
HOUSE BILL 2873

State of Washington

55th Legislature

1998 Regular Session

By Representatives Sterk, McDonald, Sherstad, McCune, Bush, Backlund, Mielke, Van Luven, Quall, Anderson, Johnson, Thompson, Conway, D. Sommers and Mulliken

Read first time 01/21/98. Referred to Committee on Criminal Justice & Corrections.

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

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

4 **Sec. 1.** RCW 9.94A.030 and 1997 c 365 s 1, 1997 c 340 s 4, 1997 c
5 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 s 1 are each
6 reenacted and amended to read as follows:

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

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

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

17 (3) "Community corrections officer" means an employee of the
18 department who is responsible for carrying out specific duties in

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

3 (4) "Community custody" means that portion of an inmate's sentence
4 of confinement in lieu of earned early release time or imposed pursuant
5 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
6 controls placed on the inmate's movement and activities by the
7 department of corrections.

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

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

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

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

30 (9) "Conviction" means an adjudication of guilt pursuant to Titles
31 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
32 acceptance of a plea of guilty.

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

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

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

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

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

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

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

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

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

13 (18) "Drug offense" means:

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

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

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

23 (19) "Escape" means:

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

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

32 (20) "Felony traffic offense" means:

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

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

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

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

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

19 (a) Any felony defined under any law as a class A felony or
20 criminal solicitation of or criminal conspiracy to commit a class A
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

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

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Promoting prostitution in the first degree;

34 (n) Rape in the third degree;

35 (o) Robbery in the second degree;

36 (p) Sexual exploitation;

37 (q) Vehicular assault;

38 (r) Vehicular homicide, when proximately caused by the driving of
39 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of
2 any vehicle in a reckless manner;

3 (s) Any other class B felony offense with a finding of sexual
4 motivation, as "sexual motivation" is defined under this section;

5 (t) Any other felony with a deadly weapon verdict under RCW
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,
8 1993, that is comparable to a most serious offense under this
9 subsection, or any federal or out-of-state conviction for an offense
10 that under the laws of this state would be a felony classified as a
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW
13 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
14 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
15 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
16 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

17 (ii) A prior conviction for indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
19 if: (A) The crime was committed against a child under the age of
20 fourteen; or (B) the relationship between the victim and perpetrator is
21 included in the definition of indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
23 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
24 through July 27, 1997.

25 (24) "Nonviolent offense" means an offense which is not a violent
26 offense.

27 (25) "Offender" means a person who has committed a felony
28 established by state law and is eighteen years of age or older or is
29 less than eighteen years of age but whose case is under superior court
30 jurisdiction under RCW 13.04.030 or has been transferred by the
31 appropriate juvenile court to a criminal court pursuant to RCW
32 13.40.110. Throughout this chapter, the terms "offender" and
33 "defendant" are used interchangeably.

34 (26) "Partial confinement" means confinement for no more than one
35 year in a facility or institution operated or utilized under contract
36 by the state or any other unit of government, or, if home detention or
37 work crew has been ordered by the court, in an approved residence, for
38 a substantial portion of each day with the balance of the day spent in
39 the community. Partial confinement includes work release, home

1 detention, work crew, and a combination of work crew and home detention
2 as defined in this section.

3 (27) "Persistent offender" is an offender who:

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

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

14 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
15 of a child in the first degree, child molestation in the first degree,
16 rape in the second degree, rape of a child in the second degree, or
17 indecent liberties by forcible compulsion; (B) murder in the first
18 degree, murder in the second degree, homicide by abuse, kidnapping in
19 the first degree, kidnapping in the second degree, assault in the first
20 degree, assault in the second degree, assault of a child in the first
21 degree, or burglary in the first degree, with a finding of sexual
22 motivation; or (C) an attempt to commit any crime listed in this
23 subsection (27)(b)(i); and

24 (ii) Has, before the commission of the offense under (b)(i) of this
25 subsection, been convicted as an offender on at least one occasion,
26 whether in this state or elsewhere, of an offense listed in (b)(i) of
27 this subsection. A conviction for rape of a child in the first degree
28 constitutes a conviction under subsection (27)(b)(i) only when the
29 offender was sixteen years of age or older when the offender committed
30 the offense. A conviction for rape of a child in the second degree
31 constitutes a conviction under subsection (27)(b)(i) only when the
32 offender was eighteen years of age or older when the offender committed
33 the offense.

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

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

1 (30) "School" has the meaning under RCW 28A.150.010, 28A.150.020,
2 or 28A.195.010. It also means any postsecondary school of education
3 including but not limited to colleges, universities, and vocational
4 educational schools. A true copy of a map produced or reproduced by
5 any municipal, school district, county, or transit authority engineer
6 for the purpose of depicting the location and boundaries of the area on
7 or within the radius of one mile of any property used for a school may
8 be used by a court or community corrections officer to determine the
9 location and boundaries of schools.

10 (31) "Serious traffic offense" means:

11 (a) Driving while under the influence of intoxicating liquor or any
12 drug (RCW 46.61.502), actual physical control while under the influence
13 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
14 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
15 or

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

19 (~~(31)~~) (32) "Serious violent offense" is a subcategory of violent
20 offense and means:

21 (a) Murder in the first degree, homicide by abuse, murder in the
22 second degree, manslaughter in the first degree, assault in the first
23 degree, kidnapping in the first degree, or rape in the first degree,
24 assault of a child in the first degree, or an attempt, criminal
25 solicitation, or criminal conspiracy to commit one of these felonies;
26 or

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

30 (~~(32)~~) (33) "Sentence range" means the sentencing court's
31 discretionary range in imposing a nonappealable sentence.

32 (~~(33)~~) (34) "Sex offense" means:

33 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
34 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
35 criminal attempt, criminal solicitation, or criminal conspiracy to
36 commit such crimes;

37 (b) A felony with a finding of sexual motivation under RCW
38 9.94A.127 or 13.40.135; or

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

4 (~~(34)~~) (35) "Sexual motivation" means that one of the purposes
5 for which the defendant committed the crime was for the purpose of his
6 or her sexual gratification.

7 (~~(35)~~) (36) "Total confinement" means confinement inside the
8 physical boundaries of a facility or institution operated or utilized
9 under contract by the state or any other unit of government for twenty-
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(36)~~) (37) "Transition training" means written and verbal
12 instructions and assistance provided by the department to the offender
13 during the two weeks prior to the offender's successful completion of
14 the work ethic camp program. The transition training shall include
15 instructions in the offender's requirements and obligations during the
16 offender's period of community custody.

17 (~~(37)~~) (38) "Victim" means any person who has sustained
18 emotional, psychological, physical, or financial injury to person or
19 property as a direct result of the crime charged.

20 (~~(38)~~) (39) "Violent offense" means:

21 (a) Any of the following felonies, as now existing or hereafter
22 amended: Any felony defined under any law as a class A felony or an
23 attempt to commit a class A felony, criminal solicitation of or
24 criminal conspiracy to commit a class A felony, manslaughter in the
25 first degree, manslaughter in the second degree, indecent liberties if
26 committed by forcible compulsion, kidnapping in the second degree,
27 arson in the second degree, assault in the second degree, assault of a
28 child in the second degree, extortion in the first degree, robbery in
29 the second degree, drive-by shooting, vehicular assault, and vehicular
30 homicide, when proximately caused by the driving of any vehicle by any
31 person while under the influence of intoxicating liquor or any drug as
32 defined by RCW 46.61.502, or by the operation of any vehicle in a
33 reckless manner;

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

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

1 (~~(39)~~) (40) "Work crew" means a program of partial confinement
2 consisting of civic improvement tasks for the benefit of the community
3 of not less than thirty-five hours per week that complies with RCW
4 9.94A.135. The civic improvement tasks shall have minimal negative
5 impact on existing private industries or the labor force in the county
6 where the service or labor is performed. The civic improvement tasks
7 shall not affect employment opportunities for people with developmental
8 disabilities contracted through sheltered workshops as defined in RCW
9 82.04.385. Only those offenders sentenced to a facility operated or
10 utilized under contract by a county or the state are eligible to
11 participate on a work crew. Offenders sentenced for a sex offense as
12 defined in subsection (~~(33)~~) (34) of this section are not eligible
13 for the work crew program.

14 (~~(40)~~) (41) "Work ethic camp" means an alternative incarceration
15 program designed to reduce recidivism and lower the cost of corrections
16 by requiring offenders to complete a comprehensive array of real-world
17 job and vocational experiences, character-building work ethics
18 training, life management skills development, substance abuse
19 rehabilitation, counseling, literacy training, and basic adult
20 education.

21 (~~(41)~~) (42) "Work release" means a program of partial confinement
22 available to offenders who are employed or engaged as a student in a
23 regular course of study at school. Participation in work release shall
24 be conditioned upon the offender attending work or school at regularly
25 defined hours and abiding by the rules of the work release facility.

26 (~~(42)~~) (43) "Home detention" means a program of partial
27 confinement available to offenders wherein the offender is confined in
28 a private residence subject to electronic surveillance.

29 **Sec. 2.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
30 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
31 amended to read as follows:

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

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

37 (2) The court may impose a sentence outside the standard sentence
38 range for that offense if it finds, considering the purpose of this

1 chapter, that there are substantial and compelling reasons justifying
2 an exceptional sentence.

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

7 (4) A persistent offender shall be sentenced to a term of total
8 confinement for life without the possibility of parole or, when
9 authorized by RCW 10.95.030 for the crime of aggravated murder in the
10 first degree, sentenced to death, notwithstanding the maximum sentence
11 under any other law. An offender convicted of the crime of murder in
12 the first degree shall be sentenced to a term of total confinement not
13 less than twenty years. An offender convicted of the crime of assault
14 in the first degree or assault of a child in the first degree where the
15 offender used force or means likely to result in death or intended to
16 kill the victim shall be sentenced to a term of total confinement not
17 less than five years. An offender convicted of the crime of rape in
18 the first degree shall be sentenced to a term of total confinement not
19 less than five years. The foregoing minimum terms of total confinement
20 are mandatory and shall not be varied or modified as provided in
21 subsection (2) of this section. In addition, all offenders subject to
22 the provisions of this subsection shall not be eligible for community
23 custody, earned early release time, furlough, home detention, partial
24 confinement, work crew, work release, or any other form of early
25 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
26 or any other form of authorized leave of absence from the correctional
27 facility while not in the direct custody of a corrections officer or
28 officers during such minimum terms of total confinement except in the
29 case of an offender in need of emergency medical treatment or for the
30 purpose of commitment to an inpatient treatment facility in the case of
31 an offender convicted of the crime of rape in the first degree.

32 (5) In sentencing a first-time offender the court may waive the
33 imposition of a sentence within the sentence range and impose a
34 sentence which may include up to ninety days of confinement in a
35 facility operated or utilized under contract by the county and a
36 requirement that the offender refrain from committing new offenses.
37 The sentence may also include up to two years of community supervision,
38 which, in addition to crime-related prohibitions, may include

1 requirements that the offender perform any one or more of the
2 following:

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

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

7 (c) Pursue a prescribed, secular course of study or vocational
8 training;

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

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

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

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

18 (i) The offender is convicted of the manufacture, delivery, or
19 possession with intent to manufacture or deliver a controlled substance
20 classified in Schedule I or II that is a narcotic drug or a felony that
21 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
22 criminal solicitation, or criminal conspiracy to commit such crimes,
23 and the violation does not involve a sentence enhancement under RCW
24 9.94A.310 (3) or (4);

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

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

31 (b) If the midpoint of the standard range is greater than one year
32 and the sentencing judge determines that the offender is eligible for
33 this option and that the offender and the community will benefit from
34 the use of the special drug offender sentencing alternative, the judge
35 may waive imposition of a sentence within the standard range and impose
36 a sentence that must include a period of total confinement in a state
37 facility for one-half of the midpoint of the standard range. During
38 incarceration in the state facility, offenders sentenced under this
39 subsection shall undergo a comprehensive substance abuse assessment and

1 receive, within available resources, treatment services appropriate for
2 the offender. The treatment services shall be designed by the division
3 of alcohol and substance abuse of the department of social and health
4 services, in cooperation with the department of corrections. If the
5 midpoint of the standard range is twenty-four months or less, no more
6 than three months of the sentence may be served in a work release
7 status. The court shall also impose one year of concurrent community
8 custody and community supervision that must include appropriate
9 outpatient substance abuse treatment, crime-related prohibitions
10 including a condition not to use illegal controlled substances, and a
11 requirement to submit to urinalysis or other testing to monitor that
12 status. The court may require that the monitoring for controlled
13 substances be conducted by the department or by a treatment
14 alternatives to street crime program or a comparable court or agency-
15 referred program. The offender may be required to pay thirty dollars
16 per month while on community custody to offset the cost of monitoring.
17 In addition, the court shall impose three or more of the following
18 conditions:

- 19 (i) Devote time to a specific employment or training;
 - 20 (ii) Remain within prescribed geographical boundaries and notify
21 the court or the community corrections officer before any change in the
22 offender's address or employment;
 - 23 (iii) Report as directed to a community corrections officer;
 - 24 (iv) Pay all court-ordered legal financial obligations;
 - 25 (v) Perform community service work;
 - 26 (vi) Stay out of areas designated by the sentencing judge.
- 27 (c) If the offender violates any of the sentence conditions in (b)
28 of this subsection, the department shall impose sanctions
29 administratively, with notice to the prosecuting attorney and the
30 sentencing court. Upon motion of the court or the prosecuting
31 attorney, a violation hearing shall be held by the court. If the court
32 finds that conditions have been willfully violated, the court may
33 impose confinement consisting of up to the remaining one-half of the
34 midpoint of the standard range. All total confinement served during
35 the period of community custody shall be credited to the offender,
36 regardless of whether the total confinement is served as a result of
37 the original sentence, as a result of a sanction imposed by the
38 department, or as a result of a violation found by the court. The term

1 of community supervision shall be tolled by any period of time served
2 in total confinement as a result of a violation found by the court.

3 (d) The department shall determine the rules for calculating the
4 value of a day fine based on the offender's income and reasonable
5 obligations which the offender has for the support of the offender and
6 any dependents. These rules shall be developed in consultation with
7 the administrator for the courts, the office of financial management,
8 and the commission.

9 (7) If a sentence range has not been established for the
10 defendant's crime, the court shall impose a determinate sentence which
11 may include not more than one year of confinement, community service
12 work, a term of community supervision not to exceed one year, and/or
13 other legal financial obligations. The court may impose a sentence
14 which provides more than one year of confinement if the court finds,
15 considering the purpose of this chapter, that there are substantial and
16 compelling reasons justifying an exceptional sentence.

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

24 The report of the examination shall include at a minimum the
25 following: The defendant's version of the facts and the official
26 version of the facts, the defendant's offense history, an assessment of
27 problems in addition to alleged deviant behaviors, the offender's
28 social and employment situation, and other evaluation measures used.
29 The report shall set forth the sources of the evaluator's information.

30 The examiner shall assess and report regarding the defendant's
31 amenability to treatment and relative risk to the community. A
32 proposed treatment plan shall be provided and shall include, at a
33 minimum:

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

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

37 (C) Monitoring plans, including any requirements regarding living
38 locations and conditions, lifestyle requirements, and monitoring by
39 family members and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

9 (ii) After receipt of the reports, the court shall consider whether
10 the offender and the community will benefit from use of this special
11 sex offender sentencing alternative and consider the victim's opinion
12 whether the offender should receive a treatment disposition under this
13 subsection. If the court determines that this special sex offender
14 sentencing alternative is appropriate, the court shall then impose a
15 sentence within the sentence range. If this sentence is less than
16 eleven years of confinement, the court may suspend the execution of the
17 sentence and impose the following conditions of suspension:

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

22 (B) The court shall order treatment for any period up to three
23 years in duration. The court in its discretion shall order outpatient
24 sex offender treatment or inpatient sex offender treatment, if
25 available. A community mental health center may not be used for such
26 treatment unless it has an appropriate program designed for sex
27 offender treatment. The offender shall not change sex offender
28 treatment providers or treatment conditions without first notifying the
29 prosecutor, the community corrections officer, and the court, and shall
30 not change providers without court approval after a hearing if the
31 prosecutor or community corrections officer object to the change. In
32 addition, as conditions of the suspended sentence, the court may impose
33 other sentence conditions including up to six months of confinement,
34 not to exceed the sentence range of confinement for that offense,
35 crime-related prohibitions, and requirements that the offender perform
36 any one or more of the following:

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

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

4 (III) Report as directed to the court and a community corrections
5 officer;

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

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

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

14 In addition, as a condition of the suspended sentence, the court
15 must order the defendant to refrain from establishing or maintaining a
16 residence within the radius of one mile of the perimeter of a school
17 ground.

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

25 (iv) At the time of sentencing, the court shall set a treatment
26 termination hearing for three months prior to the anticipated date for
27 completion of treatment. Prior to the treatment termination hearing,
28 the treatment professional and community corrections officer shall
29 submit written reports to the court and parties regarding the
30 defendant's compliance with treatment ~~((and))~~, monitoring, and
31 residential requirements, and recommendations regarding termination
32 from treatment, including proposed community supervision conditions.
33 Either party may request and the court may order another evaluation
34 regarding the advisability of termination from treatment. The
35 defendant shall pay the cost of any additional evaluation ordered
36 unless the court finds the defendant to be indigent in which case the
37 state shall pay the cost. At the treatment termination hearing the
38 court may: (A) Modify conditions of community custody, and either (B)

1 terminate treatment, or (C) extend treatment for up to the remaining
2 period of community custody.

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

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

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

19 (viii) 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 (ix) For purposes of this subsection (8), "victim" means any person
29 who has sustained emotional, psychological, physical, or financial
30 injury to person or property as a result of the crime charged.
31 "Victim" also means a parent or guardian of a victim who is a minor
32 child unless the parent or guardian is the perpetrator of the offense.

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

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

1 department of corrections to evaluate whether the offender is amenable
2 to treatment and the department may place the offender in a treatment
3 program within a correctional facility operated by the department.

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

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

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

15 (iii) Report as directed to the court and a community corrections
16 officer;

17 (iv) Undergo available outpatient treatment.

18 If the court places the offender on community supervision the court
19 must order the defendant to refrain from establishing or maintaining a
20 residence within the radius of one mile of the perimeter of a school
21 ground.

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

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

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

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

1 offense categorized as a sex offense or a serious violent offense
2 committed after July 1, 1988, but before July 1, 1990, assault in the
3 second degree, assault of a child in the second degree, any crime
4 against a person where it is determined in accordance with RCW
5 9.94A.125 that the defendant or an accomplice was armed with a deadly
6 weapon at the time of commission, or any felony offense under chapter
7 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
8 committed on or after July 1, 1988, the court shall in addition to the
9 other terms of the sentence, sentence the offender to a one-year term
10 of community placement beginning either upon completion of the term of
11 confinement or at such time as the offender is transferred to community
12 custody in lieu of earned early release in accordance with RCW
13 9.94A.150 (1) and (2). When the court sentences an offender under this
14 subsection to the statutory maximum period of confinement then the
15 community placement portion of the sentence shall consist entirely of
16 such community custody to which the offender may become eligible, in
17 accordance with RCW 9.94A.150 (1) and (2). Any period of community
18 custody actually served shall be credited against the community
19 placement portion of the sentence. If the offender is convicted of a
20 sex offense, a mandatory condition of community placement shall be a
21 prohibition restricting the offender from establishing or maintaining
22 a residence within the radius of one mile of the perimeter of a school
23 ground.

24 (b) When a court sentences a person to a term of total confinement
25 to the custody of the department of corrections for an offense
26 categorized as a sex offense committed on or after July 1, 1990, but
27 before June 6, 1996, a serious violent offense, vehicular homicide, or
28 vehicular assault, committed on or after July 1, 1990, the court shall
29 in addition to other terms of the sentence, sentence the offender to
30 community placement for two years or up to the period of earned early
31 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
32 longer. The community placement shall begin either upon completion of
33 the term of confinement or at such time as the offender is transferred
34 to community custody in lieu of earned early release in accordance with
35 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
36 this subsection to the statutory maximum period of confinement then the
37 community placement portion of the sentence shall consist entirely of
38 the community custody to which the offender may become eligible, in
39 accordance with RCW 9.94A.150 (1) and (2). Any period of community

1 custody actually served shall be credited against the community
2 placement portion of the sentence. Unless a condition is waived by the
3 court, the terms of community placement for offenders sentenced
4 pursuant to this section shall include the following conditions:

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

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

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

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

13 (v) The residence location and living arrangements are subject to
14 the prior approval of the department of corrections during the period
15 of community placement. The offender may not establish or maintain a
16 residence within the radius of one mile of the perimeter of a school
17 ground. The court may not waive the restriction on residences within
18 this radius; and

19 (vi) The offender shall submit to affirmative acts necessary to
20 monitor compliance with the orders of the court as required by the
21 department.

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

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

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

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

31 (iv) The offender shall not consume alcohol;

32 (v) The offender shall comply with any crime-related prohibitions;
33 or

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

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

5 (10)(a) When a court sentences a person to the custody of the
6 department of corrections for an offense categorized as a sex offense
7 committed on or after June 6, 1996, the court shall, in addition to
8 other terms of the sentence, sentence the offender to community custody
9 for three years or up to the period of earned early release awarded
10 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
11 community custody shall begin either upon completion of the term of
12 confinement or at such time as the offender is transferred to community
13 custody in lieu of earned early release in accordance with RCW
14 9.94A.150 (1) and (2).

15 (b) Unless a condition is waived by the court, the terms of
16 community custody shall be the same as those provided for in subsection
17 (9)(b) of this section and may include those provided for in subsection
18 (9)(c) of this section. As part of any sentence that includes a term
19 of community custody imposed under this subsection, the court shall
20 also require the offender to comply with any conditions imposed by the
21 department of corrections under subsection (14) of this section.

22 (c) At any time prior to the completion of a sex offender's term of
23 community custody, if the court finds that public safety would be
24 enhanced, the court may impose and enforce an order extending any or
25 all of the conditions imposed pursuant to this section for a period up
26 to the maximum allowable sentence for the crime as it is classified in
27 chapter 9A.20 RCW, regardless of the expiration of the offender's term
28 of community custody. If a violation of a condition extended under
29 this subsection occurs after the expiration of the offender's term of
30 community custody, it shall be deemed a violation of the sentence for
31 the purposes of RCW 9.94A.195 and may be punishable as contempt of
32 court as provided for in RCW 7.21.040.

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

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

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

35 (14) All offenders sentenced to terms involving community
36 supervision, community service, community placement, or legal financial
37 obligation shall be under the supervision of the department of
38 corrections and shall follow explicitly the instructions and conditions
39 of the department of corrections. The department may require an

1 offender to perform affirmative acts it deems appropriate to monitor
2 compliance with the conditions of the sentence imposed.

3 (a) The instructions shall include, at a minimum, reporting as
4 directed to a community corrections officer, refraining from
5 establishing or maintaining a residence within the radius of one mile
6 of the perimeter of a school ground if the offender is a sex offender,
7 remaining within prescribed geographical boundaries, notifying the
8 community corrections officer of any change in the offender's address
9 or employment, and paying the supervision fee assessment.

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

29 The department may require offenders to pay for special services
30 rendered on or after July 25, 1993, including electronic monitoring,
31 day reporting, and telephone reporting, dependent upon the offender's
32 ability to pay. The department may pay for these services for
33 offenders who are not able to pay.

34 (15) All offenders sentenced to terms involving community
35 supervision, community service, or community placement under the
36 supervision of the department of corrections shall not own, use, or
37 possess firearms or ammunition. Offenders who own, use, or are found
38 to be in actual or constructive possession of firearms or ammunition
39 shall be subject to the appropriate violation process and sanctions.

1 "Constructive possession" as used in this subsection means the power
2 and intent to control the firearm or ammunition. "Firearm" as used in
3 this subsection means a weapon or device from which a projectile may be
4 fired by an explosive such as gunpowder.

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

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

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

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

28 (20) In any sentence of partial confinement, the court may require
29 the defendant to serve the partial confinement in work release, in a
30 program of home detention, on work crew, or in a combined program of
31 work crew and home detention.

32 (21) All court-ordered legal financial obligations collected by the
33 department and remitted to the county clerk shall be credited and paid
34 where restitution is ordered. Restitution shall be paid prior to any
35 other payments of monetary obligations.

36 NEW SECTION. **Sec. 3.** If any provision of this act or its
37 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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