

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5760

Chapter 260, Laws of 1998

55th Legislature
1998 Regular Session

MENTALLY ILL OFFENDERS--EVALUATION AND TREATMENT

EFFECTIVE DATE: 6/11/98

Passed by the Senate March 7, 1998
YEAS 38 NAYS 1

BRAD OWEN

President of the Senate

Passed by the House March 5, 1998
YEAS 97 NAYS 1

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 1, 1998

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5760** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

April 1, 1998 - 3:03 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5760

Passed Legislature - 1998 Regular Session

AS AMENDED BY THE HOUSE

State of Washington 55th Legislature 1997 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long, Hargrove, Franklin, Deccio, Thibaudeau, Winsley and Kohl)

Read first time 03/05/97.

1 AN ACT Relating to mentally ill offenders; amending RCW 9.94A.110;
2 reenacting and amending RCW 9.94A.120 and 9.94A.200; and creating new
3 sections.

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

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

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

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

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

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

6 The court shall order the department to complete a presentence
7 report before imposing a sentence upon a defendant who has been
8 convicted of a felony sexual offense. The department of corrections
9 shall give priority to presentence investigations for sexual offenders.
10 If the court determines that the defendant may be a mentally ill person
11 as defined in RCW 71.24.025, although the defendant has not established
12 that at the time of the crime he or she lacked the capacity to commit
13 the crime, was incompetent to commit the crime, or was insane at the
14 time of the crime, the court shall order the department to complete a
15 presentence report before imposing a sentence.

16 The court shall consider the presentence reports, if any, including
17 any victim impact statement and criminal history, and allow arguments
18 from the prosecutor, the defense counsel, the offender, the victim, the
19 survivor of the victim, or a representative of the victim or survivor,
20 and an investigative law enforcement officer as to the sentence to be
21 imposed.

22 If the court is satisfied by a preponderance of the evidence that
23 the defendant has a criminal history, the court shall specify the
24 convictions it has found to exist. All of this information shall be
25 part of the record. Copies of all presentence reports presented to the
26 sentencing court and all written findings of facts and conclusions of
27 law as to sentencing entered by the court shall be sent to the
28 department by the clerk of the court at the conclusion of the
29 sentencing and shall accompany the offender if the offender is
30 committed to the custody of the department. Court clerks shall
31 provide, without charge, certified copies of documents relating to
32 criminal convictions requested by prosecuting attorneys.

33 **Sec. 3.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
34 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
35 amended to read as follows:

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

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

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

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

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

37 (5) In sentencing a first-time offender the court may waive the
38 imposition of a sentence within the sentence range and impose a
39 sentence which may include up to ninety days of confinement in a

1 facility operated or utilized under contract by the county and a
2 requirement that the offender refrain from committing new offenses.
3 The sentence may also include up to two years of community supervision,
4 which, in addition to crime-related prohibitions, may include
5 requirements that the offender perform any one or more of the
6 following:

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

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

11 (c) Pursue a prescribed, secular course of study or vocational
12 training;

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

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

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

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

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

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

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

35 (b) If the midpoint of the standard range is greater than one year
36 and the sentencing judge determines that the offender is eligible for
37 this option and that the offender and the community will benefit from
38 the use of the special drug offender sentencing alternative, the judge
39 may waive imposition of a sentence within the standard range and impose

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

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

1 regardless of whether the total confinement is served as a result of
2 the original sentence, as a result of a sanction imposed by the
3 department, or as a result of a violation found by the court. The term
4 of community supervision shall be tolled by any period of time served
5 in total confinement as a result of a violation found by the court.

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

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

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

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

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

- 37 (A) Frequency and type of contact between offender and therapist;
- 38 (B) Specific issues to be addressed in the treatment and
- 39 description of planned treatment modalities;

1 (C) Monitoring plans, including any requirements regarding living
2 conditions, lifestyle requirements, and monitoring by family members
3 and others;

4 (D) Anticipated length of treatment; and

5 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

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

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

37 (v) If a violation of conditions occurs during community custody,
38 the department shall either impose sanctions as provided for in RCW
39 9.94A.205(2)(a) or refer the violation to the court and recommend

1 revocation of the suspended sentence as provided for in (a)(vi) of this
2 subsection.

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

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

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

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

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

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

38 Except for an offender who has been convicted of a violation of RCW
39 9A.44.040 or 9A.44.050, if the offender completes the treatment program

1 before the expiration of his or her term of confinement, the department
2 of corrections may request the court to convert the balance of
3 confinement to community supervision and to place conditions on the
4 offender including crime-related prohibitions and requirements that the
5 offender perform any one or more of the following:

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

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

10 (iii) Report as directed to the court and a community corrections
11 officer;

12 (iv) Undergo available outpatient treatment.

13 If the offender violates any of the terms of his or her community
14 supervision, the court may order the offender to serve out the balance
15 of his or her community supervision term in confinement in the custody
16 of the department of corrections.

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

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

29 (9)(a) When a court sentences a person to a term of total
30 confinement to the custody of the department of corrections for an
31 offense categorized as a sex offense or a serious violent offense
32 committed after July 1, 1988, but before July 1, 1990, assault in the
33 second degree, assault of a child in the second degree, any crime
34 against a person where it is determined in accordance with RCW
35 9.94A.125 that the defendant or an accomplice was armed with a deadly
36 weapon at the time of commission, or any felony offense under chapter
37 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
38 committed on or after July 1, 1988, the court shall in addition to the
39 other terms of the sentence, sentence the offender to a one-year term

1 of community placement beginning either upon completion of the term of
2 confinement or at such time as the offender is transferred to community
3 custody in lieu of earned early release in accordance with RCW
4 9.94A.150 (1) and (2). When the court sentences an offender under this
5 subsection to the statutory maximum period of confinement then the
6 community placement portion of the sentence shall consist entirely of
7 such community custody to which the offender may become eligible, in
8 accordance with RCW 9.94A.150 (1) and (2). Any period of community
9 custody actually served shall be credited against the community
10 placement portion of the sentence.

11 (b) When a court sentences a person to a term of total confinement
12 to the custody of the department of corrections for an offense
13 categorized as a sex offense committed on or after July 1, 1990, but
14 before June 6, 1996, a serious violent offense, vehicular homicide, or
15 vehicular assault, committed on or after July 1, 1990, the court shall
16 in addition to other terms of the sentence, sentence the offender to
17 community placement for two years or up to the period of earned early
18 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
19 longer. The community placement shall begin either upon completion of
20 the term of confinement or at such time as the offender is transferred
21 to community custody in lieu of earned early release in accordance with
22 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
23 this subsection to the statutory maximum period of confinement then the
24 community placement portion of the sentence shall consist entirely of
25 the community custody to which the offender may become eligible, in
26 accordance with RCW 9.94A.150 (1) and (2). Any period of community
27 custody actually served shall be credited against the community
28 placement portion of the sentence. Unless a condition is waived by the
29 court, the terms of community placement for offenders sentenced
30 pursuant to this section shall include the following conditions:

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

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

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

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

1 (v) The residence location and living arrangements are subject to
2 the prior approval of the department of corrections during the period
3 of community placement; and

4 (vi) The offender shall submit to affirmative acts necessary to
5 monitor compliance with the orders of the court as required by the
6 department.

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

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

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

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

16 (iv) The offender shall not consume alcohol;

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

18 or

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

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

28 (10)(a) When a court sentences a person to the custody of the
29 department of corrections for an offense categorized as a sex offense
30 committed on or after June 6, 1996, the court shall, in addition to
31 other terms of the sentence, sentence the offender to community custody
32 for three years or up to the period of earned early release awarded
33 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
34 community custody shall begin either upon completion of the term of
35 confinement or at such time as the offender is transferred to community
36 custody in lieu of earned early release in accordance with RCW
37 9.94A.150 (1) and (2).

38 (b) Unless a condition is waived by the court, the terms of
39 community custody shall be the same as those provided for in subsection

1 (9)(b) of this section and may include those provided for in subsection
2 (9)(c) of this section. As part of any sentence that includes a term
3 of community custody imposed under this subsection, the court shall
4 also require the offender to comply with any conditions imposed by the
5 department of corrections under subsection (14) of this section.

6 (c) At any time prior to the completion of a sex offender's term of
7 community custody, if the court finds that public safety would be
8 enhanced, the court may impose and enforce an order extending any or
9 all of the conditions imposed pursuant to this section for a period up
10 to the maximum allowable sentence for the crime as it is classified in
11 chapter 9A.20 RCW, regardless of the expiration of the offender's term
12 of community custody. If a violation of a condition extended under
13 this subsection occurs after the expiration of the offender's term of
14 community custody, it shall be deemed a violation of the sentence for
15 the purposes of RCW 9.94A.195 and may be punishable as contempt of
16 court as provided for in RCW 7.21.040.

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

23 (12) If a sentence imposed includes payment of a legal financial
24 obligation, the sentence shall specify the total amount of the legal
25 financial obligation owed, and shall require the offender to pay a
26 specified monthly sum toward that legal financial obligation.
27 Restitution to victims shall be paid prior to any other payments of
28 monetary obligations. Any legal financial obligation that is imposed
29 by the court may be collected by the department, which shall deliver
30 the amount paid to the county clerk for credit. The offender's
31 compliance with payment of legal financial obligations shall be
32 supervised by the department for ten years following the entry of the
33 judgment and sentence or ten years following the offender's release
34 from total confinement. All monetary payments ordered shall be paid no
35 later than ten years after the last date of release from confinement
36 pursuant to a felony conviction or the date the sentence was entered
37 unless the superior court extends the criminal judgment an additional
38 ten years. If the legal financial obligations including crime victims'
39 assessments are not paid during the initial ten-year period, the

1 superior court may extend jurisdiction under the criminal judgment an
2 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
3 9.94A.145. If jurisdiction under the criminal judgment is extended,
4 the department is not responsible for supervision of the offender
5 during the subsequent period. Independent of the department, the party
6 or entity to whom the legal financial obligation is owed shall have the
7 authority to utilize any other remedies available to the party or
8 entity to collect the legal financial obligation. Nothing in this
9 section makes the department, the state, or any of its employees,
10 agents, or other persons acting on their behalf liable under any
11 circumstances for the payment of these legal financial obligations. If
12 an order includes restitution as one of the monetary assessments, the
13 county clerk shall make disbursements to victims named in the order.

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

18 (14) All offenders sentenced to terms involving community
19 supervision, community service, community placement, or legal financial
20 obligation shall be under the supervision of the department of
21 corrections and shall follow explicitly the instructions and conditions
22 of the department of corrections. The department may require an
23 offender to perform affirmative acts it deems appropriate to monitor
24 compliance with the conditions of the sentence imposed.

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

30 (b) For offenders sentenced to terms involving community custody
31 for crimes committed on or after June 6, 1996, the department may
32 include, in addition to the instructions in (a) of this subsection, any
33 appropriate conditions of supervision, including but not limited to,
34 prohibiting the offender from having contact with any other specified
35 individuals or specific class of individuals. The conditions
36 authorized under this subsection (14)(b) may be imposed by the
37 department prior to or during an offender's community custody term. If
38 a violation of conditions imposed by the court or the department
39 pursuant to subsection (10) of this section occurs during community

1 custody, it shall be deemed a violation of community placement for the
2 purposes of RCW 9.94A.207 and shall authorize the department to
3 transfer an offender to a more restrictive confinement status as
4 provided in RCW 9.94A.205. At any time prior to the completion of a
5 sex offender's term of community custody, the department may recommend
6 to the court that any or all of the conditions imposed by the court or
7 the department pursuant to subsection (10) of this section be continued
8 beyond the expiration of the offender's term of community custody as
9 authorized in subsection (10)(c) of this section.

10 The department may require offenders to pay for special services
11 rendered on or after July 25, 1993, including electronic monitoring,
12 day reporting, and telephone reporting, dependent upon the offender's
13 ability to pay. The department may pay for these services for
14 offenders who are not able to pay.

15 (15) All offenders sentenced to terms involving community
16 supervision, community service, or community placement under the
17 supervision of the department of corrections shall not own, use, or
18 possess firearms or ammunition. Offenders who own, use, or are found
19 to be in actual or constructive possession of firearms or ammunition
20 shall be subject to the appropriate violation process and sanctions.
21 "Constructive possession" as used in this subsection means the power
22 and intent to control the firearm or ammunition. "Firearm" as used in
23 this subsection means a weapon or device from which a projectile may be
24 fired by an explosive such as gunpowder.

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

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

34 (18) The court shall order restitution whenever the offender is
35 convicted of a felony that results in injury to any person or damage to
36 or loss of property, whether the offender is sentenced to confinement
37 or placed under community supervision, unless extraordinary
38 circumstances exist that make restitution inappropriate in the court's

1 judgment. The court shall set forth the extraordinary circumstances in
2 the record if it does not order restitution.

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

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

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

25 (~~(21)~~) (22) All court-ordered legal financial obligations
26 collected by the department and remitted to the county clerk shall be
27 credited and paid where restitution is ordered. Restitution shall be
28 paid prior to any other payments of monetary obligations.

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

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

34 (2) In cases where conditions from a second or later sentence of
35 community supervision begin prior to the term of the second or later
36 sentence, the court shall treat a violation of such conditions as a
37 violation of the sentence of community supervision currently being
38 served.

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

3 (a)(i) Following the violation, if the offender and the department
4 make a stipulated agreement, the department may impose sanctions such
5 as work release, home detention with electronic monitoring, work crew,
6 community service, inpatient treatment, daily reporting, curfew,
7 educational or counseling sessions, supervision enhanced through
8 electronic monitoring, jail time, or other sanctions available in the
9 community.

10 (ii) Within seventy-two hours of signing the stipulated agreement,
11 the department shall submit a report to the court and the prosecuting
12 attorney outlining the violation or violations, and sanctions imposed.
13 Within fifteen days of receipt of the report, if the court is not
14 satisfied with the sanctions, the court may schedule a hearing and may
15 modify the department's sanctions. If this occurs, the offender may
16 withdraw from the stipulated agreement.

17 (iii) If the offender fails to comply with the sanction
18 administratively imposed by the department, the court may take action
19 regarding the original noncompliance. Offender failure to comply with
20 the sanction administratively imposed by the department may be
21 considered an additional violation.

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

28 (c) The state has the burden of showing noncompliance by a
29 preponderance of the evidence. If the court finds that the violation
30 has occurred, it may order the offender to be confined for a period not
31 to exceed sixty days for each violation, and may (i) convert a term of
32 partial confinement to total confinement, (ii) convert community
33 service obligation to total or partial confinement, (iii) convert
34 monetary obligations, except restitution and the crime victim penalty
35 assessment, to community service hours at the rate of the state minimum
36 wage as established in RCW 49.46.020 for each hour of community
37 service, or (iv) order one or more of the penalties authorized in
38 (a)(i) of this subsection. Any time served in confinement awaiting a

1 hearing on noncompliance shall be credited against any confinement
2 order by the court; (~~and~~)

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

6 (e) If the violation involves a failure to undergo or comply with
7 mental status evaluation and/or outpatient mental health treatment, the
8 community corrections officer shall consult with the treatment provider
9 or proposed treatment provider. Enforcement of orders concerning
10 outpatient mental health treatment must reflect the availability of
11 treatment and must pursue the least restrictive means of promoting
12 participation in treatment. If the offender's failure to receive care
13 essential for health and safety presents a risk of serious physical
14 harm or probable harmful consequences, the civil detention and
15 commitment procedures of chapter 71.05 RCW shall be considered in
16 preference to incarceration in a local or state correctional facility.

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

22 (5) An offender under community placement or community supervision
23 who is civilly detained under chapter 71.05 RCW, and subsequently
24 discharged or conditionally released to the community, shall be under
25 the supervision of the department of corrections for the duration of
26 his or her period of community placement or community supervision.
27 During any period of inpatient mental health treatment that falls
28 within the period of community placement or community supervision, the
29 inpatient treatment provider and the supervising community corrections
30 officer shall notify each other about the offender's discharge,
31 release, and legal status, and shall share other relevant information.

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

34 NEW SECTION. Sec. 5. In collaboration with the department of
35 social and health services, the department of corrections shall track
36 outcomes and submit to the legislature a report of services and
37 outcomes by December 31, 1999. The report shall describe the extent to
38 which the provisions of this act are applied by the courts, the

1 effectiveness of court orders in inducing offenders to undergo and
2 comply with needed mental health treatment, and the usage of civil
3 commitment or incarceration to enforce orders concerning mental health
4 treatment. It shall further include recommendations for any needed
5 modifications in these provisions to increase effectiveness.

6 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
7 act, referencing this act by bill or chapter number, is not provided by
8 June 30, 1998, in the omnibus appropriations act, this act is null and
9 void.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.