

2 **SSB 5760** - S AMD - 582  
3 By Senator Long

4 ADOPTED 2/9/98

5 Strike everything after the enacting clause and insert the  
6 following:

7 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
8 decrease the likelihood of recidivism and reincarceration by mentally  
9 ill offenders under correctional supervision in the community by  
10 authorizing:

11 (1) The courts to request presentence reports from the department  
12 of corrections when a relationship between mental illness and criminal  
13 behavior is suspected, and to order a mental status evaluation and  
14 treatment for offenders whose criminal behavior is influenced by a  
15 mental illness; and

16 (2) Community corrections officers to work with community mental  
17 health providers to support participation in treatment by mentally ill  
18 offenders on community placement or community supervision.

19 **Sec. 2.** RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read  
20 as follows:

21 Before imposing a sentence upon a defendant, the court shall  
22 conduct a sentencing hearing. The sentencing hearing shall be held  
23 within forty court days following conviction. Upon the motion of  
24 either party for good cause shown, or on its own motion, the court may  
25 extend the time period for conducting the sentencing hearing.

26 The court shall order the department to complete a presentence  
27 report before imposing a sentence upon a defendant who has been  
28 convicted of a felony sexual offense. The department of corrections  
29 shall give priority to presentence investigations for sexual offenders.  
30 If the court determines that the defendant may be a mentally ill person  
31 as defined in RCW 71.24.025, although the defendant has not established  
32 that at the time of the crime he or she lacked the capacity to commit  
33 the crime, was incompetent to commit the crime, or was insane at the  
34 time of the crime, the court shall order the department to complete a  
35 presentence report before imposing a sentence.

1 The court shall consider the presentence reports, if any, including  
2 any victim impact statement and criminal history, and allow arguments  
3 from the prosecutor, the defense counsel, the offender, the victim, the  
4 survivor of the victim, or a representative of the victim or survivor,  
5 and an investigative law enforcement officer as to the sentence to be  
6 imposed.

7 If the court is satisfied by a preponderance of the evidence that  
8 the defendant has a criminal history, the court shall specify the  
9 convictions it has found to exist. All of this information shall be  
10 part of the record. Copies of all presentence reports presented to the  
11 sentencing court and all written findings of facts and conclusions of  
12 law as to sentencing entered by the court shall be sent to the  
13 department by the clerk of the court at the conclusion of the  
14 sentencing and shall accompany the offender if the offender is  
15 committed to the custody of the department. Court clerks shall  
16 provide, without charge, certified copies of documents relating to  
17 criminal convictions requested by prosecuting attorneys.

18 **Sec. 3.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c  
19 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and  
20 amended to read as follows:

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

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

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

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

34 (4) A persistent offender shall be sentenced to a term of total  
35 confinement for life without the possibility of parole or, when  
36 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
37 first degree, sentenced to death, notwithstanding the maximum sentence  
38 under any other law. An offender convicted of the crime of murder in

1 the first degree shall be sentenced to a term of total confinement not  
2 less than twenty years. An offender convicted of the crime of assault  
3 in the first degree or assault of a child in the first degree where the  
4 offender used force or means likely to result in death or intended to  
5 kill the victim shall be sentenced to a term of total confinement not  
6 less than five years. An offender convicted of the crime of rape in  
7 the first degree shall be sentenced to a term of total confinement not  
8 less than five years. The foregoing minimum terms of total confinement  
9 are mandatory and shall not be varied or modified as provided in  
10 subsection (2) of this section. In addition, all offenders subject to  
11 the provisions of this subsection shall not be eligible for community  
12 custody, earned early release time, furlough, home detention, partial  
13 confinement, work crew, work release, or any other form of early  
14 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),  
15 or any other form of authorized leave of absence from the correctional  
16 facility while not in the direct custody of a corrections officer or  
17 officers during such minimum terms of total confinement except in the  
18 case of an offender in need of emergency medical treatment or for the  
19 purpose of commitment to an inpatient treatment facility in the case of  
20 an offender convicted of the crime of rape in the first degree.

21 (5) In sentencing a first-time offender the court may waive the  
22 imposition of a sentence within the sentence range and impose a  
23 sentence which may include up to ninety days of confinement in a  
24 facility operated or utilized under contract by the county and a  
25 requirement that the offender refrain from committing new offenses.  
26 The sentence may also include up to two years of community supervision,  
27 which, in addition to crime-related prohibitions, may include  
28 requirements that the offender perform any one or more of the  
29 following:

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

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

34 (c) Pursue a prescribed, secular course of study or vocational  
35 training;

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

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

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

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

7 (i) The offender is convicted of the manufacture, delivery, or  
8 possession with intent to manufacture or deliver a controlled substance  
9 classified in Schedule I or II that is a narcotic drug or a felony that  
10 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
11 criminal solicitation, or criminal conspiracy to commit such crimes,  
12 and the violation does not involve a sentence enhancement under RCW  
13 9.94A.310 (3) or (4);

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

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

20 (b) If the midpoint of the standard range is greater than one year  
21 and the sentencing judge determines that the offender is eligible for  
22 this option and that the offender and the community will benefit from  
23 the use of the special drug offender sentencing alternative, the judge  
24 may waive imposition of a sentence within the standard range and impose  
25 a sentence that must include a period of total confinement in a state  
26 facility for one-half of the midpoint of the standard range. During  
27 incarceration in the state facility, offenders sentenced under this  
28 subsection shall undergo a comprehensive substance abuse assessment and  
29 receive, within available resources, treatment services appropriate for  
30 the offender. The treatment services shall be designed by the division  
31 of alcohol and substance abuse of the department of social and health  
32 services, in cooperation with the department of corrections. If the  
33 midpoint of the standard range is twenty-four months or less, no more  
34 than three months of the sentence may be served in a work release  
35 status. The court shall also impose one year of concurrent community  
36 custody and community supervision that must include appropriate  
37 outpatient substance abuse treatment, crime-related prohibitions  
38 including a condition not to use illegal controlled substances, and a  
39 requirement to submit to urinalysis or other testing to monitor that

1 status. The court may require that the monitoring for controlled  
2 substances be conducted by the department or by a treatment  
3 alternatives to street crime program or a comparable court or agency-  
4 referred program. The offender may be required to pay thirty dollars  
5 per month while on community custody to offset the cost of monitoring.  
6 In addition, the court shall impose three or more of the following  
7 conditions:

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

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

12 (iii) Report as directed to a community corrections officer;

13 (iv) Pay all court-ordered legal financial obligations;

14 (v) Perform community service work;

15 (vi) Stay out of areas designated by the sentencing judge.

16 (c) If the offender violates any of the sentence conditions in (b)  
17 of this subsection, the department shall impose sanctions  
18 administratively, with notice to the prosecuting attorney and the  
19 sentencing court. Upon motion of the court or the prosecuting  
20 attorney, a violation hearing shall be held by the court. If the court  
21 finds that conditions have been willfully violated, the court may  
22 impose confinement consisting of up to the remaining one-half of the  
23 midpoint of the standard range. All total confinement served during  
24 the period of community custody shall be credited to the offender,  
25 regardless of whether the total confinement is served as a result of  
26 the original sentence, as a result of a sanction imposed by the  
27 department, or as a result of a violation found by the court. The term  
28 of community supervision shall be tolled by any period of time served  
29 in total confinement as a result of a violation found by the court.

30 (d) The department shall determine the rules for calculating the  
31 value of a day fine based on the offender's income and reasonable  
32 obligations which the offender has for the support of the offender and  
33 any dependents. These rules shall be developed in consultation with  
34 the administrator for the courts, the office of financial management,  
35 and the commission.

36 (7) If a sentence range has not been established for the  
37 defendant's crime, the court shall impose a determinate sentence which  
38 may include not more than one year of confinement, community service  
39 work, a term of community supervision not to exceed one year, and/or

1 other legal financial obligations. The court may impose a sentence  
2 which provides more than one year of confinement if the court finds,  
3 considering the purpose of this chapter, that there are substantial and  
4 compelling reasons justifying an exceptional sentence.

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

12 The report of the examination shall include at a minimum the  
13 following: The defendant's version of the facts and the official  
14 version of the facts, the defendant's offense history, an assessment of  
15 problems in addition to alleged deviant behaviors, the offender's  
16 social and employment situation, and other evaluation measures used.  
17 The report shall set forth the sources of the evaluator's information.

18 The examiner shall assess and report regarding the defendant's  
19 amenability to treatment and relative risk to the community. A  
20 proposed treatment plan shall be provided and shall include, at a  
21 minimum:

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

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

25 (C) Monitoring plans, including any requirements regarding living  
26 conditions, lifestyle requirements, and monitoring by family members  
27 and others;

28 (D) Anticipated length of treatment; and

29 (E) Recommended crime-related prohibitions.

30 The court on its own motion may order, or on a motion by the state  
31 shall order, a second examination regarding the offender's amenability  
32 to treatment. The evaluator shall be selected by the party making the  
33 motion. The defendant shall pay the cost of any second examination  
34 ordered unless the court finds the defendant to be indigent in which  
35 case the state shall pay the cost.

36 (ii) After receipt of the reports, the court shall consider whether  
37 the offender and the community will benefit from use of this special  
38 sex offender sentencing alternative and consider the victim's opinion  
39 whether the offender should receive a treatment disposition under this

1 subsection. If the court determines that this special sex offender  
2 sentencing alternative is appropriate, the court shall then impose a  
3 sentence within the sentence range. If this sentence is less than  
4 eleven years of confinement, the court may suspend the execution of the  
5 sentence and impose the following conditions of suspension:

6 (A) The court shall place the defendant on community custody for  
7 the length of the suspended sentence or three years, whichever is  
8 greater, and require the offender to comply with any conditions imposed  
9 by the department of corrections under subsection (14) of this section;

10 (B) The court shall order treatment for any period up to three  
11 years in duration. The court in its discretion shall order outpatient  
12 sex offender treatment or inpatient sex offender treatment, if  
13 available. A community mental health center may not be used for such  
14 treatment unless it has an appropriate program designed for sex  
15 offender treatment. The offender shall not change sex offender  
16 treatment providers or treatment conditions without first notifying the  
17 prosecutor, the community corrections officer, and the court, and shall  
18 not change providers without court approval after a hearing if the  
19 prosecutor or community corrections officer object to the change. In  
20 addition, as conditions of the suspended sentence, the court may impose  
21 other sentence conditions including up to six months of confinement,  
22 not to exceed the sentence range of confinement for that offense,  
23 crime-related prohibitions, and requirements that the offender perform  
24 any one or more of the following:

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

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

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

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

34 (V) Make recoupment to the victim for the cost of any counseling  
35 required as a result of the offender's crime; and

36 (C) Sex offenders sentenced under this special sex offender  
37 sentencing alternative are not eligible to accrue any earned early  
38 release time while serving a suspended sentence.

1 (iii) The sex offender therapist shall submit quarterly reports on  
2 the defendant's progress in treatment to the court and the parties.  
3 The report shall reference the treatment plan and include at a minimum  
4 the following: Dates of attendance, defendant's compliance with  
5 requirements, treatment activities, the defendant's relative progress  
6 in treatment, and any other material as specified by the court at  
7 sentencing.

8 (iv) At the time of sentencing, the court shall set a treatment  
9 termination hearing for three months prior to the anticipated date for  
10 completion of treatment. Prior to the treatment termination hearing,  
11 the treatment professional and community corrections officer shall  
12 submit written reports to the court and parties regarding the  
13 defendant's compliance with treatment and monitoring requirements, and  
14 recommendations regarding termination from treatment, including  
15 proposed community supervision conditions. Either party may request  
16 and the court may order another evaluation regarding the advisability  
17 of termination from treatment. The defendant shall pay the cost of any  
18 additional evaluation ordered unless the court finds the defendant to  
19 be indigent in which case the state shall pay the cost. At the  
20 treatment termination hearing the court may: (A) Modify conditions of  
21 community custody, and either (B) terminate treatment, or (C) extend  
22 treatment for up to the remaining period of community custody.

23 (v) If a violation of conditions occurs during community custody,  
24 the department shall either impose sanctions as provided for in RCW  
25 9.94A.205(2)(a) or refer the violation to the court and recommend  
26 revocation of the suspended sentence as provided for in (a)(vi) of this  
27 subsection.

28 (vi) The court may revoke the suspended sentence at any time during  
29 the period of community custody and order execution of the sentence if:  
30 (A) The defendant violates the conditions of the suspended sentence, or  
31 (B) the court finds that the defendant is failing to make satisfactory  
32 progress in treatment. All confinement time served during the period  
33 of community custody shall be credited to the offender if the suspended  
34 sentence is revoked.

35 (vii) Except as provided in (a)(viii) of this subsection, after  
36 July 1, 1991, examinations and treatment ordered pursuant to this  
37 subsection shall only be conducted by sex offender treatment providers  
38 certified by the department of health pursuant to chapter 18.155 RCW.



1 (viii) A sex offender therapist who examines or treats a sex  
2 offender pursuant to this subsection (8) does not have to be certified  
3 by the department of health pursuant to chapter 18.155 RCW if the court  
4 finds that: (A) The offender has already moved to another state or  
5 plans to move to another state for reasons other than circumventing the  
6 certification requirements; (B) no certified providers are available  
7 for treatment within a reasonable geographical distance of the  
8 offender's home; and (C) the evaluation and treatment plan comply with  
9 this subsection (8) and the rules adopted by the department of health.

10 (ix) For purposes of this subsection (8), "victim" means any person  
11 who has sustained emotional, psychological, physical, or financial  
12 injury to person or property as a result of the crime charged.  
13 "Victim" also means a parent or guardian of a victim who is a minor  
14 child unless the parent or guardian is the perpetrator of the offense.

15 (x) If the defendant was less than eighteen years of age when the  
16 charge was filed, the state shall pay for the cost of initial  
17 evaluation and treatment.

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

25 Except for an offender who has been convicted of a violation of RCW  
26 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
27 before the expiration of his or her term of confinement, the department  
28 of corrections may request the court to convert the balance of  
29 confinement to community supervision and to place conditions on the  
30 offender including crime-related prohibitions and requirements that the  
31 offender perform any one or more of the following:

- 32 (i) Devote time to a specific employment or occupation;
- 33 (ii) Remain within prescribed geographical boundaries and notify  
34 the court or the community corrections officer prior to any change in  
35 the offender's address or employment;
- 36 (iii) Report as directed to the court and a community corrections  
37 officer;
- 38 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his or her community  
2 supervision, the court may order the offender to serve out the balance  
3 of his or her community supervision term in confinement in the custody  
4 of the department of corrections.

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

9 (c) Offenders convicted and sentenced for a sex offense committed  
10 prior to July 1, 1987, may, subject to available funds, request an  
11 evaluation by the department of corrections to determine whether they  
12 are amenable to treatment. If the offender is determined to be  
13 amenable to treatment, the offender may request placement in a  
14 treatment program within a correctional facility operated by the  
15 department. Placement in such treatment program is subject to  
16 available funds.

17 (9)(a) When a court sentences a person to a term of total  
18 confinement to the custody of the department of corrections for an  
19 offense categorized as a sex offense or a serious violent offense  
20 committed after July 1, 1988, but before July 1, 1990, assault in the  
21 second degree, assault of a child in the second degree, any crime  
22 against a person where it is determined in accordance with RCW  
23 9.94A.125 that the defendant or an accomplice was armed with a deadly  
24 weapon at the time of commission, or any felony offense under chapter  
25 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
26 committed on or after July 1, 1988, the court shall in addition to the  
27 other terms of the sentence, sentence the offender to a one-year term  
28 of community placement beginning either upon completion of the term of  
29 confinement or at such time as the offender is transferred to community  
30 custody in lieu of earned early release in accordance with RCW  
31 9.94A.150 (1) and (2). When the court sentences an offender under this  
32 subsection to the statutory maximum period of confinement then the  
33 community placement portion of the sentence shall consist entirely of  
34 such community custody to which the offender may become eligible, in  
35 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
36 custody actually served shall be credited against the community  
37 placement portion of the sentence.

38 (b) When a court sentences a person to a term of total confinement  
39 to the custody of the department of corrections for an offense

1 categorized as a sex offense committed on or after July 1, 1990, but  
2 before June 6, 1996, a serious violent offense, vehicular homicide, or  
3 vehicular assault, committed on or after July 1, 1990, the court shall  
4 in addition to other terms of the sentence, sentence the offender to  
5 community placement for two years or up to the period of earned early  
6 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is  
7 longer. The community placement shall begin either upon completion of  
8 the term of confinement or at such time as the offender is transferred  
9 to community custody in lieu of earned early release in accordance with  
10 RCW 9.94A.150 (1) and (2). When the court sentences an offender under  
11 this subsection to the statutory maximum period of confinement then the  
12 community placement portion of the sentence shall consist entirely of  
13 the 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. Unless a condition is waived by the  
17 court, the terms of community placement for offenders sentenced  
18 pursuant to this section shall include the following conditions:

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

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

23 (iii) The offender shall not possess or consume controlled  
24 substances except pursuant to lawfully issued prescriptions;

25 (iv) The offender shall pay supervision fees as determined by the  
26 department of corrections;

27 (v) The residence location and living arrangements are subject to  
28 the prior approval of the department of corrections during the period  
29 of community placement; and

30 (vi) The offender shall submit to affirmative acts necessary to  
31 monitor compliance with the orders of the court as required by the  
32 department.

33 (c) As a part of any sentence imposed under (a) or (b) of this  
34 subsection, the court may also order any of the following special  
35 conditions:

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

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

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

3 (iv) The offender shall not consume alcohol;

4 (v) The offender shall comply with any crime-related prohibitions;  
5 or

6 (vi) For an offender convicted of a felony sex offense against a  
7 minor victim after June 6, 1996, the offender shall comply with any  
8 terms and conditions of community placement imposed by the department  
9 of corrections relating to contact between the sex offender and a minor  
10 victim or a child of similar age or circumstance as a previous victim.

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

15 (10)(a) When a court sentences a person to the custody of the  
16 department of corrections for an offense categorized as a sex offense  
17 committed on or after June 6, 1996, the court shall, in addition to  
18 other terms of the sentence, sentence the offender to community custody  
19 for three years or up to the period of earned early release awarded  
20 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The  
21 community custody shall begin either upon completion of the term of  
22 confinement or at such time as the offender is transferred to community  
23 custody in lieu of earned early release in accordance with RCW  
24 9.94A.150 (1) and (2).

25 (b) Unless a condition is waived by the court, the terms of  
26 community custody shall be the same as those provided for in subsection  
27 (9)(b) of this section and may include those provided for in subsection  
28 (9)(c) of this section. As part of any sentence that includes a term  
29 of community custody imposed under this subsection, the court shall  
30 also require the offender to comply with any conditions imposed by the  
31 department of corrections under subsection (14) of this section.

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

1 community custody, it shall be deemed a violation of the sentence for  
2 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
3 court as provided for in RCW 7.21.040.

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

10 (12) If a sentence imposed includes payment of a legal financial  
11 obligation, the sentence shall specify the total amount of the legal  
12 financial obligation owed, and shall require the offender to pay a  
13 specified monthly sum toward that legal financial obligation.  
14 Restitution to victims shall be paid prior to any other payments of  
15 monetary obligations. Any legal financial obligation that is imposed  
16 by the court may be collected by the department, which shall deliver  
17 the amount paid to the county clerk for credit. The offender's  
18 compliance with payment of legal financial obligations shall be  
19 supervised by the department for ten years following the entry of the  
20 judgment and sentence or ten years following the offender's release  
21 from total confinement. All monetary payments ordered shall be paid no  
22 later than ten years after the last date of release from confinement  
23 pursuant to a felony conviction or the date the sentence was entered  
24 unless the superior court extends the criminal judgment an additional  
25 ten years. If the legal financial obligations including crime victims'  
26 assessments are not paid during the initial ten-year period, the  
27 superior court may extend jurisdiction under the criminal judgment an  
28 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
29 9.94A.145. If jurisdiction under the criminal judgment is extended,  
30 the department is not responsible for supervision of the offender  
31 during the subsequent period. Independent of the department, the party  
32 or entity to whom the legal financial obligation is owed shall have the  
33 authority to utilize any other remedies available to the party or  
34 entity to collect the legal financial obligation. Nothing in this  
35 section makes the department, the state, or any of its employees,  
36 agents, or other persons acting on their behalf liable under any  
37 circumstances for the payment of these legal financial obligations. If  
38 an order includes restitution as one of the monetary assessments, the  
39 county clerk shall make disbursements to victims named in the order.

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

5 (14) All offenders sentenced to terms involving community  
6 supervision, community service, community placement, or legal financial  
7 obligation shall be under the supervision of the department of  
8 corrections and shall follow explicitly the instructions and conditions  
9 of the department of corrections. The department may require an  
10 offender to perform affirmative acts it deems appropriate to monitor  
11 compliance with the conditions of the sentence imposed.

12 (a) The instructions shall include, at a minimum, reporting as  
13 directed to a community corrections officer, remaining within  
14 prescribed geographical boundaries, notifying the community corrections  
15 officer of any change in the offender's address or employment, and  
16 paying the supervision fee assessment.

17 (b) For offenders sentenced to terms involving community custody  
18 for crimes committed on or after June 6, 1996, the department may  
19 include, in addition to the instructions in (a) of this subsection, any  
20 appropriate conditions of supervision, including but not limited to,  
21 prohibiting the offender from having contact with any other specified  
22 individuals or specific class of individuals. The conditions  
23 authorized under this subsection (14)(b) may be imposed by the  
24 department prior to or during an offender's community custody term. If  
25 a violation of conditions imposed by the court or the department  
26 pursuant to subsection (10) of this section occurs during community  
27 custody, it shall be deemed a violation of community placement for the  
28 purposes of RCW 9.94A.207 and shall authorize the department to  
29 transfer an offender to a more restrictive confinement status as  
30 provided in RCW 9.94A.205. At any time prior to the completion of a  
31 sex offender's term of community custody, the department may recommend  
32 to the court that any or all of the conditions imposed by the court or  
33 the department pursuant to subsection (10) of this section be continued  
34 beyond the expiration of the offender's term of community custody as  
35 authorized in subsection (10)(c) of this section.

36 The department may require offenders to pay for special services  
37 rendered on or after July 25, 1993, including electronic monitoring,  
38 day reporting, and telephone reporting, dependent upon the offender's

1 ability to pay. The department may pay for these services for  
2 offenders who are not able to pay.

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

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

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

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

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

36 (20) The court may order an offender whose sentence includes  
37 community placement or community supervision to undergo a mental status  
38 evaluation and to participate in available outpatient mental health  
39 treatment, if the court finds that reasonable grounds exist to believe

1 that the offender is a mentally ill person as defined in RCW 71.24.025,  
2 and that this condition is likely to have influenced the offense. An  
3 order requiring mental status evaluation or treatment must be based on  
4 a presentence report and, if applicable, mental status evaluations that  
5 have been filed with the court to determine the offender's competency  
6 or eligibility for a defense of insanity. The court may order  
7 additional evaluations at a later date if deemed appropriate.

8 (21) In any sentence of partial confinement, the court may require  
9 the defendant to serve the partial confinement in work release, in a  
10 program of home detention, on work crew, or in a combined program of  
11 work crew and home detention.

12 (~~((21))~~) (22) All court-ordered legal financial obligations  
13 collected by the department and remitted to the county clerk shall be  
14 credited and paid where restitution is ordered. Restitution shall be  
15 paid prior to any other payments of monetary obligations.

16 **Sec. 4.** RCW 9.94A.200 and 1995 c 167 s 1 and 1995 c 142 s 1 are  
17 each reenacted and amended to read as follows:

18 (1) If an offender violates any condition or requirement of a  
19 sentence, the court may modify its order of judgment and sentence and  
20 impose further punishment in accordance with this section.

21 (2) In cases where conditions from a second or later sentence of  
22 community supervision begin prior to the term of the second or later  
23 sentence, the court shall treat a violation of such conditions as a  
24 violation of the sentence of community supervision currently being  
25 served.

26 (3) If an offender fails to comply with any of the requirements or  
27 conditions of a sentence the following provisions apply:

28 (a)(i) Following the violation, if the offender and the department  
29 make a stipulated agreement, the department may impose sanctions such  
30 as work release, home detention with electronic monitoring, work crew,  
31 community service, inpatient treatment, daily reporting, curfew,  
32 educational or counseling sessions, supervision enhanced through  
33 electronic monitoring, jail time, or other sanctions available in the  
34 community.

35 (ii) Within seventy-two hours of signing the stipulated agreement,  
36 the department shall submit a report to the court and the prosecuting  
37 attorney outlining the violation or violations, and sanctions imposed.  
38 Within fifteen days of receipt of the report, if the court is not



1 satisfied with the sanctions, the court may schedule a hearing and may  
2 modify the department's sanctions. If this occurs, the offender may  
3 withdraw from the stipulated agreement.

4 (iii) If the offender fails to comply with the sanction  
5 administratively imposed by the department, the court may take action  
6 regarding the original noncompliance. Offender failure to comply with  
7 the sanction administratively imposed by the department may be  
8 considered an additional violation.

9 (b) In the absence of a stipulated agreement, or where the court is  
10 not satisfied with the department's sanctions as provided in (a) of  
11 this subsection, the court, upon the motion of the state, or upon its  
12 own motion, shall require the offender to show cause why the offender  
13 should not be punished for the noncompliance. The court may issue a  
14 summons or a warrant of arrest for the offender's appearance;

15 (c) The state has the burden of showing noncompliance by a  
16 preponderance of the evidence. If the court finds that the violation  
17 has occurred, it may order the offender to be confined for a period not  
18 to exceed sixty days for each violation, and may (i) convert a term of  
19 partial confinement to total confinement, (ii) convert community  
20 service obligation to total or partial confinement, (iii) convert  
21 monetary obligations, except restitution and the crime victim penalty  
22 assessment, to community service hours at the rate of the state minimum  
23 wage as established in RCW 49.46.020 for each hour of community  
24 service, or (iv) order one or more of the penalties authorized in  
25 (a)(i) of this subsection. Any time served in confinement awaiting a  
26 hearing on noncompliance shall be credited against any confinement  
27 order by the court; ((and))

28 (d) If the court finds that the violation was not willful, the  
29 court may modify its previous order regarding payment of legal  
30 financial obligations and regarding community service obligations; and

31 (e) If the violation involves a failure to undergo or comply with  
32 mental status evaluation and/or outpatient mental health treatment, the  
33 community corrections officer shall consult with the treatment provider  
34 or proposed treatment provider. Enforcement of orders concerning  
35 outpatient mental health treatment must reflect the availability of  
36 treatment and must pursue the least restrictive means of promoting  
37 participation in treatment. If the offender's failure to receive care  
38 essential for health and safety presents a risk of serious physical  
39 harm or probable harmful consequences, the civil detention and

1 commitment procedures of chapter 71.05 RCW shall be considered in  
2 preference to incarceration in a local or state correctional facility.

3 (4) The community corrections officer may obtain information from  
4 the offender's mental health treatment provider on the offender's  
5 status with respect to evaluation, application for services,  
6 registration for services, and compliance with the supervision plan,  
7 without the offender's consent, as described under RCW 71.05.630.

8 (5) An offender under community placement or community supervision  
9 who is civilly detained under chapter 71.05 RCW, and subsequently  
10 discharged or conditionally released to the community, shall be under  
11 the supervision of the department of corrections for the duration of  
12 his or her period of community placement or community supervision.

13 (6) Nothing in this section prohibits the filing of escape charges  
14 if appropriate.

15 NEW SECTION. Sec. 5. In collaboration with the department of  
16 social and health services, the department of corrections shall track  
17 outcomes and submit to the legislature a report of services and  
18 outcomes by December 31, 1999. The report shall describe the extent to  
19 which the provisions of this act are applied by the courts, the  
20 effectiveness of court orders in inducing offenders to undergo and  
21 comply with needed mental health treatment, and the usage of civil  
22 commitment or incarceration to enforce orders concerning mental health  
23 treatment. It shall further include recommendations for any needed  
24 modifications in these provisions to increase effectiveness."

25 **SSB 5760** - S AMD - 582  
26 By Senator Long

27 ADOPTED 2/9/98

28 On page 1, line 1 of the title, after "offenders;" strike the  
29 remainder of the title and insert "amending RCW 9.94A.110; reenacting  
30 and amending RCW 9.94A.120 and 9.94A.200; and creating new sections."

--- END ---