

CERTIFICATION OF ENROLLMENT
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5421

56th Legislature
1999 Regular Session

Passed by the Senate April 22, 1999
YEAS 44 NAYS 0

President of the Senate

Passed by the House April 16, 1999
YEAS 95 NAYS 0

Speaker of the
House of Representatives

Speaker of the
House of Representatives

Approved

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5421** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

Secretary of State
State of Washington

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5421

AS AMENDED BY THE HOUSE

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke)

Read first time 03/08/1999.

1 AN ACT Relating to the supervision of offenders in the community;
2 amending RCW 9.94A.010, 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.170,
3 9.94A.205, 9.94A.207, 9.94A.383, 9.94A.440, and 9A.44.135; reenacting
4 and amending RCW 9.94A.040 and 9.94A.145; adding new sections to
5 chapter 72.09 RCW; creating new sections; prescribing penalties;
6 providing an effective date; and providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read
9 as follows:

10 The purpose of this chapter is to make the criminal justice system
11 accountable to the public by developing a system for the sentencing of
12 felony offenders which structures, but does not eliminate,
13 discretionary decisions affecting sentences, and to (~~add a new chapter~~
14 ~~to Title 9 RCW designed to~~):

15 (1) Ensure that the punishment for a criminal offense is
16 proportionate to the seriousness of the offense and the offender's
17 criminal history;

18 (2) Promote respect for the law by providing punishment which is
19 just;

- 1 (3) Be commensurate with the punishment imposed on others
2 committing similar offenses;
- 3 (4) Protect the public;
- 4 (5) Offer the offender an opportunity to improve him or herself;
- 5 (~~and~~)
- 6 (6) Make frugal use of the state's and local governments'
7 resources; and
- 8 (7) Reduce the risk of reoffending by offenders in the community.

9 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in
12 this section apply throughout this chapter.

13 (1) "Collect," or any derivative thereof, "collect and remit," or
14 "collect and deliver," when used with reference to the department of
15 corrections, means that the department, either directly or through a
16 collection agreement authorized by RCW 9.94A.145, is responsible for
17 monitoring and enforcing the offender's sentence with regard to the
18 legal financial obligation, receiving payment thereof from the
19 offender, and, consistent with current law, delivering daily the entire
20 payment to the superior court clerk without depositing it in a
21 departmental account.

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

23 (3) "Community corrections officer" means an employee of the
24 department who is responsible for carrying out specific duties in
25 supervision of sentenced offenders and monitoring of sentence
26 conditions.

27 (4) "Community custody" means that portion of an (~~inmate's~~)
28 offender's sentence of confinement in lieu of earned (~~early~~) release
29 time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), (~~or~~)~~
30 ~~(10), or (11),~~ or RCW 9.94A.383, served in the community subject to
31 controls placed on the (~~inmate's~~) offender's movement and activities
32 by the department of corrections. For offenders placed on community
33 custody for crimes committed on or after July 1, 2000, the department
34 shall assess the offender's risk of reoffense and may establish and
35 modify conditions of community custody, in addition to those imposed by
36 the court, based upon the risk to community safety.

37 (5) "Community custody range" means the minimum and maximum period
38 of community custody included as part of a sentence under RCW

1 9.94A.120(11), as established by the sentencing guidelines commission
2 or the legislature under RCW 9.94A.040, for crimes committed on or
3 after July 1, 2000.

4 ~~(6)~~ (6) "Community placement" means that period during which the
5 offender is subject to the conditions of community custody and/or
6 postrelease supervision, which begins either upon completion of the
7 term of confinement (postrelease supervision) or at such time as the
8 offender is transferred to community custody in lieu of earned
9 ((early)) release. Community placement may consist of entirely
10 community custody, entirely postrelease supervision, or a combination
11 of the two.

12 ~~((+6))~~ (7) "Community service" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender.

15 ~~((+7))~~ (8) "Community supervision" means a period of time during
16 which a convicted offender is subject to crime-related prohibitions and
17 other sentence conditions imposed by a court pursuant to this chapter
18 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the
19 supervision may include crime-related prohibitions and other conditions
20 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
21 compact for out-of-state supervision of parolees and probationers, RCW
22 9.95.270, community supervision is the functional equivalent of
23 probation and should be considered the same as probation by other
24 states.

25 ~~((+8))~~ (9) "Confinement" means total or partial confinement as
26 defined in this section.

27 ~~((+9))~~ (10) "Conviction" means an adjudication of guilt pursuant
28 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
29 guilty, and acceptance of a plea of guilty.

30 ~~((+10))~~ (11) "Court-ordered legal financial obligation" means a
31 sum of money that is ordered by a superior court of the state of
32 Washington for legal financial obligations which may include
33 restitution to the victim, statutorily imposed crime victims'
34 compensation fees as assessed pursuant to RCW 7.68.035, court costs,
35 county or interlocal drug funds, court-appointed attorneys' fees, and
36 costs of defense, fines, and any other financial obligation that is
37 assessed to the offender as a result of a felony conviction. Upon
38 conviction for vehicular assault while under the influence of
39 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular

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

6 ~~((11))~~ (12) "Crime-related prohibition" means an order of a court
7 prohibiting conduct that directly relates to the circumstances of the
8 crime for which the offender has been convicted, and shall not be
9 construed to mean orders directing an offender affirmatively to
10 participate in rehabilitative programs or to otherwise perform
11 affirmative conduct. However, affirmative acts necessary to monitor
12 compliance with the order of a court may be required by the department.

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

19 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
20 judge that equals the difference between the offender's net daily
21 income and the reasonable obligations that the offender has for the
22 support of the offender and any dependents.

23 ~~((14))~~ (15) "Day reporting" means a program of enhanced
24 supervision designed to monitor the defendant's daily activities and
25 compliance with sentence conditions, and in which the defendant is
26 required to report daily to a specific location designated by the
27 department or the sentencing judge.

28 ~~((15))~~ (16) "Department" means the department of corrections.

29 ~~((16))~~ (17) "Determinate sentence" means a sentence that states
30 with exactitude the number of actual years, months, or days of total
31 confinement, of partial confinement, of community supervision, the
32 number of actual hours or days of community service work, or dollars or
33 terms of a legal financial obligation. The fact that an offender
34 through "earned ~~((early))~~ release" can reduce the actual period of
35 confinement shall not affect the classification of the sentence as a
36 determinate sentence.

37 ~~((17))~~ (18) "Disposable earnings" means that part of the earnings
38 of an individual remaining after the deduction from those earnings of
39 any amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal
2 services, whether denominated as wages, salary, commission, bonuses, or
3 otherwise, and, notwithstanding any other provision of law making the
4 payments exempt from garnishment, attachment, or other process to
5 satisfy a court-ordered legal financial obligation, specifically
6 includes periodic payments pursuant to pension or retirement programs,
7 or insurance policies of any type, but does not include payments made
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
9 or Title 74 RCW.

10 ~~((18))~~ (19) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of
12 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
13 controlled substance (RCW 69.50.403);

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

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

20 ~~((19))~~ (20) "Escape" means:

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

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

29 ~~((20))~~ (21) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
32 and-run injury-accident (RCW 46.52.020(4)); or

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

36 ~~((21))~~ (22) "Fines" means the requirement that the offender pay
37 a specific sum of money over a specific period of time to the court.

38 ~~((22))~~ (23) "First-time offender" means any person who is
39 convicted of a felony (a) not classified as a violent offense or a sex

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

13 ~~((23))~~ (24) "Home detention" means a program of partial
14 confinement available to offenders wherein the offender is confined in
15 a private residence subject to electronic surveillance.

16 (25) "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))~~) (26) "Nonviolent offense" means an offense which is not a
26 violent offense.

27 (~~((25))~~) (27) "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))~~) (28) "Partial confinement" means confinement for no more
35 than one year in a facility or institution operated or utilized under
36 contract by the state or any other unit of government, or, if home
37 detention or work crew has been ordered by the court, in an approved
38 residence, for a substantial portion of each day with the balance of
39 the day spent in the community. Partial confinement includes work

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

3 ~~((+27+))~~ (29) "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+))~~ (29)(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+))~~ (29)(b)(i) only when
29 the offender was sixteen years of age or older when the offender
30 committed the offense. A conviction for rape of a child in the second
31 degree constitutes a conviction under subsection ~~((+27+))~~ (29)(b)(i)
32 only when the offender was eighteen years of age or older when the
33 offender committed the offense.

34 ~~((+28+))~~ (30) "Postrelease supervision" is that portion of an
35 offender's community placement that is not community custody.

36 ~~((+29+))~~ (31) "Restitution" means the requirement that the offender
37 pay a specific sum of money over a specific period of time to the court
38 as payment of damages. The sum may include both public and private

1 costs. The imposition of a restitution order does not preclude civil
2 redress.

3 ~~((+30+))~~ (32) "Risk assessment" means the application of an
4 objective instrument supported by research and adopted by the
5 department for the purpose of assessing an offender's risk of
6 reoffense, taking into consideration the nature of the harm done by the
7 offender, place and circumstances of the offender related to risk, the
8 offender's relationship to any victim, and any information provided to
9 the department by victims. The results of a risk assessment shall not
10 be based on unconfirmed or unconfirmable allegations.

11 (33) "Serious traffic offense" means:

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

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

20 ~~((+31+))~~ (34) "Serious violent offense" is a subcategory of violent
21 offense and means:

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

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

31 ~~((+32+))~~ (35) "Sentence range" means the sentencing court's
32 discretionary range in imposing a nonappealable sentence.

33 ~~((+33+))~~ (36) "Sex offense" means:

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

38 (b) A felony with a finding of sexual motivation under RCW
39 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)~~) (37) "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)~~) (38) "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)~~) (39) "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)~~) (40) "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)~~) (41) "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)~~) (42) "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, or sanctioned under
11 RCW 9.94A.205, are eligible to participate on a work crew. Offenders
12 sentenced for a sex offense as defined in subsection (~~(33)~~) (36) of
13 this section are not eligible for the work crew program.

14 (~~(40)~~) (43) "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)~~) (44) "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)~~ "Home detention" means a program of partial confinement
27 available to offenders wherein the offender is confined in a private
28 residence subject to electronic surveillance.))

29 **Sec. 3.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are
30 each reenacted and amended to read as follows:

31 (1) A sentencing guidelines commission is established as an agency
32 of state government.

33 (2) The legislature finds that the commission, having accomplished
34 its original statutory directive to implement this chapter, and having
35 expertise in sentencing practice and policies, shall:

36 (a) Evaluate state sentencing policy, to include whether the
37 sentencing ranges and standards are consistent with and further:

38 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

1 (ii) The intent of the legislature to emphasize confinement for the
2 violent offender and alternatives to confinement for the nonviolent
3 offender.

4 The commission shall provide the governor and the legislature with
5 its evaluation and recommendations under this subsection not later than
6 December 1, 1996, and every two years thereafter;

7 (b) Recommend to the legislature revisions or modifications to the
8 standard sentence ranges, state sentencing policy, prosecuting
9 standards, and other standards. If implementation of the revisions or
10 modifications would result in exceeding the capacity of correctional
11 facilities, then the commission shall accompany its recommendation with
12 an additional list of standard sentence ranges which are consistent
13 with correction capacity;

14 (c) Study the existing criminal code and from time to time make
15 recommendations to the legislature for modification;

16 (d)(i) Serve as a clearinghouse and information center for the
17 collection, preparation, analysis, and dissemination of information on
18 state and local adult and juvenile sentencing practices; (ii) develop
19 and maintain a computerized adult and juvenile sentencing information
20 system by individual superior court judge consisting of offender,
21 offense, history, and sentence information entered from judgment and
22 sentence forms for all adult felons; and (iii) conduct ongoing research
23 regarding adult and juvenile sentencing guidelines, use of total
24 confinement and alternatives to total confinement, plea bargaining, and
25 other matters relating to the improvement of the adult criminal justice
26 system and the juvenile justice system;

27 (e) Assume the powers and duties of the juvenile disposition
28 standards commission after June 30, 1996;

29 (f) Evaluate the effectiveness of existing disposition standards
30 and related statutes in implementing policies set forth in RCW
31 13.40.010 generally, specifically review the guidelines relating to the
32 confinement of minor and first offenders as well as the use of
33 diversion, and review the application of current and proposed juvenile
34 sentencing standards and guidelines for potential adverse impacts on
35 the sentencing outcomes of racial and ethnic minority youth;

36 (g) Solicit the comments and suggestions of the juvenile justice
37 community concerning disposition standards, and make recommendations to
38 the legislature regarding revisions or modifications of the standards.
39 The evaluations shall be submitted to the legislature on December 1 of

1 each odd-numbered year. The department of social and health services
2 shall provide the commission with available data concerning the
3 implementation of the disposition standards and related statutes and
4 their effect on the performance of the department's responsibilities
5 relating to juvenile offenders, and with recommendations for
6 modification of the disposition standards. The office of the
7 administrator for the courts shall provide the commission with
8 available data on diversion and dispositions of juvenile offenders
9 under chapter 13.40 RCW; and

10 (h) Not later than December 1, 1997, and at least every two years
11 thereafter, based on available information, report to the governor and
12 the legislature on:

13 (i) Racial disproportionality in juvenile and adult sentencing;

14 (ii) The capacity of state and local juvenile and adult facilities
15 and resources; and

16 (iii) Recidivism information on adult and juvenile offenders.

17 (3) Each of the commission's recommended standard sentence ranges
18 shall include one or more of the following: Total confinement, partial
19 confinement, community supervision, community service, and a fine.

20 (4) The standard sentence ranges of total and partial confinement
21 under this chapter are subject to the following limitations:

22 (a) If the maximum term in the range is one year or less, the
23 minimum term in the range shall be no less than one-third of the
24 maximum term in the range, except that if the maximum term in the range
25 is ninety days or less, the minimum term may be less than one-third of
26 the maximum;

27 (b) If the maximum term in the range is greater than one year, the
28 minimum term in the range shall be no less than seventy-five percent of
29 the maximum term in the range, except that for murder in the second
30 degree in seriousness category XIII under RCW 9.94A.310, the minimum
31 term in the range shall be no less than fifty percent of the maximum
32 term in the range; and

33 (c) The maximum term of confinement in a range may not exceed the
34 statutory maximum for the crime as provided in RCW 9A.20.021.

35 (5)(a) Not later than December 31, 1999, the commission shall
36 propose to the legislature the initial community custody ranges to be
37 included in sentences under RCW 9.94A.120(11) for crimes committed on
38 or after July 1, 2000. Not later than December 31 of each year, the
39 commission may propose modifications to the ranges. The ranges shall

1 be based on the principles in RCW 9.94A.010, and shall take into
2 account the funds available to the department for community custody.
3 The minimum term in each range shall not be less than one-half of the
4 maximum term.

5 (b) The legislature may, by enactment of a legislative bill, adopt
6 or modify the community custody ranges proposed by the commission. If
7 the legislature fails to adopt or modify the initial ranges in its next
8 regular session after they are proposed, the proposed ranges shall take
9 effect without legislative approval for crimes committed on or after
10 July 1, 2000.

11 (c) When the commission proposes modifications to ranges pursuant
12 to this subsection, the legislature may, by enactment of a bill, adopt
13 or modify the ranges proposed by the commission for crimes committed on
14 or after July 1 of the year after they were proposed. Unless the
15 legislature adopts or modifies the commission's proposal in its next
16 regular session, the proposed ranges shall not take effect.

17 (6) The commission shall exercise its duties under this section in
18 conformity with chapter 34.05 RCW.

19 **Sec. 4.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read
20 as follows:

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

26 Except in cases where the defendant shall be sentenced to a term of
27 total confinement for life without the possibility of release or, when
28 authorized by RCW 10.95.030 for the crime of aggravated murder in the
29 first degree, sentenced to death, the court may order the department to
30 complete a risk assessment report. If available before sentencing, the
31 report shall be provided to the court.

32 The court shall, at the time of plea or conviction, order the
33 department to complete a presentence report before imposing a sentence
34 upon a defendant who has been convicted of a felony sexual offense.
35 The department of corrections shall give priority to presentence
36 investigations for sexual offenders. If the court determines that the
37 defendant may be a mentally ill person as defined in RCW 71.24.025,
38 although the defendant has not established that at the time of the

1 crime he or she lacked the capacity to commit the crime, was
2 incompetent to commit the crime, or was insane at the time of the
3 crime, the court shall order the department to complete a presentence
4 report before imposing a sentence.

5 The court shall consider the risk assessment report and presentence
6 reports, if any, including any victim impact statement and criminal
7 history, and allow arguments from the prosecutor, the defense counsel,
8 the offender, the victim, the survivor of the victim, or a
9 representative of the victim or survivor, and an investigative law
10 enforcement officer as to the sentence to be imposed.

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

22 **Sec. 5.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read
23 as follows:

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

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

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

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

37 (4) A persistent offender shall be sentenced to a term of total
38 confinement for life without the possibility of parole or, when

1 authorized by RCW 10.95.030 for the crime of aggravated murder in the
2 first degree, sentenced to death, notwithstanding the maximum sentence
3 under any other law. An offender convicted of the crime of murder in
4 the first degree shall be sentenced to a term of total confinement not
5 less than twenty years. An offender convicted of the crime of assault
6 in the first degree or assault of a child in the first degree where the
7 offender used force or means likely to result in death or intended to
8 kill the victim shall be sentenced to a term of total confinement not
9 less than five years. An offender convicted of the crime of rape in
10 the first degree shall be sentenced to a term of total confinement not
11 less than five years. The foregoing minimum terms of total confinement
12 are mandatory and shall not be varied or modified as provided in
13 subsection (2) of this section. In addition, all offenders subject to
14 the provisions of this subsection shall not be eligible for community
15 custody, earned ((early)) release time, furlough, home detention,
16 partial confinement, work crew, work release, or any other form of
17 early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7),
18 or (8), or any other form of authorized leave of absence from the
19 correctional facility while not in the direct custody of a corrections
20 officer or officers during such minimum terms of total confinement
21 except in the case of an offender in need of emergency medical
22 treatment or for the purpose of commitment to an inpatient treatment
23 facility in the case of an offender convicted of the crime of rape in
24 the first degree.

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

35 ((a)) (i) Devote time to a specific employment or occupation;
36 ((b)) (ii) Undergo available outpatient treatment for up to ((two
37 years)) the period specified in (b) of this subsection, or inpatient
38 treatment not to exceed the standard range of confinement for that
39 offense;

1 (~~(e)~~) (iii) Pursue a prescribed, secular course of study or
2 vocational training;

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

6 (~~(e)~~) (v) Report as directed to (~~the court and~~) a community
7 corrections officer; or

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

10 (b) The terms and statuses applicable to sentences under (a) of
11 this subsection are:

12 (i) For sentences imposed on or after the effective date of this
13 section, for crimes committed before July 1, 2000, up to one year of
14 community supervision. If treatment is ordered, the period of
15 community supervision may include up to the period of treatment, but
16 shall not exceed two years; and

17 (ii) For crimes committed on or after July 1, 2000, up to one year
18 of community custody unless treatment is ordered, in which case the
19 period of community custody may include up to the period of treatment,
20 but shall not exceed two years. Any term of community custody imposed
21 under this subsection (5) is subject to conditions and sanctions as
22 authorized in this subsection (5) and in subsection (11)(b) and (c) of
23 this section.

24 (c) The department shall discharge from community supervision any
25 offender sentenced under this subsection (5) before the effective date
26 of this section who has served at least one year of community
27 supervision and has completed any treatment ordered by the court.

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

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

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

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

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

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

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

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

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

38 (v) Perform community service work;

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

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

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

21 (7) If a sentence range has not been established for the
22 defendant's crime, the court shall impose a determinate sentence which
23 may include not more than one year of confinement((7)); community
24 service work; until July 1, 2000, a term of community supervision not
25 to exceed one year((7)) and on and after July 1, 2000, a term of
26 community custody not to exceed one year, subject to conditions and
27 sanctions as authorized in subsection (11)(b) and (c) of this section;
28 and/or other legal financial obligations. The court may impose a
29 sentence which provides more than one year of confinement if the court
30 finds, considering the purpose of this chapter, that there are
31 substantial and compelling reasons justifying an exceptional sentence.

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

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

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

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

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

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

17 (D) Anticipated length of treatment; and

18 (E) Recommended crime-related prohibitions.

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

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

34 (A) The court shall place the defendant on community custody for
35 the length of the suspended sentence or three years, whichever is
36 greater, and require the offender to comply with any conditions imposed
37 by the department of corrections under subsection (~~(+14)~~) (15) of this
38 section;

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

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

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

20 (III) Report as directed to the court and a community corrections
21 officer;

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

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

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

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

37 (iv) At the time of sentencing, the court shall set a treatment
38 termination hearing for three months prior to the anticipated date for
39 completion of treatment. Prior to the treatment termination hearing,

1 the treatment professional and community corrections officer shall
2 submit written reports to the court and parties regarding the
3 defendant's compliance with treatment and monitoring requirements, and
4 recommendations regarding termination from treatment, including
5 proposed community supervision conditions. Either party may request
6 and the court may order another evaluation regarding the advisability
7 of termination from treatment. The defendant shall pay the cost of any
8 additional evaluation ordered unless the court finds the defendant to
9 be indigent in which case the state shall pay the cost. At the
10 treatment termination hearing the court may: (A) Modify conditions of
11 community custody, and either (B) terminate treatment, or (C) extend
12 treatment for up to the remaining period of community custody.

13 (v) If a violation of conditions occurs during community custody,
14 the department shall either impose sanctions as provided for in RCW
15 9.94A.205(2)(a) or refer the violation to the court and recommend
16 revocation of the suspended sentence as provided for in (a)(vi) of this
17 subsection.

18 (vi) The court may revoke the suspended sentence at any time during
19 the period of community custody and order execution of the sentence if:
20 (A) The defendant violates the conditions of the suspended sentence, or
21 (B) the court finds that the defendant is failing to make satisfactory
22 progress in treatment. All confinement time served during the period
23 of community custody shall be credited to the offender if the suspended
24 sentence is revoked.

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

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

38 (ix) For purposes of this subsection (8), "victim" means any person
39 who has sustained emotional, psychological, physical, or financial

1 injury to person or property as a result of the crime charged.
2 "Victim" also means a parent or guardian of a victim who is a minor
3 child unless the parent or guardian is the perpetrator of the offense.

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

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

14 Except for an offender who has been convicted of a violation of RCW
15 9A.44.040 or 9A.44.050, if the offender completes the treatment program
16 before the expiration of his or her term of confinement, the department
17 of corrections may request the court to convert the balance of
18 confinement to community supervision and to place conditions on the
19 offender including crime-related prohibitions and requirements that the
20 offender perform any one or more of the following:

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

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

25 (iii) Report as directed to the court and a community corrections
26 officer;

27 (iv) Undergo available outpatient treatment.

28 If the offender violates any of the terms of his or her community
29 supervision, the court may order the offender to serve out the balance
30 of his or her community supervision term in confinement in the custody
31 of the department of corrections.

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

36 (c) Offenders convicted and sentenced for a sex offense committed
37 prior to July 1, 1987, may, subject to available funds, request an
38 evaluation by the department of corrections to determine whether they
39 are amenable to treatment. If the offender is determined to be

1 amenable to treatment, the offender may request placement in a
2 treatment program within a correctional facility operated by the
3 department. Placement in such treatment program is subject to
4 available funds.

5 (d) Within the funds available for this purpose, the department
6 shall develop and monitor transition and relapse prevention strategies,
7 including risk assessment and release plans, to reduce risk to the
8 community after sex offenders' terms of confinement in the custody of
9 the department.

10 (9)(a)(i) When a court sentences a person to a term of total
11 confinement to the custody of the department of corrections for an
12 offense categorized as a sex offense or a serious violent offense
13 committed after July 1, 1988, but before July 1, 1990, assault in the
14 second degree, assault of a child in the second degree, any crime
15 against a person where it is determined in accordance with RCW
16 9.94A.125 that the defendant or an accomplice was armed with a deadly
17 weapon at the time of commission, or any felony offense under chapter
18 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
19 committed on or after July 1, 1988, but before the effective date of
20 this section, the court shall in addition to the other terms of the
21 sentence, sentence the offender to a one-year term of community
22 placement beginning either upon completion of the term of confinement
23 or at such time as the offender is transferred to community custody in
24 lieu of earned ((early)) release in accordance with RCW 9.94A.150 (1)
25 and (2). When the court sentences an offender under this subsection to
26 the statutory maximum period of confinement then the community
27 placement portion of the sentence shall consist entirely of such
28 community custody to which the offender may become eligible, in
29 accordance with RCW 9.94A.150 (1) and (2). Any period of community
30 custody actually served shall be credited against the community
31 placement portion of the sentence.

32 (ii) Except for persons sentenced under (b) of this subsection or
33 subsection (10)(a) of this section, when a court sentences a person to
34 a term of total confinement to the custody of the department of
35 corrections for a violent offense, any crime against a person under RCW
36 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW
37 not sentenced under subsection (6) of this section, committed on or
38 after the effective date of this section but before July 1, 2000, the
39 court shall in addition to the other terms of the sentence, sentence

1 the offender to a one-year term of community placement beginning either
2 upon completion of the term of confinement or at such time as the
3 offender is transferred to community custody in lieu of earned release
4 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
5 the offender under this subsection (9)(a)(ii) to the statutory maximum
6 period of confinement, then the community placement portion of the
7 sentence shall consist entirely of such community custody to which the
8 offender may become eligible, in accordance with RCW 9.94A.150 (1) and
9 (2). Any period of community custody actually served shall be credited
10 against the community 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, or a serious violent offense, vehicular homicide,
15 or vehicular assault, committed on or after July 1, 1990, but before
16 July 1, 2000, the court shall in addition to other terms of the
17 sentence, sentence the offender to community placement for two years or
18 up to the period of earned ((early)) release awarded pursuant to RCW
19 9.94A.150 (1) and (2), whichever is longer. The community placement
20 shall begin either upon completion of the term of confinement or at
21 such time as the offender is transferred to community custody in lieu
22 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and
23 (2). When the court sentences an offender under this subsection to the
24 statutory maximum period of confinement then the community placement
25 portion of the sentence shall consist entirely of the community custody
26 to which the offender may become eligible, in accordance with RCW
27 9.94A.150 (1) and (2). Any period of community custody actually served
28 shall be credited against the community placement portion of the
29 sentence. Unless a condition is waived by the court, the terms of
30 community placement for offenders sentenced pursuant to this section
31 shall include the following conditions:

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

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

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

38 (iv) The offender shall pay supervision fees as determined by the
39 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, but before July 1, 2000, the court
31 shall, in addition to other terms of the sentence, sentence the
32 offender to community custody for three years or up to the period of
33 earned ((early)) release awarded pursuant to RCW 9.94A.150 (1) and (2),
34 whichever is longer. The community custody shall begin either upon
35 completion of the term of confinement or at such time as the offender
36 is transferred to community custody in lieu of earned ((early)) release
37 in accordance with RCW 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))~~ (15) of this
6 section.

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

18 (11)(a) When a court sentences a person to the custody of the
19 department of corrections for a sex offense, a violent offense, any
20 crime against a person under RCW 9.94A.440(2), or a felony offense
21 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of
22 this section, committed on or after July 1, 2000, the court shall in
23 addition to the other terms of the sentence, sentence the offender to
24 community custody for the community custody range or up to the period
25 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),
26 whichever is longer. The community custody shall begin either upon
27 completion of the term of confinement or at such time as the offender
28 is transferred to community custody in lieu of earned release in
29 accordance with RCW 9.94A.150 (1) and (2).

30 (b) Unless a condition is waived by the court, the conditions of
31 community custody shall include those provided for in subsection
32 (9)(b)(i) through (vi) of this section. The conditions may also
33 include those provided for in subsection (9)(c)(i) through (vi) of this
34 section. The court may also order the offender to participate in
35 rehabilitative programs or otherwise perform affirmative conduct
36 reasonably related to the circumstances of the offense, the offender's
37 risk of reoffending, or the safety of the community, and the department
38 shall enforce such conditions pursuant to (f) of this subsection. As
39 part of any sentence that includes a term of community custody imposed

1 under this subsection, the court shall also require the offender to
2 comply with any conditions imposed by the department of corrections
3 under subsection (15) of this section. The department shall assess the
4 offender's risk of reoffense and may establish and modify additional
5 conditions of the offender's community custody based upon the risk to
6 community safety. The department may not impose conditions that are
7 contrary to those ordered by the court and may not contravene or
8 decrease court imposed conditions. The department shall notify the
9 offender in writing of any such conditions or modifications. In
10 setting, modifying, and enforcing conditions of community custody, the
11 department shall be deemed to be performing a quasi-judicial function.

12 (c) If an offender violates conditions imposed by the court or the
13 department pursuant to this subsection during community custody, the
14 department may transfer the offender to a more restrictive confinement
15 status and impose other available sanctions as provided in RCW
16 9.94A.205 and 9.94A.207.

17 (d) Except for terms of community custody under subsection (8) of
18 this section, the department shall discharge the offender from
19 community custody on a date determined by the department, which the
20 department may modify, based on risk and performance of the offender,
21 within the range or at the end of the period of earned release,
22 whichever is later.

23 (e) At any time prior to the completion or termination of a sex
24 offender's term of community custody, if the court finds that public
25 safety would be enhanced, the court may impose and enforce an order
26 extending any or all of the conditions imposed pursuant to this section
27 for a period up to the maximum allowable sentence for the crime as it
28 is classified in chapter 9A.20 RCW, regardless of the expiration of the
29 offender's term of community custody. If a violation of a condition
30 extended under this subsection occurs after the expiration of the
31 offender's term of community custody, it shall be deemed a violation of
32 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
33 contempt of court as provided for in RCW 7.21.040. If the court
34 extends a condition beyond the expiration of the term of community
35 custody, the department is not responsible for supervision of the
36 offender's compliance with the condition.

37 (f) Within the funds available for community custody, the
38 department shall determine conditions and duration of community custody
39 on the basis of risk to community safety, and shall supervise offenders

1 during community custody on the basis of risk to community safety and
2 conditions imposed by the court. The secretary shall adopt rules to
3 implement the provisions of this subsection (11)(f).

4 (g) By the close of the next business day after receiving notice of
5 a condition imposed or modified by the department, an offender may
6 request an administrative review under rules adopted by the department.
7 The condition shall remain in effect unless the reviewing officer finds
8 that it is not reasonably related to any of the following: (i) The
9 crime of conviction; (ii) the offender's risk of reoffending; or (iii)
10 the safety of the community.

11 (12) If the court imposes a sentence requiring confinement of
12 thirty days or less, the court may, in its discretion, specify that the
13 sentence be served on consecutive or intermittent days. A sentence
14 requiring more than thirty days of confinement shall be served on
15 consecutive days. Local jail administrators may schedule court-ordered
16 intermittent sentences as space permits.

17 ~~((12))~~ (13) If a sentence imposed includes payment of a legal
18 financial obligation, the sentence shall specify the total amount of
19 the legal financial obligation owed, and shall require the offender to
20 pay a specified monthly sum toward that legal financial obligation.
21 Restitution to victims shall be paid prior to any other payments of
22 monetary obligations. Any legal financial obligation that is imposed
23 by the court may be collected by the department, which shall deliver
24 the amount paid to the county clerk for credit. The offender's
25 compliance with payment of legal financial obligations shall be
26 supervised by the department for ten years following the entry of the
27 judgment and sentence or ten years following the offender's release
28 from total confinement. All monetary payments ordered shall be paid no
29 later than ten years after the last date of release from confinement
30 pursuant to a felony conviction or the date the sentence was entered
31 unless the superior court extends the criminal judgment an additional
32 ten years. If the legal financial obligations including crime victims'
33 assessments are not paid during the initial ten-year period, the
34 superior court may extend jurisdiction under the criminal judgment an
35 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
36 9.94A.145. If jurisdiction under the criminal judgment is extended,
37 the department is not responsible for supervision of the offender
38 during the subsequent period. Independent of the department, the party
39 or entity to whom the legal financial obligation is owed shall have the

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

8 ~~((13))~~ (14) Except as provided under RCW 9.94A.140(1) and
9 9.94A.142(1), a court may not impose a sentence providing for a term of
10 confinement or community supervision ~~((or))~~, community placement, or
11 community custody which exceeds the statutory maximum for the crime as
12 provided in chapter 9A.20 RCW.

13 ~~((14))~~ (15) All offenders sentenced to terms involving community
14 supervision, community service, community placement, community custody,
15 or legal financial obligation shall be under the supervision of the
16 department of corrections and shall follow explicitly the instructions
17 and conditions of the department of corrections. The department may
18 require an offender to perform affirmative acts it deems appropriate to
19 monitor compliance with the conditions of the sentence imposed.

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

25 (b) For offenders sentenced to terms involving community custody
26 for crimes committed on or after June 6, 1996, the department may
27 include, in addition to the instructions in (a) of this subsection, any
28 appropriate conditions of supervision, including but not limited to,
29 prohibiting the offender from having contact with any other specified
30 individuals or specific class of individuals. For offenders sentenced
31 to terms of community custody for crimes committed on or after July 1,
32 2000, the department may additionally require the offender to
33 participate in rehabilitative programs or otherwise perform affirmative
34 conduct, and to obey all laws.

35 The conditions authorized under this subsection ~~((14))~~ (15)(b)
36 may be imposed by the department prior to or during an offender's
37 community custody term. If a violation of conditions imposed by the
38 court or the department pursuant to subsection (10) of this section
39 occurs during community custody, it shall be deemed a violation of

1 community placement for the purposes of RCW 9.94A.207 and shall
2 authorize the department to transfer an offender to a more restrictive
3 confinement status as provided in RCW 9.94A.205. At any time prior to
4 the completion of (~~(a-sex)~~) an offender's term of community custody,
5 the department may recommend to the court that any or all of the
6 conditions imposed by the court or the department pursuant to
7 subsection (10) or (11) of this section be continued beyond the
8 expiration of the offender's term of community custody as authorized in
9 subsection (10)(c) or (11)(e) 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))~~) (16) All offenders sentenced to terms involving community
16 supervision, community service, community custody, or community
17 placement under the supervision of the department of corrections shall
18 not own, use, or possess firearms or ammunition. Offenders who own,
19 use, or are found to be in actual or constructive possession of
20 firearms or ammunition shall be subject to the appropriate violation
21 process and sanctions. "Constructive possession" as used in this
22 subsection means the power and intent to control the firearm or
23 ammunition. "Firearm" as used in this subsection means a weapon or
24 device from which a projectile may be fired by an explosive such as
25 gunpowder.

26 (~~((16))~~) (17) The sentencing court shall give the offender credit
27 for all confinement time served before the sentencing if that
28 confinement was solely in regard to the offense for which the offender
29 is being sentenced.

30 (~~((17))~~) (18) A departure from the standards in RCW 9.94A.400 (1)
31 and (2) governing whether sentences are to be served consecutively or
32 concurrently is an exceptional sentence subject to the limitations in
33 subsections (2) and (3) of this section, and may be appealed by the
34 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

35 (~~((18))~~) (19) The court shall order restitution whenever the
36 offender is convicted of a felony that results in injury to any person
37 or damage to or loss of property, whether the offender is sentenced to
38 confinement or placed under community supervision, unless extraordinary
39 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))~~ (20) As a part of any sentence, the court may impose and
4 enforce an order that relates directly to the circumstances of the
5 crime for which the offender has been convicted, prohibiting the
6 offender from having any contact with other specified individuals or a
7 specific class of individuals for a period not to exceed the maximum
8 allowable sentence for the crime, regardless of the expiration of the
9 offender's term of community supervision or community placement.

10 ~~((20))~~ (21) The court may order an offender whose sentence
11 includes community placement or community supervision to undergo a
12 mental status evaluation and to participate in available outpatient
13 mental health treatment, if the court finds that reasonable grounds
14 exist to believe that the offender is a mentally ill person as defined
15 in RCW 71.24.025, and that this condition is likely to have influenced
16 the offense. An order requiring mental status evaluation or treatment
17 must be based on a presentence report and, if applicable, mental status
18 evaluations that have been filed with the court to determine the
19 offender's competency or eligibility for a defense of insanity. The
20 court may order additional evaluations at a later date if deemed
21 appropriate.

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

26 ~~((22))~~ (23) All court-ordered legal financial obligations
27 collected by the department and remitted to the county clerk shall be
28 credited and paid where restitution is ordered. Restitution shall be
29 paid prior to any other payments of monetary obligations.

30 (24)(a) Sex offender examinations and treatment ordered as a
31 special condition of community placement or community custody under
32 this section shall be conducted only by sex offender treatment
33 providers certified by the department of health under chapter 18.155
34 RCW unless the court finds that: (i) The offender has already moved to
35 another state or plans to move to another state for reasons other than
36 circumventing the certification requirements; (ii) no certified
37 providers are available for treatment within a reasonable geographic
38 distance of the offender's home, as determined in rules adopted by the
39 secretary; (iii) the evaluation and treatment plan comply with the

1 rules adopted by the department of health; or (iv) the treatment
2 provider is employed by the department. A treatment provider selected
3 by an offender who is not certified by the department of health shall
4 consult with a certified provider during the offender's period of
5 treatment to ensure compliance with the rules adopted by the department
6 of health. The frequency and content of the consultation shall be
7 based on the recommendation of the certified provider.

8 (b) A sex offender's failure to participate in treatment required
9 as a condition of community placement or community custody is a
10 violation that will not be excused on the basis that no treatment
11 provider was located within a reasonable geographic distance of the
12 offender's home.

13 **Sec. 6.** RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are
14 each reenacted and amended to read as follows:

15 (1) Whenever a person is convicted of a felony, the court may order
16 the payment of a legal financial obligation as part of the sentence.
17 The court must on either the judgment and sentence or on a subsequent
18 order to pay, designate the total amount of a legal financial
19 obligation and segregate this amount among the separate assessments
20 made for restitution, costs, fines, and other assessments required by
21 law. On the same order, the court is also to set a sum that the
22 offender is required to pay on a monthly basis towards satisfying the
23 legal financial obligation. If the court fails to set the offender
24 monthly payment amount, the department shall set the amount. Upon
25 receipt of an offender's monthly payment, after restitution is
26 satisfied, the county clerk shall distribute the payment proportionally
27 among all other fines, costs, and assessments imposed, unless otherwise
28 ordered by the court.

29 (2) If the court determines that the offender, at the time of
30 sentencing, has the means to pay for the cost of incarceration, the
31 court may require the offender to pay for the cost of incarceration at
32 a rate of fifty dollars per day of incarceration. Payment of other
33 court-ordered financial obligations, including all legal financial
34 obligations and costs of supervision shall take precedence over the
35 payment of the cost of incarceration ordered by the court. All funds
36 recovered from offenders for the cost of incarceration in the county
37 jail shall be remitted to the county and the costs of incarceration in
38 a prison shall be remitted to the department of corrections.

1 (3) The court may add to the judgment and sentence or subsequent
2 order to pay a statement that a notice of payroll deduction is to be
3 immediately issued. If the court chooses not to order the immediate
4 issuance of a notice of payroll deduction at sentencing, the court
5 shall add to the judgment and sentence or subsequent order to pay a
6 statement that a notice of payroll deduction may be issued or other
7 income-withholding action may be taken, without further notice to the
8 offender if a monthly court-ordered legal financial obligation payment
9 is not paid when due, and an amount equal to or greater than the amount
10 payable for one month is owed.

11 If a judgment and sentence or subsequent order to pay does not
12 include the statement that a notice of payroll deduction may be issued
13 or other income-withholding action may be taken if a monthly legal
14 financial obligation payment is past due, the department may serve a
15 notice on the offender stating such requirements and authorizations.
16 Service shall be by personal service or any form of mail requiring a
17 return receipt.

18 (4) All legal financial obligations that are ordered as a result of
19 a conviction for a felony, may also be enforced in the same manner as
20 a judgment in a civil action by the party or entity to whom the legal
21 financial obligation is owed. Restitution collected through civil
22 enforcement must be paid through the registry of the court and must be
23 distributed proportionately according to each victim's loss when there
24 is more than one victim. The judgment and sentence shall identify the
25 party or entity to whom restitution is owed so that the state, party,
26 or entity may enforce the judgment. If restitution is ordered pursuant
27 to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and
28 the victim's child born from the rape, the Washington state child
29 support registry shall be identified as the party to whom payments must
30 be made. Restitution obligations arising from the rape of a child in
31 the first, second, or third degree that result in the pregnancy of the
32 victim may be enforced for the time periods provided under RCW
33 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations
34 may be enforced at any time during the ten-year period following the
35 offender's release from total confinement or within ten years of entry
36 of the judgment and sentence, whichever period is longer. Prior to the
37 expiration of the initial ten-year period, the superior court may
38 extend the criminal judgment an additional ten years for payment of
39 legal financial obligations including crime victims' assessments. If

1 jurisdiction under the criminal judgment is extended, the department is
2 not responsible for supervision of the offender during the subsequent
3 period. Independent of the department, the party or entity to whom the
4 legal financial obligation is owed shall have the authority to utilize
5 any other remedies available to the party or entity to collect the
6 legal financial obligation.

7 (5) In order to assist the court in setting a monthly sum that the
8 offender must pay during the period of supervision, the offender is
9 required to report to the department for purposes of preparing a
10 recommendation to the court. When reporting, the offender is required,
11 under oath, to truthfully and honestly respond to all questions
12 concerning present, past, and future earning capabilities and the
13 location and nature of all property or financial assets. The offender
14 is further required to bring any and all documents as requested by the
15 department.

16 (6) After completing the investigation, the department shall make
17 a report to the court on the amount of the monthly payment that the
18 offender should be required to make towards a satisfied legal financial
19 obligation.

20 (7) During the period of supervision, the department may make a
21 recommendation to the court that the offender's monthly payment
22 schedule be modified so as to reflect a change in financial
23 circumstances. If the department sets the monthly payment amount, the
24 department may modify the monthly payment amount without the matter
25 being returned to the court. Also, during the period of supervision,
26 the offender may be required at the request of the department to report
27 to the department for the purposes of reviewing the appropriateness of
28 the collection schedule for the legal financial obligation. During
29 this reporting, the offender is required under oath to truthfully and
30 honestly respond to all questions concerning earning capabilities and
31 the location and nature of all property or financial assets. Also, the
32 offender is required to bring any and all documents as requested by the
33 department in order to prepare the collection schedule.

34 (8) After the judgment and sentence or payment order is entered,
35 the department shall for any period of supervision be authorized to
36 collect the legal financial obligation from the offender. Any amount
37 collected by the department shall be remitted daily to the county clerk
38 for the purposes of disbursements. The department is authorized to
39 accept credit cards as payment for a legal financial obligation, and

1 any costs incurred related to accepting credit card payments shall be
2 the responsibility of the offender.

3 (9) The department or any obligee of the legal financial obligation
4 may seek a mandatory wage assignment for the purposes of obtaining
5 satisfaction for the legal financial obligation pursuant to RCW
6 9.94A.2001.

7 (10) The requirement that the offender pay a monthly sum towards a
8 legal financial obligation constitutes a condition or requirement of a
9 sentence and the offender is subject to the penalties as provided in
10 RCW 9.94A.200 for noncompliance.

11 (11) The county clerk shall provide the department with
12 individualized monthly billings for each offender with an unsatisfied
13 legal financial obligation and shall provide the department with notice
14 of payments by such offenders no less frequently than weekly.

15 (12) The department may arrange for the collection of unpaid legal
16 financial obligations through the county clerk, or through another
17 entity if the clerk does not assume responsibility for collection. The
18 costs for collection services shall be paid by the offender.

19 **Sec. 7.** RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read
20 as follows:

21 (1) A term of confinement(~~(, including community custody,)~~) ordered
22 in a sentence pursuant to this chapter shall be tolled by any period of
23 time during which the offender has absented ((him)) himself or herself
24 from confinement without the prior approval of the entity in whose
25 custody the offender has been placed. A term of partial confinement
26 shall be tolled during any period of time spent in total confinement
27 pursuant to a new conviction or pursuant to sanctions for violation of
28 sentence conditions on a separate felony conviction.

29 (2) A term of ((~~supervision, including postrelease supervision~~))
30 community custody ordered in a sentence pursuant to this chapter shall
31 be tolled by any period of time during which the offender has absented
32 himself or herself from supervision without prior approval of the
33 entity under whose ((~~supervision~~)) community custody the offender has
34 been placed.

35 (3) Any period of ((~~supervision~~)) community custody shall be tolled
36 during any period of time the offender is in confinement for any
37 reason. However, if an offender is detained pursuant to RCW 9.94A.207
38 or 9.94A.195 and is later found not to have violated a condition or

1 requirement of ((supervision)) community custody, time spent in
2 confinement due to such detention shall not toll ((to [the])) the
3 period of ((supervision)) community custody.

4 (4) For confinement or ((supervision)) community custody sentences,
5 the date for the tolling of the sentence shall be established by the
6 entity responsible for the confinement or ((supervision)) community
7 custody.

8 **Sec. 8.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read
9 as follows:

10 (1) If an ((inmate)) offender violates any condition or requirement
11 of community custody, the department may transfer the ((inmate))
12 offender to a more restrictive confinement status to serve up to the
13 remaining portion of the sentence, less credit for any period actually
14 spent in community custody or in detention awaiting disposition of an
15 alleged violation and subject to the limitations of subsection (2) of
16 this section.

17 (2)(a) For a sex offender sentenced to a term of community custody
18 under RCW 9.94A.120(8) who violates any condition of community custody,
19 the department may impose a sanction of up to sixty days' confinement
20 in a local correctional facility for each violation. If the department
21 imposes a sanction, the department shall submit within seventy-two
22 hours a report to the court and the prosecuting attorney outlining the
23 violation or violations and the sanctions imposed.

24 (b) For a sex offender sentenced to a term of community custody
25 under RCW 9.94A.120(10) who violates any condition of community custody
26 after having completed his or her maximum term of total confinement,
27 including time served on community custody in lieu of earned ((early))
28 release, the department may impose a sanction of up to sixty days in a
29 local correctional facility for each violation.

30 (c) For an offender sentenced to a term of community custody under
31 RCW 9.94A.120 (5), (7), or (11), or under RCW 9.94A.383, for a crime
32 committed on or after July 1, 2000, who violates any condition of
33 community custody after having completed his or her maximum term of
34 total confinement, including time served on community custody in lieu
35 of earned release, the department may impose a sanction of up to sixty
36 days in total confinement for each violation. The department may
37 impose sanctions such as work release, home detention with electronic
38 monitoring, work crew, community service, inpatient treatment, daily

1 reporting, curfew, educational or counseling sessions, supervision
2 enhanced through electronic monitoring, or any other sanctions
3 available in the community.

4 (d) For an offender sentenced to a term of community placement
5 under RCW 9.94A.120(9)(a)(ii) who violates any condition of community
6 placement after having completed his or her maximum term of total
7 confinement, including time served on community custody in lieu of
8 earned release, the department may impose a sanction of up to sixty
9 days in total confinement for each violation. The department may
10 impose sanctions such as work release, home detention with electronic
11 monitoring, work crew, community service, inpatient treatment, daily
12 reporting, curfew, educational or counseling sessions, supervision
13 enhanced through electronic monitoring, or any other sanctions
14 available in the community.

15 (3) If an ((inmate)) offender is accused of violating any condition
16 or requirement of community custody, he or she is entitled to a hearing
17 before the department prior to the imposition of sanctions. The
18 hearing shall be considered as ((inmate)) offender disciplinary
19 proceedings and shall not be subject to chapter 34.05 RCW. The
20 department shall develop hearing procedures and a structure of
21 graduated sanctions.

22 (4) The hearing procedures required under subsection (3) of this
23 section shall be developed by rule and include the following:

24 (a) Hearing officers shall report through a chain of command
25 separate from that of community corrections officers;

26 (b) The department shall provide the offender with written notice
27 of the violation, the evidence relied upon, and the reasons the
28 particular sanction was imposed. The notice shall include a statement
29 of the rights specified in this subsection, and the offender's right to
30 file a personal restraint petition under court rules after the final
31 decision of the department;

32 (c) The hearing shall be held unless waived by the offender, and
33 shall be electronically recorded. For offenders not in total
34 confinement, the hearing shall be held within fifteen working days, but
35 not less than twenty-four hours, after notice of the violation. For
36 offenders in total confinement, the hearing shall be held within five
37 working days, but not less than twenty-four hours, after notice of the
38 violation;

1 (d) The offender shall have the right to: (i) Be present at the
2 hearing; (ii) have the assistance of a person qualified to assist the
3 offender in the hearing, appointed by the hearing officer if the
4 offender has a language or communications barrier; (iii) testify or
5 remain silent; (iv) call witnesses and present documentary evidence;
6 and (v) question witnesses who appear and testify; and

7 (e) The sanction shall take effect if affirmed by the hearing
8 officer. Within seven days after the hearing officer's decision, the
9 offender may appeal the decision to a panel of three reviewing officers
10 designated by the secretary or by the secretary's designee. The
11 sanction shall be reversed or modified if a majority of the panel finds
12 that the sanction was not reasonably related to any of the following:
13 (i) The crime of conviction; (ii) the violation committed; (iii) the
14 offender's risk of reoffending; or (iv) the safety of the community.

15 (5) For purposes of this section, no finding of a violation of
16 conditions may be based on unconfirmed or unconfirmable allegations.

17 **Sec. 9.** RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read
18 as follows:

19 (1) The secretary may issue warrants for the arrest of any offender
20 who violates a condition of community placement or community custody.
21 The arrest warrants shall authorize any law enforcement or peace
22 officer or community corrections officer of this state or any other
23 state where such offender may be located, to arrest the offender and
24 place him or her in total confinement pending disposition of the
25 alleged violation. The department shall compensate the local
26 jurisdiction at the office of financial management's adjudicated rate,
27 in accordance with RCW 70.48.440. A community corrections officer, if
28 he or she has reasonable cause to believe an offender in community
29 placement or community custody has violated a condition of community
30 placement or community custody, may suspend the person's community
31 placement or community custody status and arrest or cause the arrest
32 and detention in total confinement of the offender, pending the
33 determination of the secretary as to whether the violation has
34 occurred. The community corrections officer shall report to the
35 secretary all facts and circumstances and the reasons for the action of
36 suspending community placement or community custody status. A
37 violation of a condition of community placement or community custody
38 shall be deemed a violation of the sentence for purposes of RCW

1 9.94A.195. The authority granted to community corrections officers
2 under this section shall be in addition to that set forth in RCW
3 9.94A.195.

4 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
5 to community custody and who are detained in a local correctional
6 facility are the financial responsibility of the department of
7 corrections, except as provided in subsection (3) of this section. The
8 community custody inmate shall be removed from the local correctional
9 facility, except as provided in subsection (3) of this section, not
10 later than eight days, excluding weekends and holidays, following
11 admittance to the local correctional facility and notification that the
12 inmate is available for movement to a state correctional institution.

13 (3) The department may negotiate with local correctional
14 authorities for an additional period of detention; however, sex
15 offenders sanctioned for community custody violations under RCW
16 9.94A.205(2) to a term of confinement shall remain in the local
17 correctional facility for the complete term of the sanction. For
18 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
19 correctional facility shall be financially responsible. For
20 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
21 of corrections shall be financially responsible for that portion of the
22 sanction served during the time in which the sex offender is on
23 community custody in lieu of earned ((early)) release, and the local
24 correctional facility shall be financially responsible for that portion
25 of the sanction served by the sex offender after the time in which the
26 sex offender is on community custody in lieu of earned ((early))
27 release. The department, in consultation with the Washington
28 association of sheriffs and police chiefs and those counties in which
29 the sheriff does not operate a correctional facility, shall establish
30 a methodology for determining the department's local correctional
31 facilities bed utilization rate, for each county in calendar year 1998,
32 for offenders being held for violations of conditions of community
33 custody, community placement, or community supervision. For
34 confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the
35 local correctional facility shall continue to be financially
36 responsible to the extent of the calendar year 1998 bed utilization
37 rate. If the department's use of bed space in local correctional
38 facilities of any county for confinement sanctions imposed on offenders
39 sentenced to a term of community custody under RCW 9.94A.205(2) (c) or

1 (d) exceeds the 1998 bed utilization rate for the county, the
2 department shall compensate the county for the excess use at the per
3 diem rate equal to the lowest rate charged by the county under its
4 contract with a municipal government during the year in which the use
5 occurs.

6 **Sec. 10.** RCW 9.94A.383 and 1988 c 143 s 23 are each amended to
7 read as follows:

8 On all sentences of confinement for one year or less, the court may
9 impose up to one year of community (~~(supervision))~~ custody, subject to
10 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and
11 (c). An offender shall be on community (~~(supervision))~~ custody as of
12 the date of sentencing. However, during the time for which the
13 offender is in total or partial confinement pursuant to the sentence or
14 a violation of the sentence, the period of community (~~(supervision))~~
15 custody shall toll.

16 **Sec. 11.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
17 as follows:

18 (1) Decision not to prosecute.

19 STANDARD: A prosecuting attorney may decline to prosecute, even
20 though technically sufficient evidence to prosecute exists, in
21 situations where prosecution would serve no public purpose, would
22 defeat the underlying purpose of the law in question or would result in
23 decreased respect for the law.

24 GUIDELINE/COMMENTARY:

25 Examples

26 The following are examples of reasons not to prosecute which could
27 satisfy the standard.

28 (a) Contrary to Legislative Intent - It may be proper to decline to
29 charge where the application of criminal sanctions would be clearly
30 contrary to the intent of the legislature in enacting the particular
31 statute.

32 (b) Antiquated Statute - It may be proper to decline to charge
33 where the statute in question is antiquated in that:

34 (i) It has not been enforced for many years; and

35 (ii) Most members of society act as if it were no longer in
36 existence; and

1 (iii) It serves no deterrent or protective purpose in today's
2 society; and

3 (iv) The statute has not been recently reconsidered by the
4 legislature.

5 This reason is not to be construed as the basis for declining cases
6 because the law in question is unpopular or because it is difficult to
7 enforce.

8 (c) De Minimus Violation - It may be proper to decline to charge
9 where the violation of law is only technical or insubstantial and where
10 no public interest or deterrent purpose would be served by prosecution.

11 (d) Confinement on Other Charges - It may be proper to decline to
12 charge because the accused has been sentenced on another charge to a
13 lengthy period of confinement; and

14 (i) Conviction of the new offense would not merit any additional
15 direct or collateral punishment;

16 (ii) The new offense is either a misdemeanor or a felony which is
17 not particularly aggravated; and

18 (iii) Conviction of the new offense would not serve any significant
19 deterrent purpose.

20 (e) Pending Conviction on Another Charge - It may be proper to
21 decline to charge because the accused is facing a pending prosecution
22 in the same or another county; and

23 (i) Conviction of the new offense would not merit any additional
24 direct or collateral punishment;

25 (ii) Conviction in the pending prosecution is imminent;

26 (iii) The new offense is either a misdemeanor or a felony which is
27 not particularly aggravated; and

28 (iv) Conviction of the new offense would not serve any significant
29 deterrent purpose.

30 (f) High Disproportionate Cost of Prosecution - It may be proper to
31 decline to charge where the cost of locating or transporting, or the
32 burden on, prosecution witnesses is highly disproportionate to the
33 importance of prosecuting the offense in question. This reason should
34 be limited to minor cases and should not be relied upon in serious
35 cases.

36 (g) Improper Motives of Complainant - It may be proper to decline
37 charges because the motives of the complainant are improper and
38 prosecution would serve no public purpose, would defeat the underlying

1 purpose of the law in question or would result in decreased respect for
2 the law.

3 (h) Immunity - It may be proper to decline to charge where immunity
4 is to be given to an accused in order to prosecute another where the
5 accused's information or testimony will reasonably lead to the
6 conviction of others who are responsible for more serious criminal
7 conduct or who represent a greater danger to the public interest.

8 (i) Victim Request - It may be proper to decline to charge because
9 the victim requests that no criminal charges be filed and the case
10 involves the following crimes or situations:

11 (i) Assault cases where the victim has suffered little or no
12 injury;

13 (ii) Crimes against property, not involving violence, where no
14 major loss was suffered;

15 (iii) Where doing so would not jeopardize the safety of society.

16 Care should be taken to insure that the victim's request is freely
17 made and is not the product of threats or pressure by the accused.

18 The presence of these factors may also justify the decision to
19 dismiss a prosecution which has been commenced.

20 Notification

21 The prosecutor is encouraged to notify the victim, when practical,
22 and the law enforcement personnel, of the decision not to prosecute.

23 (2) Decision to prosecute.

24 (a) STANDARD:

25 Crimes against persons will be filed if sufficient admissible
26 evidence exists, which, when considered with the most plausible,
27 reasonably foreseeable defense that could be raised under the evidence,
28 would justify conviction by a reasonable and objective fact-finder.
29 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
30 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
31 9A.64.020 the prosecutor should avoid pre-filing agreements or
32 diversions intended to place the accused in a program of treatment or
33 counseling, so that treatment, if determined to be beneficial, can be
34 provided pursuant to RCW 9.94A.120(8).

35 Crimes against property/other crimes will be filed if the
36 admissible evidence is of such convincing force as to make it probable
37 that a reasonable and objective fact-finder would convict after hearing
38 all the admissible evidence and the most plausible defense that could
39 be raised.

1 See table below for the crimes within these categories.

2 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

3 CRIMES AGAINST PERSONS

- 4 Aggravated Murder
- 5 1st Degree Murder
- 6 2nd Degree Murder
- 7 1st Degree Kidnaping
- 8 1st Degree Assault
- 9 1st Degree Assault of a Child
- 10 1st Degree Rape
- 11 1st Degree Robbery
- 12 1st Degree Rape of a Child
- 13 1st Degree Arson
- 14 2nd Degree Kidnaping
- 15 2nd Degree Assault
- 16 2nd Degree Assault of a Child
- 17 2nd Degree Rape
- 18 2nd Degree Robbery
- 19 1st Degree Burglary
- 20 1st Degree Manslaughter
- 21 2nd Degree Manslaughter
- 22 1st Degree Extortion
- 23 Indecent Liberties
- 24 Incest
- 25 2nd Degree Rape of a Child
- 26 Vehicular Homicide
- 27 Vehicular Assault
- 28 3rd Degree Rape
- 29 3rd Degree Rape of a Child
- 30 1st Degree Child Molestation
- 31 2nd Degree Child Molestation
- 32 3rd Degree Child Molestation
- 33 2nd Degree Extortion
- 34 1st Degree Promoting Prostitution
- 35 Intimidating a Juror
- 36 Communication with a Minor
- 37 Intimidating a Witness
- 38 Intimidating a Public Servant

1 Bomb Threat (if against person)
2 3rd Degree Assault
3 3rd Degree Assault of a Child
4 Unlawful Imprisonment
5 Promoting a Suicide Attempt
6 Riot (if against person)
7 Stalking
8 Custodial Assault
9 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
10 and (c))
11 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
12 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
13 (5))

14 CRIMES AGAINST PROPERTY/OTHER CRIMES

15 2nd Degree Arson
16 1st Degree Escape
17 2nd Degree Burglary
18 1st Degree Theft
19 1st Degree Perjury
20 1st Degree Introducing Contraband
21 1st Degree Possession of Stolen Property
22 Bribery
23 Bribing a Witness
24 Bribe received by a Witness
25 Bomb Threat (if against property)
26 1st Degree Malicious Mischief
27 2nd Degree Theft
28 2nd Degree Escape
29 2nd Degree Introducing Contraband
30 2nd Degree Possession of Stolen Property
31 2nd Degree Malicious Mischief
32 1st Degree Reckless Burning
33 Taking a Motor Vehicle without Authorization
34 Forgery
35 2nd Degree Perjury
36 2nd Degree Promoting Prostitution
37 Tampering with a Witness
38 Trading in Public Office
39 Trading in Special Influence

1 Receiving/Granting Unlawful Compensation
2 Bigamy
3 Eluding a Pursuing Police Vehicle
4 Willful Failure to Return from Furlough
5 Escape from Community Custody
6 Riot (if against property)
7 Thefts of Livestock

8 ALL OTHER UNCLASSIFIED FELONIES

9 Selection of Charges/Degree of Charge

10 ~~((1))~~ (i) The prosecutor should file charges which adequately
11 describe the nature of defendant's conduct. Other offenses may be
12 charged only if they are necessary to ensure that the charges:

13 ~~((a))~~ (A) Will significantly enhance the strength of the state's
14 case at trial; or

15 ~~((b))~~ (B) Will result in restitution to all victims.

16 ~~((2))~~ (ii) The prosecutor should not overcharge to obtain a
17 guilty plea. Overcharging includes:

18 ~~((a))~~ (A) Charging a higher degree;

19 ~~((b))~~ (B) Charging additional counts.

20 This standard is intended to direct prosecutors to charge those
21 crimes which demonstrate the nature and seriousness of a defendant's
22 criminal conduct, but to decline to charge crimes which are not
23 necessary to such an indication. Crimes which do not merge as a matter
24 of law, but which arise from the same course of conduct, do not all
25 have to be charged.

26 (b) GUIDELINES/COMMENTARY:

27 (i) Police Investigation

28 A prosecuting attorney is dependent upon law enforcement agencies
29 to conduct the necessary factual investigation which must precede the
30 decision to prosecute. The prosecuting attorney shall ensure that a
31 thorough factual investigation has been conducted before a decision to
32 prosecute is made. In ordinary circumstances the investigation should
33 include the following:

34 ~~((1))~~ (A) The interviewing of all material witnesses, together
35 with the obtaining of written statements whenever possible;

36 ~~((2))~~ (B) The completion of necessary laboratory tests; and

37 ~~((3))~~ (C) The obtaining, in accordance with constitutional
38 requirements, of the suspect's version of the events.

1 If the initial investigation is incomplete, a prosecuting attorney
2 should insist upon further investigation before a decision to prosecute
3 is made, and specify what the investigation needs to include.

4 (ii) Exceptions

5 In certain situations, a prosecuting attorney may authorize filing
6 of a criminal complaint before the investigation is complete if:

7 ~~((1))~~ (A) Probable cause exists to believe the suspect is guilty;
8 and

9 ~~((2))~~ (B) The suspect presents a danger to the community or is
10 likely to flee if not apprehended; or

11 ~~((3))~~ (C) The arrest of the suspect is necessary to complete the
12 investigation of the crime.

13 In the event that the exception to the standard is applied, the
14 prosecuting attorney shall obtain a commitment from the law enforcement
15 agency involved to complete the investigation in a timely manner. If
16 the subsequent investigation does not produce sufficient evidence to
17 meet the normal charging standard, the complaint should be dismissed.

18 (iii) Investigation Techniques

19 The prosecutor should be fully advised of the investigatory
20 techniques that were used in the case investigation including:

21 ~~((1))~~ (A) Polygraph testing;

22 ~~((2))~~ (B) Hypnosis;

23 ~~((3))~~ (C) Electronic surveillance;

24 ~~((4))~~ (D) Use of informants.

25 (iv) Pre-Filing Discussions with Defendant

26 Discussions with the defendant or his/her representative regarding
27 the selection or disposition of charges may occur prior to the filing
28 of charges, and potential agreements can be reached.

29 (v) Pre-Filing Discussions with Victim(s)

30 Discussions with the victim(s) or victims' representatives
31 regarding the selection or disposition of charges may occur before the
32 filing of charges. The discussions may be considered by the prosecutor
33 in charging and disposition decisions, and should be considered before
34 reaching any agreement with the defendant regarding these decisions.

35 NEW SECTION. Sec. 12. A new section is added to chapter 72.09 RCW
36 to read as follows:

37 Except as specifically prohibited by other law, and for purposes of
38 determining, modifying, or monitoring compliance with conditions of

1 community custody, community placement, or community supervision as
2 authorized under RCW 9.94A.120 and 9.94A.383, the department:

3 (1) Shall have access to all relevant records and information in
4 the possession of public agencies relating to offenders, including
5 police reports, prosecutors' statements of probable cause, complete
6 criminal history information, psychological evaluations and psychiatric
7 hospital reports, sex offender treatment program reports, and juvenile
8 records; and

9 (2) May require periodic reports from providers of treatment or
10 other services required by the court or the department, including
11 progress reports, evaluations and assessments, and reports of
12 violations of conditions imposed by the court or the department.

13 NEW SECTION. **Sec. 13.** A new section is added to chapter 72.09 RCW
14 to read as follows:

15 To the extent practicable, the department shall deploy community
16 corrections staff on the basis of geographic areas in which offenders
17 under the department's jurisdiction are located, and shall establish a
18 systematic means of assessing risk to the safety of those communities.

19 NEW SECTION. **Sec. 14.** The secretary of corrections may adopt
20 rules to implement sections 1 through 13 of this act.

21 **Sec. 15.** RCW 9A.44.135 and 1998 c 220 s 2 are each amended to read
22 as follows:

23 (1) When an offender registers with the county sheriff pursuant to
24 RCW 9A.44.130, the county sheriff shall notify the police chief or town
25 marshal of the jurisdiction in which the offender has registered to
26 live. If the offender registers to live in an unincorporated area of
27 the county, the sheriff shall make reasonable attempts to verify that
28 the offender is residing at the registered address. If the offender
29 registers to live in an incorporated city or town, the police chief or
30 town marshal shall make reasonable attempts to verify that the offender
31 is residing at the registered address. Reasonable attempts at
32 verifying an address shall include at a minimum:

33 (a) Each year the ((county sheriff)) chief law enforcement officer
34 of the jurisdiction where the offender is registered to live shall send
35 by certified mail, with return receipt requested, a nonforwardable

1 verification form to the offender at the offender's last registered
2 address.

3 (b) The offender must sign the verification form, state on the form
4 whether he or she still resides at the last registered address, and
5 return the form to the (~~county sheriff~~) chief law enforcement officer
6 of the jurisdiction where the offender is registered to live within ten
7 days after receipt of the form.

8 (2) The (~~sheriff~~) chief law enforcement officer of the
9 jurisdiction where the offender has registered to live shall make
10 reasonable attempts to locate any sex offender who fails to return the
11 verification form or who cannot be located at the registered address.
12 If the offender fails to return the verification form or the offender
13 is not at the last registered address, the (~~county sheriff~~) chief law
14 enforcement officer of the jurisdiction where the offender has
15 registered to live shall promptly forward this information to the
16 county sheriff and to the Washington state patrol for inclusion in the
17 central registry of sex offenders.

18 (3) When an offender notifies the county sheriff of a change to his
19 or her residence address pursuant to RCW 9A.44.130, and the new address
20 is in a different law enforcement jurisdiction, the county sheriff
21 shall notify the police chief or town marshal of the jurisdiction from
22 which the offender has moved.

23 NEW SECTION. Sec. 16. A new section is added to chapter 72.09 RCW
24 to read as follows:

25 (1) The Washington state institute for public policy shall conduct
26 a study of the effect of the use of community custody under this act.
27 The study shall include the effect of this act on recidivism and other
28 outcomes. In its study the institute shall consider:

29 (a) Recidivism, according to the definition adopted by the
30 institute pursuant to section 59, chapter 338, Laws of 1997;

31 (b) The number and seriousness level of violations of conditions;

32 (c) The application of the graduated sanctions by the department;

33 (d) Unauthorized absences from supervision;

34 (e) Payment of legal financial obligations;

35 (f) Unlawful use of controlled substances;

36 (g) Use of alcohol when abstention or treatment for alcoholism is
37 a condition of supervision;

1 (h) Effects on the number of offenders who are employed or
2 participate in vocational rehabilitation;

3 (i) Participation in vocational and education programs; and

4 (j) Impact on the receipt of public assistance.

5 (2) By January 1, 2000, the institute shall report to the
6 legislature on the design for the study. By January 1st of each year
7 thereafter, the institute shall report to the legislature on the
8 progress and findings of the study and make recommendations based on
9 its findings. By January 1, 2010, the institute shall provide to the
10 legislature a final report on the findings of the study.

11 (3) Subsections (1) and (2) of this section expire December 31,
12 2010.

13 NEW SECTION. **Sec. 17.** Nothing in this act shall be construed to
14 create an immunity or defense from liability for personal injury or
15 wrongful death based solely on availability of funds.

16 NEW SECTION. **Sec. 18.** This act may be known and cited as the
17 offender accountability act.

18 NEW SECTION. **Sec. 19.** Section 10 of this act takes effect July 1,
19 2000, and applies only to offenses committed on or after July 1, 2000.

20 NEW SECTION. **Sec. 20.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

--- END ---