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SECOND SUBSTITUTE HOUSE BILL 2225

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State of Washington

54th Legislature

1996 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Ballasiotes, Schoesler, Pennington, Sheldon, Kessler, D. Sommers, Radcliff, Koster, Delvin, Conway, Scheuerman, Campbell, Horn, Sheahan, Quall, Mitchell, Thompson, Blanton, Costa, Backlund and Benton)

Read first time 02/05/96.

1 AN ACT Relating to increasing the punishment for rape and indecent  
2 liberties; amending RCW 9.94A.120; reenacting and amending RCW  
3 9.94A.320; creating a new section; prescribing penalties; and providing  
4 an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW  
7 to read as follows:

8 (1) The legislature finds that:

9 (a) Rape and other sex offenses involving forcible compulsion are  
10 among the most terrifying and demeaning criminal acts an individual can  
11 perpetrate against another human being and the personal trauma and  
12 anguish suffered by the victims of rape and indecent liberties and by  
13 their families can create devastating difficulties which often take  
14 years to overcome;

15 (b) The pain and complications caused by rape and indecent  
16 liberties are even more severe where deadly weapons are involved, where  
17 the victim is kidnapped or receives serious physical injuries, where  
18 the victim is less than fourteen years old, where the perpetrator has

1 wrongfully entered the building or vehicle where the victim is  
2 situated, or where forcible compulsion is used; and

3 (c) The severity of punishment for those who commit rape or  
4 indecent liberties should be commensurate with the crime the  
5 perpetrators have forced upon their victims and strict penalties for  
6 such cruel and humiliating violations of a person's dignity and honor  
7 are both appropriate and just.

8 (2) The legislature hereby intends to ensure that the penalties  
9 imposed for rape and indecent liberties are significant and that the  
10 victims of rape and indecent liberties will be better able to lead  
11 lives free of fear knowing that the perpetrators of such crimes against  
12 them will be incarcerated for a substantial length of time.

13 **Sec. 2.** RCW 9.94A.320 and 1995 c 385 s 2, 1995 c 285 s 28, and  
14 1995 c 129 s 3 (Initiative Measure No. 159) are each reenacted and  
15 amended to read as follows:

16 TABLE 2

17 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

18	XV	Aggravated Murder 1 (RCW 10.95.020)
19	XIV	Murder 1 (RCW 9A.32.030)
20		Homicide by abuse (RCW 9A.32.055)
21		<u>Rape 1 (RCW 9A.44.050)</u>
22		<u>Rape of a Child 1 (RCW 9A.44.073)</u>
23	XIII	Murder 2 (RCW 9A.32.050)
24		<u>Rape 2 (with forcible compulsion) (RCW</u>
25		<u>9A.44.050(1)(a))</u>
26		<u>Rape of a Child 2 (RCW 9A.44.076)</u>
27	XII	Assault 1 (RCW 9A.36.011)
28		Assault of a Child 1 (RCW 9A.36.120)
29		<u>Indecent Liberties (with forcible</u>
30		<u>compulsion) (RCW 9A.44.100(1)(a))</u>
31	XI	<del>((Rape 1 (RCW 9A.44.040)</del>
32		<del>Rape of a Child 1 (RCW 9A.44.073)))</del>

1 X Kidnapping 1 (RCW 9A.40.020)  
2 Rape 2 (without forcible compulsion) (RCW  
3 9A.44.050(1) (b), (c), (d), and (e))  
4 (~~Rape of a Child 2 (RCW 9A.44.076)~~)  
5 Child Molestation 1 (RCW 9A.44.083)  
6 Damaging building, etc., by explosion with  
7 threat to human being (RCW  
8 70.74.280(1))  
9 Over 18 and deliver heroin or narcotic  
10 from Schedule I or II to someone  
11 under 18 (RCW 69.50.406)  
12 Leading Organized Crime (RCW  
13 9A.82.060(1)(a))

14 IX Assault of a Child 2 (RCW 9A.36.130)  
15 Robbery 1 (RCW 9A.56.200)  
16 Manslaughter 1 (RCW 9A.32.060)  
17 Explosive devices prohibited (RCW  
18 70.74.180)  
19 (~~Indecent Liberties (with forcible  
20 compulsion) (RCW 9A.44.100(1)(a))~~)  
21 Endangering life and property by  
22 explosives with threat to human being  
23 (RCW 70.74.270)  
24 Over 18 and deliver narcotic from Schedule  
25 III, IV, or V or a nonnarcotic from  
26 Schedule I-V to someone under 18 and  
27 3 years junior (RCW 69.50.406)  
28 Controlled Substance Homicide (RCW  
29 69.50.415)  
30 Sexual Exploitation (RCW 9.68A.040)  
31 Inciting Criminal Profiteering (RCW  
32 9A.82.060(1)(b))  
33 Vehicular Homicide, by being under the  
34 influence of intoxicating liquor or  
35 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)  
2 Promoting Prostitution 1 (RCW 9A.88.070)  
3 Selling for profit (controlled or  
4 counterfeit) any controlled substance  
5 (RCW 69.50.410)  
6 Manufacture, deliver, or possess with  
7 intent to deliver heroin or cocaine  
8 (RCW 69.50.401(a)(1)(i))  
9 Manufacture, deliver, or possess with  
10 intent to deliver methamphetamine  
11 (RCW 69.50.401(a)(1)(ii))  
12 Vehicular Homicide, by the operation of  
13 any vehicle in a reckless manner (RCW  
14 46.61.520)

15 VII Burglary 1 (RCW 9A.52.020)  
16 Vehicular Homicide, by disregard for the  
17 safety of others (RCW 46.61.520)  
18 Introducing Contraband 1 (RCW 9A.76.140)  
19 Indecent Liberties (without forcible  
20 compulsion) (RCW 9A.44.100(1) (b) and  
21 (c))  
22 Child Molestation 2 (RCW 9A.44.086)  
23 Dealing in depictions of minor engaged in  
24 sexually explicit conduct (RCW  
25 9.68A.050)  
26 Sending, bringing into state depictions of  
27 minor engaged in sexually explicit  
28 conduct (RCW 9.68A.060)  
29 Involving a minor in drug dealing (RCW  
30 69.50.401(f))  
31 Reckless Endangerment 1 (RCW 9A.36.045)  
32 Unlawful Possession of a Firearm in the  
33 first degree (RCW 9.41.040(1)(a))

34 VI Bribery (RCW 9A.68.010)  
35 Manslaughter 2 (RCW 9A.32.070)  
36 Rape of a Child 3 (RCW 9A.44.079)  
37 Intimidating a Juror/Witness (RCW  
38 9A.72.110, 9A.72.130)

1 Damaging building, etc., by explosion with  
2 no threat to human being (RCW  
3 70.74.280(2))  
4 Endangering life and property by  
5 explosives with no threat to human  
6 being (RCW 70.74.270)  
7 Incest 1 (RCW 9A.64.020(1))  
8 Manufacture, deliver, or possess with  
9 intent to deliver narcotics from  
10 Schedule I or II (except heroin or  
11 cocaine) (RCW 69.50.401(a)(1)(i))  
12 Intimidating a Judge (RCW 9A.72.160)  
13 Bail Jumping with Murder 1 (RCW  
14 9A.76.170(2)(a))  
15 Theft of a Firearm (RCW 9A.56.300)  
16 V Persistent prison misbehavior (RCW  
17 9.94.070)  
18 Criminal Mistreatment 1 (RCW 9A.42.020)  
19 Rape 3 (RCW 9A.44.060)  
20 Sexual Misconduct with a Minor 1 (RCW  
21 9A.44.093)  
22 Child Molestation 3 (RCW 9A.44.089)  
23 Kidnapping 2 (RCW 9A.40.030)  
24 Extortion 1 (RCW 9A.56.120)  
25 Incest 2 (RCW 9A.64.020(2))  
26 Perjury 1 (RCW 9A.72.020)  
27 Extortionate Extension of Credit (RCW  
28 9A.82.020)  
29 Advancing money or property for  
30 extortionate extension of credit (RCW  
31 9A.82.030)  
32 Extortionate Means to Collect Extensions  
33 of Credit (RCW 9A.82.040)  
34 Rendering Criminal Assistance 1 (RCW  
35 9A.76.070)  
36 Bail Jumping with class A Felony (RCW  
37 9A.76.170(2)(b))  
38 Sexually Violating Human Remains (RCW  
39 9A.44.105)

1 Delivery of imitation controlled substance  
2 by person eighteen or over to person  
3 under eighteen (RCW 69.52.030(2))  
4 Possession of a Stolen Firearm (RCW  
5 9A.56.310)

6 IV Residential Burglary (RCW 9A.52.025)  
7 Theft of Livestock 1 (RCW 9A.56.080)  
8 Robbery 2 (RCW 9A.56.210)  
9 Assault 2 (RCW 9A.36.021)  
10 Escape 1 (RCW 9A.76.110)  
11 Arson 2 (RCW 9A.48.030)  
12 Commercial Bribery (RCW 9A.68.060)  
13 Bribing a Witness/Bribe Received by  
14 Witness (RCW 9A.72.090, 9A.72.100)  
15 Malicious Harassment (RCW 9A.36.080)  
16 Threats to Bomb (RCW 9.61.160)  
17 Willful Failure to Return from Furlough  
18 (RCW 72.66.060)  
19 Hit and Run « Injury Accident (RCW  
20 46.52.020(4))  
21 Vehicular Assault (RCW 46.61.522)  
22 Manufacture, deliver, or possess with  
23 intent to deliver narcotics from  
24 Schedule III, IV, or V or  
25 nonnarcotics from Schedule I-V  
26 (except marijuana or  
27 methamphetamines) (RCW  
28 69.50.401(a)(1)(ii) through (iv))  
29 Influencing Outcome of Sporting Event (RCW  
30 9A.82.070)  
31 Use of Proceeds of Criminal Profiteering  
32 (RCW 9A.82.080 (1) and (2))  
33 Knowingly Trafficking in Stolen Property  
34 (RCW 9A.82.050(2))

35 III Criminal Mistreatment 2 (RCW 9A.42.030)  
36 Extortion 2 (RCW 9A.56.130)  
37 Unlawful Imprisonment (RCW 9A.40.040)  
38 Assault 3 (RCW 9A.36.031)

1 Assault of a Child 3 (RCW 9A.36.140)  
2 Custodial Assault (RCW 9A.36.100)  
3 Unlawful possession of firearm in the  
4 second degree (RCW 9.41.040(1)(b))  
5 Harassment (RCW 9A.46.020)  
6 Promoting Prostitution 2 (RCW 9A.88.080)  
7 Willful Failure to Return from Work  
8 Release (RCW 72.65.070)  
9 Burglary 2 (RCW 9A.52.030)  
10 Introducing Contraband 2 (RCW 9A.76.150)  
11 Communication with a Minor for Immoral  
12 Purposes (RCW 9.68A.090)  
13 Patronizing a Juvenile Prostitute (RCW  
14 9.68A.100)  
15 Escape 2 (RCW 9A.76.120)  
16 Perjury 2 (RCW 9A.72.030)  
17 Bail Jumping with class B or C Felony (RCW  
18 9A.76.170(2)(c))  
19 Intimidating a Public Servant (RCW  
20 9A.76.180)  
21 Tampering with a Witness (RCW 9A.72.120)  
22 Manufacture, deliver, or possess with  
23 intent to deliver marijuana (RCW  
24 69.50.401(a)(1)(ii))  
25 Delivery of a material in lieu of a  
26 controlled substance (RCW  
27 69.50.401(c))  
28 Manufacture, distribute, or possess with  
29 intent to distribute an imitation  
30 controlled substance (RCW  
31 69.52.030(1))  
32 Recklessly Trafficking in Stolen Property  
33 (RCW 9A.82.050(1))  
34 Theft of livestock 2 (RCW 9A.56.080)  
35 Securities Act violation (RCW 21.20.400)

1       II       Unlawful Practice of Law (RCW 2.48.180)  
2               Malicious Mischief 1 (RCW 9A.48.070)  
3               Possession of Stolen Property 1 (RCW  
4                       9A.56.150)  
5               Theft 1 (RCW 9A.56.030)  
6               Trafficking in Insurance Claims (RCW  
7                       48.30A.015)  
8               Unlicensed Practice of a Profession or  
9                       Business (RCW 18.130.190(7))  
10              Health Care False Claims (RCW 48.80.030)  
11              Possession of controlled substance that is  
12                       either heroin or narcotics from  
13                       Schedule I or II (RCW 69.50.401(d))  
14              Possession of phencyclidine (PCP) (RCW  
15                       69.50.401(d))  
16              Create, deliver, or possess a counterfeit  
17                       controlled substance (RCW  
18                       69.50.401(b))  
19              Computer Trespass 1 (RCW 9A.52.110)  
20              Escape from Community Custody (RCW  
21                       72.09.310)

22       I       Theft 2 (RCW 9A.56.040)  
23               Possession of Stolen Property 2 (RCW  
24                       9A.56.160)  
25               Forgery (RCW 9A.60.020)  
26               Taking Motor Vehicle Without Permission  
27                       (RCW 9A.56.070)  
28               Vehicle Prowl 1 (RCW 9A.52.095)  
29               Attempting to Elude a Pursuing Police  
30                       Vehicle (RCW 46.61.024)  
31               Malicious Mischief 2 (RCW 9A.48.080)  
32               Reckless Burning 1 (RCW 9A.48.040)  
33               Unlawful Issuance of Checks or Drafts (RCW  
34                       9A.56.060)  
35               Unlawful Use of Food Stamps (RCW 9.91.140  
36                       (2) and (3))  
37               False Verification for Welfare (RCW  
38                       74.08.055)  
39               Forged Prescription (RCW 69.41.020)



1 Forged Prescription for a Controlled  
2 Substance (RCW 69.50.403)  
3 Possess Controlled Substance that is a  
4 Narcotic from Schedule III, IV, or V  
5 or Non-narcotic from Schedule I-V  
6 (except phencyclidine) (RCW  
7 69.50.401(d))

8 **Sec. 3.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read  
9 as follows:

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

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

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

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

23 (4) A persistent offender shall be sentenced to a term of total  
24 confinement for life without the possibility of parole or, when  
25 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
26 first degree, sentenced to death, notwithstanding the maximum sentence  
27 under any other law. An offender convicted of the crime of murder in  
28 the first degree shall be sentenced to a term of total confinement not  
29 less than twenty years. An offender convicted of the crime of assault  
30 in the first degree or assault of a child in the first degree where the  
31 offender used force or means likely to result in death or intended to  
32 kill the victim shall be sentenced to a term of total confinement not  
33 less than five years. An offender convicted of the crime of rape in  
34 the first degree shall be sentenced to a term of total confinement not  
35 less than five years. The foregoing minimum terms of total confinement  
36 are mandatory and shall not be varied or modified as provided in  
37 subsection (2) of this section. In addition, all offenders subject to

1 the provisions of this subsection shall not be eligible for community  
2 custody, earned early release time, furlough, home detention, partial  
3 confinement, work crew, work release, or any other form of early  
4 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
5 or any other form of authorized leave of absence from the correctional  
6 facility while not in the direct custody of a corrections officer or  
7 officers during such minimum terms of total confinement except in the  
8 case of an offender in need of emergency medical treatment or for the  
9 purpose of commitment to an inpatient treatment facility in the case of  
10 an offender convicted of the crime of rape in the first degree.

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

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

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

24 (c) Pursue a prescribed, secular course of study or vocational  
25 training;

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

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

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

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

35 (i) The offender is convicted of the manufacture, delivery, or  
36 possession with intent to manufacture or deliver a controlled substance  
37 classified in Schedule I or II that is a narcotic drug or a felony that  
38 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
39 criminal solicitation, or criminal conspiracy to commit such crimes,

1 and the violation does not involve a sentence enhancement under RCW  
2 9.94A.310 (3) or (4);

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

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

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

36 (i) Devote time to a specific employment or training;

37 (ii) Remain within prescribed geographical boundaries and notify  
38 the court or the community corrections officer before any change in the  
39 offender's address or employment;

- 1 (iii) Report as directed to a community corrections officer;
- 2 (iv) Pay all court-ordered legal financial obligations;
- 3 (v) Perform community service work;
- 4 (vi) Stay out of areas designated by the sentencing judge.

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

19 (d) The department shall determine the rules for calculating the  
20 value of a day fine based on the offender's income and reasonable  
21 obligations which the offender has for the support of the offender and  
22 any dependents. These rules shall be developed in consultation with  
23 the administrator for the courts, the office of financial management,  
24 and the commission.

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

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

1 The report of the examination shall include at a minimum the  
2 following: The defendant's version of the facts and the official  
3 version of the facts, the defendant's offense history, an assessment of  
4 problems in addition to alleged deviant behaviors, the offender's  
5 social and employment situation, and other evaluation measures used.  
6 The report shall set forth the sources of the evaluator's information.

7 The examiner shall assess and report regarding the defendant's  
8 amenability to treatment and relative risk to the community. A  
9 proposed treatment plan shall be provided and shall include, at a  
10 minimum:

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

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

14 (C) Monitoring plans, including any requirements regarding living  
15 conditions, lifestyle requirements, and monitoring by family members  
16 and others;

17 (D) Anticipated length of treatment; and

18 (E) Recommended crime-related prohibitions.

19 The court on its own motion may order, or on a motion by the state  
20 shall order, a second examination regarding the offender's amenability  
21 to treatment. The evaluator shall be selected by the party making the  
22 motion. The defendant shall pay the cost of any second examination  
23 ordered unless the court finds the defendant to be indigent in which  
24 case the state shall pay the cost.

25 (ii) After receipt of the reports, the court shall consider whether  
26 the offender and the community will benefit from use of this special  
27 sexual offender sentencing alternative and consider the victim's  
28 opinion whether the offender should receive a treatment disposition  
29 under this subsection. If the court determines that this special sex  
30 offender sentencing alternative is appropriate, the court shall then  
31 impose a sentence within the sentence range. ~~((If this sentence is  
32 less than eight years of confinement,))~~ The court may suspend the  
33 execution of the sentence and impose the following conditions of  
34 suspension:

35 (A) The court shall place the defendant on community supervision  
36 for the length of the suspended sentence or three years, whichever is  
37 greater; and

38 (B) The court shall order treatment for any period up to three  
39 years in duration. The court in its discretion shall order outpatient

1 sex offender treatment or inpatient sex offender treatment, if  
2 available. A community mental health center may not be used for such  
3 treatment unless it has an appropriate program designed for sex  
4 offender treatment. The offender shall not change sex offender  
5 treatment providers or treatment conditions without first notifying the  
6 prosecutor, the community corrections officer, and the court, and shall  
7 not change providers without court approval after a hearing if the  
8 prosecutor or community corrections officer object to the change. In  
9 addition, as conditions of the suspended sentence, the court may impose  
10 other sentence conditions including up to six months of confinement,  
11 not to exceed the sentence range of confinement for that offense,  
12 crime-related prohibitions, and requirements that the offender perform  
13 any one or more of the following:

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

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

18 (III) Report as directed to the court and a community corrections  
19 officer;

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

23 (V) Make recoupment to the victim for the cost of any counseling  
24 required as a result of the offender's crime.

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

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

1 and the court may order another evaluation regarding the advisability  
2 of termination from treatment. The defendant shall pay the cost of any  
3 additional evaluation ordered unless the court finds the defendant to  
4 be indigent in which case the state shall pay the cost. At the  
5 treatment termination hearing the court may: (A) Modify conditions of  
6 community supervision, and either (B) terminate treatment, or (C)  
7 extend treatment for up to the remaining period of community  
8 supervision.

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

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

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

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

34 (b) When an offender commits any felony sex offense on or after  
35 July 1, 1987, and is sentenced to a term of confinement of more than  
36 one year but less than six years, the sentencing court may, on its own  
37 motion or on the motion of the offender or the state, request the  
38 department of corrections to evaluate whether the offender is amenable

1 to treatment and the department may place the offender in a treatment  
2 program within a correctional facility operated by the department.

3 Except for an offender who has been convicted of a violation of RCW  
4 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
5 before the expiration of his or her term of confinement, the department  
6 of corrections may request the court to convert the balance of  
7 confinement to community supervision and to place conditions on the  
8 offender including crime-related prohibitions and requirements that the  
9 offender perform any one or more of the following:

- 10 (i) Devote time to a specific employment or occupation;
- 11 (ii) Remain within prescribed geographical boundaries and notify  
12 the court or the community corrections officer prior to any change in  
13 the offender's address or employment;
- 14 (iii) Report as directed to the court and a community corrections  
15 officer;
- 16 (iv) Undergo available outpatient treatment.

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

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

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

33 (9)(a) When a court sentences a person to a term of total  
34 confinement to the custody of the department of corrections for an  
35 offense categorized as a sex offense or a serious violent offense  
36 committed after July 1, 1988, but before July 1, 1990, assault in the  
37 second degree, assault of a child in the second degree, any crime  
38 against a person where it is determined in accordance with RCW  
39 9.94A.125 that the defendant or an accomplice was armed with a deadly



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

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

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

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

38 (iii) The offender shall not consume controlled substances except  
39 pursuant to lawfully issued prescriptions;

1 (iv) An offender in community custody shall not unlawfully possess  
2 controlled substances;

3 (v) The offender shall pay supervision fees as determined by the  
4 department of corrections; and

5 (vi) The residence location and living arrangements are subject to  
6 the prior approval of the department of corrections during the period  
7 of community placement.

8 (c) The court may also order any of the following special  
9 conditions:

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

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

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

16 (iv) The offender shall not consume alcohol; or

17 (v) The offender shall comply with any crime-related prohibitions.

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

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

28 (11) If a sentence imposed includes payment of a legal financial  
29 obligation, the sentence shall specify the total amount of the legal  
30 financial obligation owed, and shall require the offender to pay a  
31 specified monthly sum toward that legal financial obligation.  
32 Restitution to victims shall be paid prior to any other payments of  
33 monetary obligations. Any legal financial obligation that is imposed  
34 by the court may be collected by the department, which shall deliver  
35 the amount paid to the county clerk for credit. The offender's  
36 compliance with payment of legal financial obligations shall be  
37 supervised by the department. All monetary payments ordered shall be  
38 paid no later than ten years after the last date of release from  
39 confinement pursuant to a felony conviction or the date the sentence

1 was entered. Independent of the department, the party or entity to  
2 whom the legal financial obligation is owed shall have the authority to  
3 utilize any other remedies available to the party or entity to collect  
4 the legal financial obligation. Nothing in this section makes the  
5 department, the state, or any of its employees, agents, or other  
6 persons acting on their behalf liable under any circumstances for the  
7 payment of these legal financial obligations. If an order includes  
8 restitution as one of the monetary assessments, the county clerk shall  
9 make disbursements to victims named in the order.

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

14 (13) All offenders sentenced to terms involving community  
15 supervision, community service, community placement, or legal financial  
16 obligation shall be under the supervision of the secretary of the  
17 department of corrections or such person as the secretary may designate  
18 and shall follow explicitly the instructions of the secretary including  
19 reporting as directed to a community corrections officer, remaining  
20 within prescribed geographical boundaries, notifying the community  
21 corrections officer of any change in the offender's address or  
22 employment, and paying the supervision fee assessment. The department  
23 may require offenders to pay for special services rendered on or after  
24 July 25, 1993, including electronic monitoring, day reporting, and  
25 telephone reporting, dependent upon the offender's ability to pay. The  
26 department may pay for these services for offenders who are not able to  
27 pay.

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

38 (15) The sentencing court shall give the offender credit for all  
39 confinement time served before the sentencing if that confinement was

1 solely in regard to the offense for which the offender is being  
2 sentenced.

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

8 (17) The court shall order restitution whenever the offender is  
9 convicted of a felony that results in injury to any person or damage to  
10 or loss of property, whether the offender is sentenced to confinement  
11 or placed under community supervision, unless extraordinary  
12 circumstances exist that make restitution inappropriate in the court's  
13 judgment. The court shall set forth the extraordinary circumstances in  
14 the record if it does not order restitution.

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

22 (19) In any sentence of partial confinement, the court may require  
23 the defendant to serve the partial confinement in work release, in a  
24 program of home detention, on work crew, or in a combined program of  
25 work crew and home detention.

26 (20) All court-ordered legal financial obligations collected by the  
27 department and remitted to the county clerk shall be credited and paid  
28 where restitution is ordered. Restitution shall be paid prior to any  
29 other payments of monetary obligations.

30 NEW SECTION. **Sec. 4.** This act shall take effect July 1, 1996.

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