
HOUSE BILL 2734

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By Representatives Sterk, Sheahan, Campbell, L. Thomas, McMahan, Sheldon, Sherstad, Cooke, Mulliken, Boldt, McMorris, Thompson, Hargrove, Benton and Johnson

Read first time 01/17/96. Referred to Committee on Corrections.

1 AN ACT Relating to sex offenders; amending RCW 9.94A.120;
2 reenacting and amending RCW 9.94A.030; and declaring an emergency.

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

4 **Sec. 1.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995
5 c 101 s 2 are each reenacted and amended to read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Collect," or any derivative thereof, "collect and remit," or
9 "collect and deliver," when used with reference to the department of
10 corrections, means that the department is responsible for monitoring
11 and enforcing the offender's sentence with regard to the legal
12 financial obligation, receiving payment thereof from the offender, and,
13 consistent with current law, delivering daily the entire payment to the
14 superior court clerk without depositing it in a departmental account.

15 (2) "Commission" means the sentencing guidelines commission.

16 (3) "Community corrections officer" means an employee of the
17 department who is responsible for carrying out specific duties in
18 supervision of sentenced offenders and monitoring of sentence
19 conditions.

1 (4) "Community custody" means that portion of an inmate's sentence
2 of confinement in lieu of earned early release time or imposed pursuant
3 to RCW 9.94A.120(6) served in the community subject to controls placed
4 on the inmate's movement and activities by the department of
5 corrections.

6 (5) "Community placement" means that period during which the
7 offender is subject to the conditions of community custody and/or
8 postrelease supervision, which begins either upon completion of the
9 term of confinement (postrelease supervision) or at such time as the
10 offender is transferred to community custody in lieu of earned early
11 release. Community placement may consist of entirely community
12 custody, entirely postrelease supervision, or a combination of the two.

13 (6) "Community service" means compulsory service, without
14 compensation, performed for the benefit of the community by the
15 offender.

16 (7) "Community supervision" means a period of time during which a
17 convicted offender is subject to crime-related prohibitions and other
18 sentence conditions imposed by a court pursuant to this chapter or RCW
19 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
20 may include crime-related prohibitions and other conditions imposed
21 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
22 for out-of-state supervision of parolees and probationers, RCW
23 9.95.270, community supervision is the functional equivalent of
24 probation and should be considered the same as probation by other
25 states.

26 (8) "Confinement" means total or partial confinement as defined in
27 this section.

28 (9) "Conviction" means an adjudication of guilt pursuant to Titles
29 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
30 acceptance of a plea of guilty.

31 (10) "Court-ordered legal financial obligation" means a sum of
32 money that is ordered by a superior court of the state of Washington
33 for legal financial obligations which may include restitution to the
34 victim, statutorily imposed crime victims' compensation fees as
35 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
36 drug funds, court-appointed attorneys' fees, and costs of defense,
37 fines, and any other financial obligation that is assessed to the
38 offender as a result of a felony conviction. Upon conviction for
39 vehicular assault while under the influence of intoxicating liquor or

1 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
2 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
3 legal financial obligations may also include payment to a public agency
4 of the expense of an emergency response to the incident resulting in
5 the conviction, subject to the provisions in RCW 38.52.430.

6 (11) "Crime-related prohibition" means an order of a court
7 prohibiting conduct that directly relates to the circumstances of the
8 crime for which the offender has been convicted, and shall not be
9 construed to mean orders directing an offender affirmatively to
10 participate in rehabilitative programs or to otherwise perform
11 affirmative conduct.

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

18 (b) "Criminal history" shall always include juvenile convictions
19 for sex offenses and serious violent offenses and shall also include a
20 defendant's other prior convictions in juvenile court if: (i) The
21 conviction was for an offense which is a felony or a serious traffic
22 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
23 the defendant was fifteen years of age or older at the time the offense
24 was committed; and (iii) with respect to prior juvenile class B and C
25 felonies or serious traffic offenses, the defendant was less than
26 twenty-three years of age at the time the offense for which he or she
27 is being sentenced was committed.

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

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

37 (15) "Department" means the department of corrections.

38 (16) "Determinate sentence" means a sentence that states with
39 exactitude the number of actual years, months, or days of total

1 confinement, of partial confinement, of community supervision, the
2 number of actual hours or days of community service work, or dollars or
3 terms of a legal financial obligation. The fact that an offender
4 through "earned early release" can reduce the actual period of
5 confinement shall not affect the classification of the sentence as a
6 determinate sentence.

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

19 (18) "Drug offense" means:

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

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

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

29 (19) "Escape" means:

30 (a) Escape in the first degree (RCW 9A.76.110), escape in the
31 second degree (RCW 9A.76.120), willful failure to return from furlough
32 (RCW 72.66.060), willful failure to return from work release (RCW
33 72.65.070), or willful failure to be available for supervision by the
34 department while in community custody (RCW 72.09.310); or

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

38 (20) "Felony traffic offense" means:

1 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
2 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
3 and-run injury-accident (RCW 46.52.020(4)); or

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

7 (21) "Fines" means the requirement that the offender pay a specific
8 sum of money over a specific period of time to the court.

9 (22)(a) "First-time offender" means any person who is convicted of
10 a felony (i) not classified as a violent offense or a sex offense under
11 this chapter, or (ii) that is not the manufacture, delivery, or
12 possession with intent to manufacture or deliver a controlled substance
13 classified in schedule I or II that is a narcotic drug, nor the
14 manufacture, delivery, or possession with intent to deliver
15 methamphetamine, its salts, isomers, and salts of its isomers as
16 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
17 controlled substance or counterfeit substance classified in schedule I,
18 RCW 69.50.204, except leaves and flowering tops of marihuana, and
19 except as provided in (b) of this subsection, who previously has never
20 been convicted of a felony in this state, federal court, or another
21 state, and who has never participated in a program of deferred
22 prosecution for a felony offense.

23 (b) For purposes of (a) of this subsection, a juvenile adjudication
24 for an offense committed before the age of fifteen years is not a
25 previous felony conviction except for adjudications of sex offenses and
26 serious violent offenses.

27 (23) "Most serious offense" means any of the following felonies or
28 a felony attempt to commit any of the following felonies, as now
29 existing or hereafter amended:

30 (a) Any felony defined under any law as a class A felony or
31 criminal solicitation of or criminal conspiracy to commit a class A
32 felony;

33 (b) Assault in the second degree;

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

35 (d) Child molestation in the second degree;

36 (e) Controlled substance homicide;

37 (f) Extortion in the first degree;

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

39 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault;
- 10 (r) Vehicular homicide, when proximately caused by the driving of
11 any vehicle by any person while under the influence of intoxicating
12 liquor or any drug as defined by RCW 46.61.502, or by the operation of
13 any vehicle in a reckless manner;
- 14 (s) Any other class B felony offense with a finding of sexual
15 motivation, as "sexual motivation" is defined under this section;
- 16 (t) Any other felony with a deadly weapon verdict under RCW
17 9.94A.125;
- 18 (u) Any felony offense in effect at any time prior to December 2,
19 1993, that is comparable to a most serious offense under this
20 subsection, or any federal or out-of-state conviction for an offense
21 that under the laws of this state would be a felony classified as a
22 most serious offense under this subsection.
- 23 (24) "Nonviolent offense" means an offense which is not a violent
24 offense.
- 25 (25) "Offender" means a person who has committed a felony
26 established by state law and is eighteen years of age or older or is
27 less than eighteen years of age but whose case has been transferred by
28 the appropriate juvenile court to a criminal court pursuant to RCW
29 13.40.110. Throughout this chapter, the terms "offender" and
30 "defendant" are used interchangeably.
- 31 (26) "Partial confinement" means confinement for no more than one
32 year in a facility or institution operated or utilized under contract
33 by the state or any other unit of government, or, if home detention or
34 work crew has been ordered by the court, in an approved residence, for
35 a substantial portion of each day with the balance of the day spent in
36 the community. Partial confinement includes work release, home
37 detention, work crew, and a combination of work crew and home detention
38 as defined in this section.
- 39 (27) "Persistent offender" is an offender who:

1 (a) Has been convicted in this state of any felony considered a
2 most serious offense; and

3 (b) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.360; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted.

11 (28) "Postrelease supervision" is that portion of an offender's
12 community placement that is not community custody.

13 (29) "Restitution" means the requirement that the offender pay a
14 specific sum of money over a specific period of time to the court as
15 payment of damages. The sum may include both public and private costs.
16 The imposition of a restitution order does not preclude civil redress.

17 (30) "School" has the meaning under RCW 28A.150.010, 28A.150.020,
18 or 28A.195.010. It also means any postsecondary school of education
19 including but not limited to colleges, universities, and vocational
20 educational schools. A true copy of a map produced or reproduced by
21 any municipal, school district, county, or transit authority engineer
22 for the purpose of depicting the location and boundaries of the area on
23 or within the radius of one-quarter of a mile or three city blocks of
24 any property used for a school may be used by a court or community
25 corrections officer to determine the location and boundaries of
26 schools.

27 (31) "Serious traffic offense" means:

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

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

36 (~~((31))~~) (32) "Serious violent offense" is a subcategory of violent
37 offense and means:

38 (a) Murder in the first degree, homicide by abuse, murder in the
39 second degree, assault in the first degree, kidnapping in the first

1 degree, or rape in the first degree, assault of a child in the first
2 degree, or an attempt, criminal solicitation, or criminal conspiracy to
3 commit one of these felonies; or

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

7 (~~(32)~~) (33) "Sentence range" means the sentencing court's
8 discretionary range in imposing a nonappealable sentence.

9 (~~(33)~~) (34) "Sex offense" means:

10 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
11 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
12 criminal attempt, criminal solicitation, or criminal conspiracy to
13 commit such crimes;

14 (b) A felony with a finding of sexual motivation under RCW
15 9.94A.127 or 13.40.135; or

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

19 (~~(34)~~) (35) "Sexual motivation" means that one of the purposes
20 for which the defendant committed the crime was for the purpose of his
21 or her sexual gratification.

22 (~~(35)~~) (36) "Total confinement" means confinement inside the
23 physical boundaries of a facility or institution operated or utilized
24 under contract by the state or any other unit of government for twenty-
25 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

26 (~~(36)~~) (37) "Transition training" means written and verbal
27 instructions and assistance provided by the department to the offender
28 during the two weeks prior to the offender's successful completion of
29 the work ethic camp program. The transition training shall include
30 instructions in the offender's requirements and obligations during the
31 offender's period of community custody.

32 (~~(37)~~) (38) "Victim" means any person who has sustained
33 emotional, psychological, physical, or financial injury to person or
34 property as a direct result of the crime charged.

35 (~~(38)~~) (39) "Violent offense" means:

36 (a) Any of the following felonies, as now existing or hereafter
37 amended: Any felony defined under any law as a class A felony or an
38 attempt to commit a class A felony, criminal solicitation of or
39 criminal conspiracy to commit a class A felony, manslaughter in the

1 first degree, manslaughter in the second degree, indecent liberties if
2 committed by forcible compulsion, kidnapping in the second degree,
3 arson in the second degree, assault in the second degree, assault of a
4 child in the second degree, extortion in the first degree, robbery in
5 the second degree, vehicular assault, and vehicular homicide, when
6 proximately caused by the driving of any vehicle by any person while
7 under the influence of intoxicating liquor or any drug as defined by
8 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

15 (~~(39)~~) (40) "Work crew" means a program of partial confinement
16 consisting of civic improvement tasks for the benefit of the community
17 of not less than thirty-five hours per week that complies with RCW
18 9.94A.135. The civic improvement tasks shall have minimal negative
19 impact on existing private industries or the labor force in the county
20 where the service or labor is performed. The civic improvement tasks
21 shall not affect employment opportunities for people with developmental
22 disabilities contracted through sheltered workshops as defined in RCW
23 82.04.385. Only those offenders sentenced to a facility operated or
24 utilized under contract by a county or the state are eligible to
25 participate on a work crew. Offenders sentenced for a sex offense as
26 defined in subsection (~~(33)~~) (34) of this section are not eligible
27 for the work crew program.

28 (~~(40)~~) (41) "Work ethic camp" means an alternative incarceration
29 program designed to reduce recidivism and lower the cost of corrections
30 by requiring offenders to complete a comprehensive array of real-world
31 job and vocational experiences, character-building work ethics
32 training, life management skills development, substance abuse
33 rehabilitation, counseling, literacy training, and basic adult
34 education.

35 (~~(41)~~) (42) "Work release" means a program of partial confinement
36 available to offenders who are employed or engaged as a student in a
37 regular course of study at school. Participation in work release shall
38 be conditioned upon the offender attending work or school at regularly
39 defined hours and abiding by the rules of the work release facility.

1 (~~(42)~~) (43) "Home detention" means a program of partial
2 confinement available to offenders wherein the offender is confined in
3 a private residence subject to electronic surveillance.

4 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
5 as follows:

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

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

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

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

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

1 facility while not in the direct custody of a corrections officer or
2 officers during such minimum terms of total confinement except in the
3 case of an offender in need of emergency medical treatment or for the
4 purpose of commitment to an inpatient treatment facility in the case of
5 an offender convicted of the crime of rape in the first degree.

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

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

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

19 (c) Pursue a prescribed, secular course of study or vocational
20 training;

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

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

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

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

30 (i) The offender is convicted of the manufacture, delivery, or
31 possession with intent to manufacture or deliver a controlled substance
32 classified in Schedule I or II that is a narcotic drug or a felony that
33 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
34 criminal solicitation, or criminal conspiracy to commit such crimes,
35 and the violation does not involve a sentence enhancement under RCW
36 9.94A.310 (3) or (4);

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

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

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

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

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

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

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

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

36 The report of the examination shall include at a minimum the
37 following: The defendant's version of the facts and the official
38 version of the facts, the defendant's offense history, an assessment of
39 problems in addition to alleged deviant behaviors, the offender's

1 social and employment situation, and other evaluation measures used.
2 The report shall set forth the sources of the evaluator's information.

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

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

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

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

13 (D) Anticipated length of treatment; and

14 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

20 In addition, as a condition of the suspended sentence, the court
21 must order the defendant to refrain from establishing or maintaining a
22 residence within the radius of one-quarter of a mile or three city
23 blocks of the perimeter of a school ground.

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

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

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

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

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

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

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

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

1 Except for an offender who has been convicted of a violation of RCW
2 9A.44.040 or 9A.44.050, if the offender completes the treatment program
3 before the expiration of his or her term of confinement, the department
4 of corrections may request the court to convert the balance of
5 confinement to community supervision and to place conditions on the
6 offender including crime-related prohibitions and requirements that the
7 offender perform any one or more of the following:

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

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

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

14 (iv) Undergo available outpatient treatment.

15 If the court places the offender on community supervision the court
16 must order the defendant to refrain from establishing or maintaining a
17 residence within the radius of one-quarter of a mile or three city
18 blocks of the perimeter of a school ground.

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

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

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

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

1 against a person where it is determined in accordance with RCW
2 9.94A.125 that the defendant or an accomplice was armed with a deadly
3 weapon at the time of commission, or any felony offense under chapter
4 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
5 committed on or after July 1, 1988, the court shall in addition to the
6 other terms of the sentence, sentence the offender to a one-year term
7 of community placement beginning either upon completion of the term of
8 confinement or at such time as the offender is transferred to community
9 custody in lieu of earned early release in accordance with RCW
10 9.94A.150 (1) and (2). When the court sentences an offender under this
11 subsection to the statutory maximum period of confinement then the
12 community placement portion of the sentence shall consist entirely of
13 such community custody to which the offender may become eligible, in
14 accordance with RCW 9.94A.150 (1) and (2). Any period of community
15 custody actually served shall be credited against the community
16 placement portion of the sentence. If the offender is convicted of a
17 sex offense, a mandatory condition of community placement shall be a
18 prohibition restricting the offender from establishing or maintaining
19 a residence within the radius of one-quarter of a mile or three city
20 blocks of the perimeter of a school ground.

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

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

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

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

7 (iv) An offender in community custody shall not unlawfully possess
8 controlled substances;

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

11 (vi) The residence location and living arrangements are subject to
12 the prior approval of the department of corrections during the period
13 of community placement. The offender may not establish or maintain a
14 residence within the radius of one-quarter of a mile or three city
15 blocks of the perimeter of a school ground. The court may not waive
16 the restriction on residences within this radius.

17 (c) The court may also order any of the following special
18 conditions:

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

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

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

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

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

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

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

37 (11) If a sentence imposed includes payment of a legal financial
38 obligation, the sentence shall specify the total amount of the legal
39 financial obligation owed, and shall require the offender to pay a

1 specified monthly sum toward that legal financial obligation.
2 Restitution to victims shall be paid prior to any other payments of
3 monetary obligations. Any legal financial obligation that is imposed
4 by the court may be collected by the department, which shall deliver
5 the amount paid to the county clerk for credit. The offender's
6 compliance with payment of legal financial obligations shall be
7 supervised by the department. All monetary payments ordered shall be
8 paid no later than ten years after the last date of release from
9 confinement pursuant to a felony conviction or the date the sentence
10 was entered. Independent of the department, the party or entity to
11 whom the legal financial obligation is owed shall have the authority to
12 utilize any other remedies available to the party or entity to collect
13 the legal financial obligation. Nothing in this section makes the
14 department, the state, or any of its employees, agents, or other
15 persons acting on their behalf liable under any circumstances for the
16 payment of these legal financial obligations. If an order includes
17 restitution as one of the monetary assessments, the county clerk shall
18 make disbursements to victims named in the order.

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

23 (13) All offenders sentenced to terms involving community
24 supervision, community service, community placement, or legal financial
25 obligation shall be under the supervision of the secretary of the
26 department of corrections or such person as the secretary may designate
27 and shall follow explicitly the instructions of the secretary including
28 reporting as directed to a community corrections officer, refraining
29 from establishing or maintaining a residence within the radius of one-
30 quarter of a mile or three city blocks of the perimeter of a school
31 ground if the offender is a sex offender, remaining within prescribed
32 geographical boundaries, notifying the community corrections officer of
33 any change in the offender's address or employment, and paying the
34 supervision fee assessment. The department may require offenders to
35 pay for special services rendered on or after July 25, 1993, including
36 electronic monitoring, day reporting, and telephone reporting,
37 dependent upon the offender's ability to pay. The department may pay
38 for these services for offenders who are not able to pay.

1 (14) All offenders sentenced to terms involving community
2 supervision, community service, or community placement under the
3 supervision of the department of corrections shall not own, use, or
4 possess firearms or ammunition. Offenders who own, use, or are found
5 to be in actual or constructive possession of firearms or ammunition
6 shall be subject to the appropriate violation process and sanctions.
7 "Constructive possession" as used in this subsection means the power
8 and intent to control the firearm or ammunition. "Firearm" as used in
9 this subsection means a weapon or device from which a projectile may be
10 fired by an explosive such as gunpowder.

11 (15) The sentencing court shall give the offender credit for all
12 confinement time served before the sentencing if that confinement was
13 solely in regard to the offense for which the offender is being
14 sentenced.

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

20 (17) The court shall order restitution whenever the offender is
21 convicted of a felony that results in injury to any person or damage to
22 or loss of property, whether the offender is sentenced to confinement
23 or placed under community supervision, unless extraordinary
24 circumstances exist that make restitution inappropriate in the court's
25 judgment. The court shall set forth the extraordinary circumstances in
26 the record if it does not order restitution.

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

34 (19) In any sentence of partial confinement, the court may require
35 the defendant to serve the partial confinement in work release, in a
36 program of home detention, on work crew, or in a combined program of
37 work crew and home detention.

38 (20) All court-ordered legal financial obligations collected by the
39 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any
2 other payments of monetary obligations.

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

7 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and shall take
10 effect immediately.

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