)
22 and (2).

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

31 (b) As part of any sentence that includes a term of community
32 custody imposed under this subsection, the court shall also require the
33 offender to comply with any conditions imposed by the department under
34 RCW 9.94A.720. The department shall assess the offender's risk of
35 reoffense and may establish and modify additional conditions of the
36 offender's community custody based upon the risk to community safety.
37 In addition, the department may require the offender to participate in

1 rehabilitative programs, or otherwise perform affirmative conduct, and
2 to obey all laws.

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

9 (3) If an offender violates conditions imposed by the court or the
10 department pursuant to this section during community custody, the
11 department may transfer the offender to a more restrictive confinement
12 status and impose other available sanctions as provided in RCW
13 9.94A.205 and 9.94A.207.

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

19 (5) At any time prior to the completion or termination of a sex
20 offender's term of community custody, if the court finds that public
21 safety would be enhanced, the court may impose and enforce an order
22 extending any or all of the conditions imposed pursuant to this section
23 for a period up to the maximum allowable sentence for the crime as it
24 is classified in chapter 9A.20 RCW, regardless of the expiration of the
25 offender's term of community custody. If a violation of a condition
26 extended under this subsection occurs after the expiration of the
27 offender's term of community custody, it shall be deemed a violation of
28 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
29 contempt of court as provided for in RCW 7.21.040. If the court
30 extends a condition beyond the expiration of the term of community
31 custody, the department is not responsible for supervision of the
32 offender's compliance with the condition.

33 (6) Within the funds available for community custody, the
34 department shall determine conditions and duration of community custody
35 on the basis of risk to community safety, and shall supervise offenders
36 during community custody on the basis of risk to community safety and
37 conditions imposed by the court. The secretary shall adopt rules to
38 implement the provisions of this subsection.

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

8 NEW SECTION. Sec. 20. A new section is added to chapter 9.94A RCW
9 to read as follows:

10 (1)(a) Except when (b) of this subsection applies, an offender who
11 is not a persistent offender shall be sentenced under this section if
12 the offender has:

13 (i) Been convicted of:

14 (A) Rape in the first degree or rape in the second degree;

15 (B) Rape of a child in the first degree, child molestation in the
16 first degree, or rape of a child in the second degree, with a finding
17 that the offense was predatory or where the offender used forcible
18 compulsion to commit the crime;

19 (C) Indecent liberties by forcible compulsion;

20 (D) Any of the following offenses with a finding of sexual
21 motivation: Murder in the first degree, murder in the second degree,
22 homicide by abuse, kidnapping in the first degree, kidnapping in the
23 second degree, assault in the first degree, assault in the second
24 degree, assault of a child in the first degree, or burglary in the
25 first degree; or

26 (E) An attempt to commit any crime listed in this subsection
27 (1)(a)(i);

28 committed on or after the effective date of this section, and the
29 offender is not a persistent offender; or

30 (ii) A prior conviction for an offense listed in RCW
31 9.94A.030(32)(b), and is convicted of any sex offense, which the trier
32 of fact finds was predatory and which was committed after the effective
33 date of this section.

34 (b) An offender convicted of rape of a child in the first or second
35 degree who was seventeen years of age or younger at the time of the
36 offense shall not be sentenced under this section unless the trier of
37 fact finds that the offense was predatory or committed using forcible
38 compulsion.

1 For purposes of (a)(ii) of this subsection, failure to register is
2 not a sex offense.

3 (2) Upon a finding that the offender is subject to sentencing under
4 this section, the court shall impose a sentence to a maximum term
5 consisting of the statutory maximum sentence for the offense and a
6 minimum term either within the standard sentence range for the offense,
7 or outside the standard sentence range pursuant to RCW 9.94A.390, if
8 the offender is otherwise eligible for such a sentence.

9 (3) A person sentenced under subsection (2) of this section shall
10 serve the sentence in a facility or institution operated, or utilized
11 under contract, by the state.

12 (4) When a court sentences a person to the custody of the
13 department under this section, the court shall, in addition to the
14 other terms of the sentence, sentence the offender to community custody
15 under the supervision of the department and the authority of the board
16 for any period of time the person is released from total confinement
17 before the expiration of the maximum sentence.

18 (5)(a) Unless a condition is waived by the court, the conditions of
19 community custody shall include those provided for in RCW 9.94A.700(4).
20 The conditions may also include those provided for in RCW 9.94A.700(5).
21 The court may also order the offender to participate in rehabilitative
22 programs or otherwise perform affirmative conduct reasonably related to
23 the circumstances of the offense, the offender's risk of reoffending,
24 or the safety of the community, and the department and the board shall
25 enforce such conditions pursuant to sections 22, 25, and 26 of this
26 act.

27 (b) As part of any sentence under this section, the court shall
28 also require the offender to comply with any conditions imposed by the
29 board under sections 22 and 24 through 27 of this act.

30 NEW SECTION. **Sec. 21.** A new section is added to chapter 71.09 RCW
31 to read as follows:

32 (1) The prosecuting attorney shall file a special allegation that
33 the offense was predatory and may file a special allegation that the
34 offense was committed by forcible compulsion in every criminal case in
35 which the defendant is charged with rape of a child in the first or
36 second degree, child molestation in the first degree, or in any sex
37 offense when the offender has a prior conviction for an offense listed
38 in RCW 9.94A.030(32)(b), when sufficient admissible evidence exists,

1 which, when considered with the most plausible, reasonably foreseeable
2 defense that could be raised under the evidence, would justify a
3 finding that the offense was predatory or was committed by forcible
4 compulsion by a reasonable and objective fact-finder.

5 (2) In a criminal case wherein there has been a special allegation
6 the state shall prove beyond a reasonable doubt that the offense was
7 predatory. The court shall make a finding of fact of whether or not an
8 offense was predatory or was committed by forcible compulsion, or if a
9 jury trial is had, the jury shall, if it finds the defendant guilty,
10 also find a special verdict as to whether or not the offense was
11 predatory or was committed by forcible compulsion.

12 (3) The prosecuting attorney shall not withdraw the special
13 allegation that an offense was predatory or was committed by forcible
14 compulsion without approval of the court through an order of dismissal
15 of the special allegation. The court shall not dismiss this special
16 allegation unless it finds that such an order is necessary to correct
17 an error in the initial charging decision or unless there are
18 evidentiary problems which make proving the special allegation
19 doubtful.

20 NEW SECTION. Sec. 22. A new section is added to chapter 9.94A RCW
21 to read as follows:

22 (1) The department shall assess the offender's risk of reoffense
23 and shall recommend to the board any additional or modified conditions
24 of the offender's community custody based upon the risk to community
25 safety. In addition, the department shall make a recommendation with
26 regard to, and the board may require the offender to participate in,
27 rehabilitative programs, or otherwise perform affirmative conduct, and
28 obey all laws.

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

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

36 (4) If an offender violates conditions imposed by the court, the
37 department, or the board during community custody, the board or the
38 department may transfer the offender to a more restrictive confinement

1 status and impose other available sanctions as provided in section 27
2 of this act.

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

8 (a) The crime of conviction;

9 (b) The offender's risk of reoffending; or

10 (c) The safety of the community.

11 (6) An offender released by the board under section 24 of this act
12 shall be subject to the supervision of the department until the
13 expiration of the maximum term of the sentence. The department shall
14 monitor the offender's compliance with conditions of community custody
15 imposed by the court, department, or board, and promptly report any
16 violations to the board. The board must consider and may impose
17 department-recommended conditions. The board shall impose the
18 conditions and instructions provided for in RCW 9.94A.720 and may
19 impose or modify conditions of release following written notice to the
20 offender. Any violation of conditions of community custody established
21 or modified by the board shall be subject to the provisions of sections
22 25 through 28 of this act.

23 (7) If the department finds that an emergency exists requiring the
24 immediate imposition of conditions of release in addition to those set
25 by the board under section 24 of this act and subsection (1) of this
26 section in order to prevent the offender from committing a crime, the
27 department may impose additional conditions. The department may not
28 impose conditions that are contrary to those set by the board or the
29 court and may not contravene or decrease court-imposed or board-imposed
30 conditions. Conditions imposed under this subsection shall take effect
31 immediately after notice to the offender by personal service, but shall
32 not remain in effect longer than seven working days unless approved by
33 the board under subsection (6) of this section within seven working
34 days.

35 NEW SECTION. **Sec. 23.** A new section is added to chapter 72.09 RCW
36 to read as follows:

1 The department shall provide offenders sentenced under section 20
2 of this act with the opportunity for sex offender treatment during
3 incarceration.

4 NEW SECTION. **Sec. 24.** A new section is added to chapter 9.94A RCW
5 to read as follows:

6 (1)(a) Before the expiration of the minimum term, as part of the
7 end of sentence review process under RCW 72.09.340, 72.09.345, and
8 where appropriate, 72.09.370, the department shall conduct, and the
9 offender shall participate in, an examination of the offender,
10 incorporating methodologies that are recognized by experts in the
11 prediction of sexual dangerousness, and including a prediction of the
12 probability that the offender will engage in sex offenses if released.

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

15 (2) The department shall recommend to the board any conditions of
16 community custody necessary to supplement conditions ordered by the
17 court, based on the offender's risk to community safety. The board
18 shall consider the department's recommendations and may impose
19 conditions in addition to those recommended by the department.

20 (3) No later than ninety days before expiration of the minimum
21 term, but after the board receives the results from the end of sentence
22 review process and the recommendations for additional or modified
23 conditions of community custody from the department, the board shall
24 conduct a hearing to determine whether it is likely that the offender
25 will engage in sex offenses if released on conditions to be set by the
26 board. The board may consider an offender's failure to participate in
27 an evaluation under subsection (1) of this section in determining
28 whether to release the offender. The board shall order the offender
29 released, under such affirmative and other conditions as the board
30 determines appropriate, unless the board determines by a preponderance
31 of the evidence that, despite such conditions, it is more likely than
32 not that the offender will commit sex offenses if released. If the
33 board does not order the offender released, the board shall establish
34 a new minimum term, not to exceed two years.

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

1 (1) Whenever the board or a community corrections officer of this
2 state has reason to believe an offender released under section 24 of
3 this act has violated a condition of community custody or the laws of
4 this state, any community corrections officer may arrest or cause the
5 arrest and detention of the offender pending a determination by the
6 board whether sanctions should be imposed or the offender's community
7 custody should be revoked. The community corrections officer shall
8 report all facts and circumstances surrounding the alleged violation to
9 the board, with recommendations.

10 (2) If the board or the department causes the arrest or detention
11 of an offender for a violation that does not amount to a new crime and
12 the offender is arrested or detained by local law enforcement or in a
13 local jail, the board or department, whichever caused the arrest or
14 detention, shall be financially responsible for local costs. Jail bed
15 costs shall be allocated at the rate established under RCW
16 9.94A.207(3).

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

19 Any offender released under section 24 of this act who is arrested
20 and detained in physical custody by the authority of a community
21 corrections officer, or upon the written order of the board, shall not
22 be released from custody on bail or personal recognizance, except upon
23 approval of the board and the issuance by the board of an order
24 reinstating the offender's release on the same or modified conditions.
25 All chiefs of police, marshals of cities and towns, sheriffs of
26 counties, and all police, prison, and peace officers and constables
27 shall execute any such order in the same manner as any ordinary
28 criminal process.

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

31 (1) If an offender released by the board under section 24 of this
32 act violates any condition or requirement of community custody, the
33 board may transfer the offender to a more restrictive confinement
34 status to serve up to the remaining portion of the sentence, less
35 credit for any period actually spent in community custody or in
36 detention awaiting disposition of an alleged violation and subject to
37 the limitations of subsection (2) of this section.

1 (2) Following the hearing specified in subsection (3) of this
2 section, whenever an offender released by the board under section 24 of
3 this act violates any condition or requirement of community custody,
4 the board may impose sanctions such as work release, home detention
5 with electronic monitoring, work crew, community service, inpatient
6 treatment, daily reporting, curfew, educational or counseling sessions,
7 supervision enhanced through electronic monitoring, or any other
8 sanctions available in the community, or may suspend or revoke the
9 release to community custody.

10 (3) If an offender released by the board under section 24 of this
11 act is accused of violating any condition or requirement of community
12 custody, he or she is entitled to a hearing before the board prior to
13 the imposition of sanctions. The hearing shall be considered as
14 offender disciplinary proceedings and shall not be subject to chapter
15 34.05 RCW. The board shall develop hearing procedures and a structure
16 of graduated sanctions consistent with the hearing procedures and
17 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
18 suspend the offender's release to community custody and confine the
19 offender in a correctional institution owned, operated by, or operated
20 under contract with the state prior to the hearing unless the offender
21 has been arrested and confined for a new criminal offense.

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

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

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

33 (c) The hearing shall be held unless waived by the offender, and
34 shall be electronically recorded. For offenders not in total
35 confinement, the hearing shall be held within fifteen working days, but
36 not less than twenty-four hours after notice of the violation. For
37 offenders in total confinement, the hearing shall be held within five
38 working days, but not less than twenty-four hours after notice of the
39 violation;

1 (d) The offender shall have the right to: (i) Be present at the
2 hearing; (ii) have the assistance of a person qualified to assist the
3 offender in the hearing, appointed by the hearing officer if the
4 offender has a language or communications barrier; (iii) testify or
5 remain silent; (iv) call witnesses and present documentary evidence;
6 (v) question witnesses who appear and testify; and (vi) be represented
7 by counsel if revocation of the release to community custody is a
8 possible sanction for the violation; and

9 (e) The sanction shall take effect if affirmed by the hearing
10 officer. Within seven days after the hearing officer's decision, the
11 offender may appeal the decision to a panel of three reviewing officers
12 designated by the chair of the board or by the chair's designee. The
13 sanction shall be reversed or modified if a majority of the panel finds
14 that the sanction was not reasonably related to any of the following:
15 (i) The crime of conviction; (ii) the violation committed; (iii) the
16 offender's risk of reoffending; or (iv) the safety of the community.

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

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

21 In the event the board suspends release status of an offender
22 released under section 24 of this act by reason of an alleged violation
23 of a condition of release, or pending disposition of a new criminal
24 charge, the board may nullify the suspension order and reinstate
25 release under previous conditions or any new conditions the board
26 determines advisable. Before the board may nullify a suspension order
27 and reinstate release, it shall determine that the best interests of
28 society and the offender shall be served by such reinstatement rather
29 than return to confinement.

30 **Sec. 29.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to read
31 as follows:

32 (1) The commission consists of twenty voting members, one of whom
33 the governor shall designate as chairperson. With the exception of ex
34 officio voting members, the voting members of the commission shall be
35 appointed by the governor, subject to confirmation by the senate.

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

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

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

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

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

11 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

23 In making the appointments, the governor shall endeavor to assure
24 that the commission membership includes adequate representation and
25 expertise relating to both the adult criminal justice system and the
26 juvenile justice system. In making the appointments, the governor
27 shall seek the recommendations of Washington prosecutors in respect to
28 the prosecuting attorney members, of the Washington state bar
29 association in respect to the defense attorney members, of the
30 association of superior court judges in respect to the members who are
31 judges, of the Washington association of sheriffs and police chiefs in
32 respect to the member who is a law enforcement officer, of the
33 Washington state association of counties in respect to the member who
34 is a county official, of the association of Washington cities in
35 respect to the member who is a city official, of the office of crime
36 victims advocacy and other organizations of crime victims in respect to
37 the member who is a victim of crime or a crime victims' advocate, and
38 of the Washington association of juvenile court administrators in

1 respect to the member who is an administrator of juvenile court
2 services.

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

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

10 (4) The speaker of the house of representatives and the president
11 of the senate may each appoint two nonvoting members to the commission,
12 one from each of the two largest caucuses in each house. The members
13 so appointed shall serve two-year terms, or until they cease to be
14 members of the house from which they were appointed, whichever occurs
15 first.

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

21 **Sec. 30.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and 2000
22 c 28 s 5 are each reenacted and amended to read as follows:

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

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

27 (i) Unless another term of confinement applies, the court shall
28 impose a sentence within the standard sentence range established in RCW
29 9.94A.310;

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

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

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

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

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

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

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

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

3 (x) Section 20 of this act, relating to certain sex offenses;

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

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

7 (b) If a standard sentence range has not been established for the
8 offender's crime, the court shall impose a determinate sentence which
9 may include not more than one year of confinement; community service
10 work; until July 1, 2000, a term of community supervision not to exceed
11 one year and on and after July 1, 2000, a term of community custody not
12 to exceed one year, subject to conditions and sanctions as authorized
13 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
14 The court may impose a sentence which provides more than one year of
15 confinement if the court finds reasons justifying an exceptional
16 sentence as provided in RCW 9.94A.390.

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

23 (4) If a sentence imposed includes payment of a legal financial
24 obligation, it shall be imposed as provided in RCW 9.94A.140,
25 9.94A.142, and 9.94A.145.

26 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
27 court may not impose a sentence providing for a term of confinement or
28 community supervision, community placement, or community custody which
29 exceeds the statutory maximum for the crime as provided in chapter
30 9A.20 RCW.

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

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

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

1 (9) The court may order an offender whose sentence includes
2 community placement or community supervision to undergo a mental status
3 evaluation and to participate in available outpatient mental health
4 treatment, if the court finds that reasonable grounds exist to believe
5 that the offender is a mentally ill person as defined in RCW 71.24.025,
6 and that this condition is likely to have influenced the offense. An
7 order requiring mental status evaluation or treatment must be based on
8 a presentence report and, if applicable, mental status evaluations that
9 have been filed with the court to determine the offender's competency
10 or eligibility for a defense of insanity. The court may order
11 additional evaluations at a later date if deemed appropriate.

12 (10) In any sentence of partial confinement, the court may require
13 the offender to serve the partial confinement in work release, in a
14 program of home detention, on work crew, or in a combined program of
15 work crew and home detention.

16 (11) In sentencing an offender convicted of a crime of domestic
17 violence, as defined in RCW 10.99.020, if the offender has a minor
18 child, or if the victim of the offense for which the offender was
19 convicted has a minor child, the court may, as part of any term of
20 community supervision, community placement, or community custody, order
21 the offender to participate in a domestic violence perpetrator program
22 approved under RCW 26.50.150.

23 **Sec. 31.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
24 as follows:

25 (1) A sentence that includes a term or terms of confinement
26 totaling more than one year shall be served in a facility or
27 institution operated, or utilized under contract, by the state. Except
28 as provided in subsection (3) of this section, a sentence of not more
29 than one year of confinement shall be served in a facility operated,
30 licensed, or utilized under contract, by the county, or if home
31 detention or work crew has been ordered by the court, in the residence
32 of either the offender or a member of the offender's immediate family.

33 (2) If a county uses a state partial confinement facility for the
34 partial confinement of a person sentenced to confinement for not more
35 than one year, the county shall reimburse the state for the use of the
36 facility as provided in this subsection. The office of financial
37 management shall set the rate of reimbursement based upon the average
38 per diem cost per offender in the facility. The office of financial

1 management shall determine to what extent, if any, reimbursement shall
2 be reduced or eliminated because of funds provided by the legislature
3 to the department for the purpose of covering the cost of county use of
4 state partial confinement facilities. The office of financial
5 management shall reestablish reimbursement rates each even-numbered
6 year.

7 (3) A person who is sentenced for a felony to a term of not more
8 than one year, and who is committed or returned to incarceration in a
9 state facility on another felony conviction, either under the
10 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
11 shall serve all terms of confinement, including a sentence of not more
12 than one year, in a facility or institution operated, or utilized under
13 contract, by the state, consistent with the provisions of RCW
14 9.94A.400.

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

19 (5) Sentences imposed pursuant to section 20 of this act shall be
20 served in a facility or institution operated, or utilized under
21 contract, by the state.

22 **Sec. 32.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
23 as follows:

24 The court may impose a sentence outside the standard sentence range
25 for an offense if it finds, considering the purpose of this chapter,
26 that there are substantial and compelling reasons justifying an
27 exceptional sentence. Whenever a sentence outside the standard
28 sentence range is imposed, the court shall set forth the reasons for
29 its decision in written findings of fact and conclusions of law. A
30 sentence outside the standard sentence range shall be a determinate
31 sentence unless it is imposed on an offender sentenced under section 20
32 of this act. An exceptional sentence imposed on an offender sentenced
33 under section 20 of this act shall be to a minimum term set by the
34 court and a maximum term equal to the statutory maximum sentence for
35 the offense of conviction under chapter 9A.20 RCW.

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

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

6 The following are illustrative factors which the court may consider
7 in the exercise of its discretion to impose an exceptional sentence.
8 The following are illustrative only and are not intended to be
9 exclusive reasons for exceptional sentences.

10 (1) Mitigating Circumstances

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

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

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

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

21 (e) The defendant's capacity to appreciate the wrongfulness of his
22 or her conduct, or to conform his or her conduct to the requirements of
23 the law, was significantly impaired. Voluntary use of drugs or alcohol
24 is excluded.

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

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

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

34 (2) Aggravating Circumstances

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

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

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

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

6 (i) The current offense involved multiple victims or multiple
7 incidents per victim;

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

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

12 (iv) The defendant used his or her position of trust, confidence,
13 or fiduciary responsibility to facilitate the commission of the current
14 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (k) The offense resulted in the pregnancy of a child victim of
21 rape.

22 (l) The defendant knew that the victim of the current offense was
23 a youth who was not residing with a legal custodian and the defendant
24 established or promoted the relationship for the primary purpose of
25 victimization.

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

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

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

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

37 (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. 34.** 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. 35.** 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. 36.** 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 20 of this act, for a
24 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 24 of this act. If
27 the board does not release the person, it shall set a new minimum term
28 not to exceed two years. The board shall review the person again not
29 less than ninety days prior to the expiration of the new minimum term.

30 **Sec. 37.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to read
31 as follows:

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

35 The proposed criteria should take into consideration RCW
36 9.95.009(2). Before submission to the governor, the board shall
37 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 20 through 28 of this act.

8 **Sec. 38.** 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 24 of this act, upon the completion of the
16 statutory maximum sentence, or through the action of the governor.

17 **Sec. 39.** 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. 40.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to read
30 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. 41.** 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 20 of this act for a
25 crime committed on or after July 1, 2001.

26 **Sec. 42.** 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 24 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 20 through 28 of this act.

1 **Sec. 43.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to read
2 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 20 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. 44.** 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. 45.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to read
36 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 20 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. 46.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to read
12 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. 47.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to read
25 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 20 of this act,
5 to leave a state correctional institution on community custody
6 according to the provisions of sections 20 through 28 of this act. The
7 person may be returned to the institution following a violation of his
8 or her conditions of release to community custody pursuant to the
9 hearing provisions of section 27 of this act.

10 **Sec. 48.** 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. 49.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to read
24 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. 50.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to read
9 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 20 of this act are subject to
34 the violation hearing process established in section 27 of this act.

35 **Sec. 51.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to read
36 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 20 of this act
19 are defined in section 27 of this act.

20 **Sec. 52.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to read
21 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. 53.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to read
16 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. 54.** 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. 55.** 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. 56.** 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. 57.** 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((,)) 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 20 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. 58.** 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. 59.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to read
7 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. 60.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to read
13 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. 61.** 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. 62.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to read
29 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. 63.** 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. 64.** 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. 65.** 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. 66.** 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. 67.** 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. 68.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to read
19 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. 69.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to read
27 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 committed after July 1, 2001,
5 and sentenced under section 20 of this act: RCW 9.95.003, 9.95.005,
6 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060,
7 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121,
8 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170,
9 9.95.300, and 9.96.050.

10 **Sec. 70.** 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. 71.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to read
35 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. 72.** 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. 73.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
33 read as follows:

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

37 (a) By forcible compulsion;

1 (b) When the other person is incapable of consent by reason of
2 being mentally defective, mentally incapacitated, or physically
3 helpless;

4 (c) When the victim is developmentally disabled and the perpetrator
5 is a person who is not married to the victim and who has supervisory
6 authority over the victim;

7 (d) When the perpetrator is a health care provider, the victim is
8 a client or patient, and the sexual contact occurs during a treatment
9 session, consultation, interview, or examination. It is an affirmative
10 defense that the defendant must prove by a preponderance of the
11 evidence that the client or patient consented to the sexual contact
12 with the knowledge that the sexual contact was not for the purpose of
13 treatment;

14 (e) When the victim is a resident of a facility for mentally
15 disordered or chemically dependent persons and the perpetrator is a
16 person who is not married to the victim and has supervisory authority
17 over the victim; or

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

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

23 **Sec. 74.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to read
24 as follows:

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

33 (2) Prior to release of an offender identified under this section,
34 a team consisting of representatives of the department of corrections,
35 the division of mental health, and, as necessary, the indeterminate
36 sentence review board, other divisions or administrations within the
37 department of social and health services, specifically including the
38 division of alcohol and substance abuse and the division of

1 developmental disabilities, the appropriate regional support network,
2 and the providers, as appropriate, shall develop a plan, as determined
3 necessary by the team, for delivery of treatment and support services
4 to the offender upon release. The team may include a school district
5 representative for offenders under the age of twenty-one. The team
6 shall consult with the offender's counsel, if any, and, as appropriate,
7 the offender's family and community. The team shall notify the crime
8 victim/witness program, which shall provide notice to all people
9 registered to receive notice under RCW 9.94A.155 of the proposed
10 release plan developed by the team. Victims, witnesses, and other
11 interested people notified by the department may provide information
12 and comments to the department on potential safety risk to specific
13 individuals or classes of individuals posed by the specific offender.
14 The team may recommend: (a) That the offender be evaluated by the
15 county designated mental health professional, as defined in chapter
16 71.05 RCW; (b) department-supervised community treatment; or (c)
17 voluntary community mental health or chemical dependency or abuse
18 treatment.

19 (3) Prior to release of an offender identified under this section,
20 the team shall determine whether or not an evaluation by a county
21 designated mental health professional is needed. If an evaluation is
22 recommended, the supporting documentation shall be immediately
23 forwarded to the appropriate county designated mental health
24 professional. The supporting documentation shall include the
25 offender's criminal history, history of judicially required or
26 administratively ordered involuntary antipsychotic medication while in
27 confinement, and any known history of involuntary civil commitment.

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

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

36 (6) If the county designated mental health professional determines
37 an emergency detention under chapter 71.05 RCW is necessary, the
38 department shall release the offender only to a state hospital or to a

1 consenting evaluation and treatment facility. The department shall
2 arrange transportation of the offender to the hospital or facility.

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

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

12 NEW SECTION. **Sec. 75.** A new section is added to chapter 9.95 RCW
13 to read as follows:

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

18 NEW SECTION. **Sec. 76.** The following acts or parts of acts are
19 each repealed:

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

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

25 NEW SECTION. **Sec. 77.** The secretary of corrections, the secretary
26 of social and health services, and the indeterminate sentence review
27 board may adopt rules to implement this act.

28 NEW SECTION. **Sec. 78.** (1) Sections 18 through 77 of this act
29 shall not affect the validity of any sentence imposed under any other
30 law for any offense committed before, on, or after the effective date
31 of this section.

32 (2) Sections 18 through 77 of this act shall apply to offenses
33 committed on or after the effective date of this section.

1 NEW SECTION. **Sec. 79.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 80.** This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and takes effect
8 July 1, 2001, except for sections 1 through 17 of this act which take
9 effect immediately.

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