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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: AMH-2722.2/01 2nd draft

ATTY/TYPIST: KT:ads

BRIEF DESCRIPTION:

2 2ESSB 6151 - H AMD  
3 By Representative

4 ADOPTED AS AMENDED 5/22/01

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

7 "PART I  
8 GENERAL PROVISIONS

9 NEW SECTION. **Sec. 101.** (1) The legislature makes the following  
10 findings:

11 (a) The effective management of high-risk sex offenders requires a  
12 comprehensive approach that includes appropriate sentencing for sex  
13 offenses and a plan to address both the immediate and long-term need to  
14 protect the public and meet constitutional requirements.

15 (b) The individualized treatment required for constitutional civil  
16 commitment includes the realistic possibility of release to a less  
17 restrictive alternative in appropriate cases.

18 (c) Some high-risk sex offenders are most appropriately managed  
19 through an indeterminate sentencing structure in which they will be  
20 supervised and can be retained in or returned to a state correctional  
21 institution until the statutory maximum sentence has expired. The  
22 state does not currently have an indeterminate sentencing structure.  
23 Consequently, the state must make changes to its sentencing structure  
24 to effectively manage these high-risk sex offenders.

25 (2) Therefore, the legislature intends to:

26 (a) Maximize public safety and enhance the potential for successful  
27 treatment of sexually violent predators through the tightly managed use  
28 of less restrictive alternatives;

29 (b) Ensure the prompt siting and timely operation of a secure  
30 community transition facility on McNeil Island, and ensure the  
31 continued progress toward the construction and operation of the total  
32 confinement facility already planned for McNeil Island, to further the  
33 treatment and management of persons civilly committed under chapter  
34 71.09 RCW;

1 (c) Provide guidance for the equitable distribution and siting of  
2 secure community transition facilities for persons ordered  
3 conditionally released to less restrictive alternatives under chapter  
4 71.09 RCW; and

5 (d) Manage high-risk sex offenders to the greatest extent possible  
6 through the criminal justice system by establishing an indeterminate  
7 sentencing structure for those offenders who present a high risk to the  
8 community, based on their sex offense history.

9 **Sec. 102.** RCW 71.09.020 and 2001 c 286 s 4 are each amended to  
10 read as follows:

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

13 (1) (~~("Sexually violent predator" means any person who has been  
14 convicted of or charged with a crime of sexual violence and who suffers  
15 from a mental abnormality or personality disorder which makes the  
16 person likely to engage in predatory acts of sexual violence if not  
17 confined in a secure facility.~~

18 ~~(2) "Mental abnormality" means a congenital or acquired condition  
19 affecting the emotional or volitional capacity which predisposes the  
20 person to the commission of criminal sexual acts in a degree  
21 constituting such person a menace to the health and safety of others.)~~  
22 "Department" means the department of social and health services.

23 (2) "Less restrictive alternative" means court-ordered treatment in  
24 a setting less restrictive than total confinement which satisfies the  
25 conditions set forth in RCW 71.09.092.

26 (3) "Likely to engage in predatory acts of sexual violence if not  
27 confined in a secure facility" means that the person more probably than  
28 not will engage in such acts if released unconditionally from detention  
29 on the sexually violent predator petition. Such likelihood must be  
30 evidenced by a recent overt act if the person is not totally confined  
31 at the time the petition is filed under RCW 71.09.030.

32 (4) "Mental abnormality" means a congenital or acquired condition  
33 affecting the emotional or volitional capacity which predisposes the  
34 person to the commission of criminal sexual acts in a degree  
35 constituting such person a menace to the health and safety of others.

36 (5) "Predatory" means acts directed towards: (a) Strangers; (b)  
37 individuals with whom a relationship has been established or promoted

1 for the primary purpose of victimization; or (c) persons of casual  
2 acquaintance with whom no substantial personal relationship exists.

3 ~~((+5))~~ (6) "Recent overt act" means any act or threat that has  
4 either caused harm of a sexually violent nature or creates a reasonable  
5 apprehension of such harm in the mind of an objective person who knows  
6 of the history and mental condition of the person engaging in the act.

7 ~~((+6))~~ (7) "Risk potential activity" or "risk potential facility"  
8 means an activity or facility that provides a higher incidence of risk  
9 to the public from persons conditionally released from the special  
10 commitment center. Risk potential activities and facilities include:  
11 Public and private schools, school bus stops, licensed day care and  
12 licensed preschool facilities, public parks, publicly dedicated trails,  
13 sports fields, playgrounds, recreational and community centers,  
14 churches, synagogues, temples, mosques, and public libraries.

15 (8) "Secretary" means the secretary of social and health services  
16 or the secretary's designee.

17 (9) "Secure facility" means a residential facility for persons  
18 civily confined under the provisions of this chapter that includes  
19 security measures sufficient to protect the community. Such facilities  
20 include total confinement facilities, secure community transition  
21 facilities, and any residence used as a court-ordered placement under  
22 RCW 71.09.096.

23 (10) "Secure community transition facility" means a residential  
24 facility for persons civilly committed and conditionally released to a  
25 less restrictive alternative under this chapter. A secure community  
26 transition facility has supervision and security, and either provides  
27 or ensures the provision of sex offender treatment services. Secure  
28 community transition facilities include but are not limited to the  
29 facilities established pursuant to section 201 of this act and any  
30 community-based facilities established under this chapter and operated  
31 by the secretary or under contract with the secretary.

32 (11) "Sexually violent offense" means an act committed on, before,  
33 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as  
34 rape in the first degree, rape in the second degree by forcible  
35 compulsion, rape of a child in the first or second degree, statutory  
36 rape in the first or second degree, indecent liberties by forcible  
37 compulsion, indecent liberties against a child under age fourteen,  
38 incest against a child under age fourteen, or child molestation in the  
39 first or second degree; (b) a felony offense in effect at any time

1 prior to July 1, 1990, that is comparable to a sexually violent offense  
2 as defined in (a) of this subsection, or any federal or out-of-state  
3 conviction for a felony offense that under the laws of this state would  
4 be a sexually violent offense as defined in this subsection; (c) an act  
5 of murder in the first or second degree, assault in the first or second  
6 degree, assault of a child in the first or second degree, kidnapping in  
7 the first or second degree, burglary in the first degree, residential  
8 burglary, or unlawful imprisonment, which act, either at the time of  
9 sentencing for the offense or subsequently during civil commitment  
10 proceedings pursuant to this chapter ((71.09 RCW)), has been determined  
11 beyond a reasonable doubt to have been sexually motivated, as that term  
12 is defined in RCW 9.94A.030; or (d) an act as described in chapter  
13 9A.28 RCW, that is an attempt, criminal solicitation, or criminal  
14 conspiracy to commit one of the felonies designated in (a), (b), or (c)  
15 of this subsection.

16 ~~((7) "Less restrictive alternative" means court-ordered treatment  
17 in a setting less restrictive than total confinement which satisfies  
18 the conditions set forth in RCW 71.09.092.~~

19 ~~(8) "Secretary" means the secretary of social and health services  
20 or his or her designee.))~~

21 (12) "Sexually violent predator" means any person who has been  
22 convicted of or charged with a crime of sexual violence and who suffers  
23 from a mental abnormality or personality disorder which makes the  
24 person likely to engage in predatory acts of sexual violence if not  
25 confined in a secure facility.

26 (13) "Total confinement facility" means a facility that provides  
27 supervision and sex offender treatment services in a total confinement  
28 setting. Total confinement facilities include the special commitment  
29 center and any similar facility designated as a secure facility by the  
30 secretary.

## 31 PART II

### 32 SITING AND OPERATION OF SECURE COMMUNITY TRANSITION FACILITIES

33 NEW SECTION. Sec. 201. A new section is added to chapter 71.09  
34 RCW to read as follows:

35 (1) The secretary is authorized to site, construct, occupy, and  
36 operate a secure community transition facility on McNeil Island for  
37 persons authorized to petition for court-ordered conditional release

1 under RCW 71.09.090(1) and a special commitment center on McNeil Island  
2 with up to four hundred four beds as a total confinement facility under  
3 this chapter, subject to appropriated funding for those purposes. The  
4 secure community transition facility shall be authorized for the number  
5 of beds needed to ensure compliance with the orders of the superior  
6 courts under this chapter and the federal district court for the  
7 western district of Washington, but in no case more than fifteen  
8 occupied beds. The department may submit a request to the legislature  
9 for authorization to operate additional beds at this facility.

10 (2) Notwithstanding RCW 36.70A.103 or any other law, this statute  
11 preempts and supersedes local plans, development regulations,  
12 permitting requirements, inspection requirements, and other laws as  
13 necessary to enable the secretary to site, construct, occupy, and  
14 operate a secure community transition facility on McNeil Island and a  
15 total confinement facility on McNeil Island.

16 (3) To the greatest extent possible, until June 30, 2003, persons  
17 who were not civilly committed from the county in which the secure  
18 community transition facility established pursuant to subsection (1) of  
19 this section is located may not be conditionally released to a setting  
20 less restrictive than that facility in that county.

21 (4) As of the effective date of this section, the state shall  
22 immediately cease any efforts in effect on such date to site secure  
23 community transition facilities, other than the facility authorized by  
24 subsection (1) of this section, and shall instead site such facilities  
25 according to the requirements of subsections (5) and (6) of this  
26 section.

27 (5) The department shall determine, in consultation with the  
28 attorney general, whether additional secure community transition  
29 facilities, other than the facility authorized pursuant to subsection  
30 (1) of this section, are necessary. If additional facilities are  
31 necessary, the department shall prepare a projected list of counties in  
32 which the facilities need to be sited over the next six years, and  
33 every six years thereafter, and transmit that list to the office of  
34 financial management. In preparing this list, the department shall  
35 comply with the following requirements:

36 (a) No additional secure community transition facilities may be  
37 sited in the county where the special commitment center is located  
38 until after June 30, 2008.

1 (b) The total number of secure community transition facility beds  
2 sited between the effective date of this section and June 30, 2008, in  
3 each county may be no greater than the total number of persons civilly  
4 committed from that county who were residents of the special commitment  
5 center on April 1, 2001. The total number of secure community  
6 transition facility beds sited between July 1, 2008, and June 30, 2015,  
7 in each county may be no greater than the total number of persons  
8 civilly committed from that county who were residents of the special  
9 commitment center on July 1, 2008.

10 (c) The department shall, in consultation with the joint select  
11 committee established pursuant to section 219 of this act and  
12 consistent with the requirements of section 210 of this act, provide  
13 for the equitable distribution of secure community transition  
14 facilities among counties. The department shall base this equitable  
15 distribution on the following factors and give weight to each in  
16 accordance with the order of priority listed below:

17 (i) The total number of persons civilly committed from each county  
18 who were residents of the special commitment center on April 1, 2001,  
19 per one thousand persons residing in the county;

20 (ii) The number of state hospital beds for mentally ill persons and  
21 secure community transition facility beds operated by the department of  
22 social and health services, and the number of correctional institution,  
23 work release, and other criminal justice facility beds owned or  
24 operated by, or operated under contract with, the department of  
25 corrections, located in each county per one thousand persons residing  
26 in the county;

27 (iii) The number of projected secure community transition facility  
28 beds operated by the department of social and health services, and the  
29 number of projected correctional institution, work release, and other  
30 criminal justice facility beds owned or operated by, or operated under  
31 contract with, the department of corrections located in each county per  
32 one thousand persons residing in the county; and

33 (iv) The number of registered sex offenders classified as level II  
34 or level III and the number of sex offenders registered as homeless per  
35 one thousand persons residing in the county.

36 (6) In identifying potential sites within a county for the location  
37 of a secure community transition facility, the department shall work  
38 with local governments to provide for the equitable distribution of  
39 such facilities in jurisdictions and neighborhoods within the county.

1 The department and local governments shall base this equitable  
2 distribution on the following factors and give weight to each in  
3 accordance with the order of priority listed below:

4 (a) The number of state hospital beds for mentally ill persons and  
5 secure community transition facility beds operated by the department of  
6 social and health services, and the number of correctional institution,  
7 work release, or other criminal justice facility beds owned or operated  
8 by, or operated under contract with, the department of corrections,  
9 located in each jurisdiction or neighborhood per one thousand persons  
10 residing in the jurisdiction or neighborhood;

11 (b) The number of projected secure community transition facility  
12 beds operated by the department of social and health services, and the  
13 number of projected correctional institution, work release, or other  
14 criminal justice facility beds owned or operated by, or operated under  
15 contract with, the department of corrections located in each  
16 jurisdiction or neighborhood per one thousand persons residing in the  
17 jurisdiction or neighborhood; and

18 (c) The number of registered sex offenders classified as level II  
19 or level III and the number of sex offenders registered as homeless in  
20 the jurisdiction or neighborhood per one thousand persons residing in  
21 the jurisdiction or neighborhood.

22 (7) For the purposes of subsections (3), (5), and (6) of this  
23 section, a person is civilly committed from a particular county if the  
24 petition for civil commitment with respect to the person was filed in  
25 that county.

26 (8) For the purposes of subsections (5) and (6) of this section:

27 (a) "Equitable distribution" means siting or locating secure  
28 community transition facilities in a manner that will not cause a  
29 disproportionate grouping of similar facilities either in any one  
30 county, or in any one jurisdiction or community within a county, as  
31 relevant; and

32 (b) "Jurisdiction" means a city, town, or unincorporated area of a  
33 county.

34 NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09  
35 RCW to read as follows:

36 The secretary is authorized to operate a correctional facility on  
37 McNeil Island for the confinement of sex offenders and other offenders  
38 sentenced by the courts, and to make necessary repairs, renovations,



1 additions, and improvements to state property for that purpose,  
2 notwithstanding any local comprehensive plans, development regulations,  
3 permitting requirements, or other local laws. Operation of the  
4 correctional facility and other state facilities authorized by this  
5 section and other law includes access to adequate docking facilities on  
6 state-owned tidelands at the town of Steilacoom.

7 **Sec. 203.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended  
8 to read as follows:

9 State agencies shall comply with the local comprehensive plans and  
10 development regulations and amendments thereto adopted pursuant to this  
11 chapter except as otherwise provided in sections 201 (1) and (2) and  
12 202 of this act.

13 NEW SECTION. **Sec. 204.** Beginning on the effective date of this  
14 section, the state shall immediately enter into negotiations for a  
15 mitigation agreement with: (1) The county in which the secure  
16 community transition facility established pursuant to section 201(1) of  
17 this act is located; (2) each community in which the persons from that  
18 facility will reside or regularly spend time in pursuant to court  
19 orders for regular work or education, or to receive social services, or  
20 will regularly be transported through to reach those other communities;  
21 and (3) other impacted parties. The negotiations must be toward an  
22 agreement that will provide state funding, as appropriated for this  
23 purpose, in an amount adequate to mitigate anticipated or realized  
24 increased costs resulting from any increased risks to public safety  
25 brought about by the presence of sexually violent predators in those  
26 communities due to the siting of the secure community transition  
27 facility established pursuant to section 201(1) of this act. This  
28 section expires June 30, 2003.

29 NEW SECTION. **Sec. 205.** A new section is added to chapter 71.09  
30 RCW to read as follows:

31 (1) The department shall make reasonable efforts to distribute the  
32 impact of the employment, education, and social services needs of the  
33 residents of the secure community transition facility established  
34 pursuant to section 201(1) of this act among the adjoining counties and  
35 not to concentrate the residents' use of resources in any one  
36 community.

1 (2) The department shall develop policies to ensure that placement  
2 of persons eligible in the future for conditional release to a setting  
3 less restrictive than the facility established pursuant to section  
4 201(1) of this act will be equitably distributed among the counties and  
5 within jurisdictions in the county.

6 NEW SECTION. **Sec. 206.** The department of social and health  
7 services shall, by August 1, 2001, and prior to operating the secure  
8 community transition facility established pursuant to section 201(1) of  
9 this act, hold at least three public hearings in the affected  
10 communities within the county where the facility is located.

11 The purpose of the public hearings is to seek input from county and  
12 city officials, local law enforcement officials, and the public  
13 regarding operations and security measures needed to adequately protect  
14 the community from any increased risk to public safety brought about by  
15 the presence of persons conditionally released from the special  
16 commitment center in these communities due to the siting of the  
17 facility. The department shall ensure that persons have a full  
18 opportunity to speak to the issues to be addressed during each hearing.

19 NEW SECTION. **Sec. 207.** The secretary of social and health  
20 services shall coordinate with the secretary of corrections and the  
21 appropriate local or state law enforcement agency or agencies to  
22 establish a twenty-four-hour law enforcement presence on McNeil Island  
23 before any person is admitted to the secure community transition  
24 facility established under section 201(1) of this act. Law enforcement  
25 shall coordinate with the emergency response team for McNeil Island to  
26 provide planning and coordination in the event of an escape from the  
27 special commitment center or the secure community transition facility.

28 In addition, or if no law enforcement agency will provide a law  
29 enforcement presence on the island, not more than ten correctional  
30 employees, as selected by the secretary of corrections, who are members  
31 of the emergency response team for the McNeil Island correctional  
32 facility, shall have the powers and duties of a general authority peace  
33 officer while acting in a law enforcement capacity. If there is no law  
34 enforcement agency to provide the law enforcement presence, those  
35 correctional employees selected as peace officers shall provide a  
36 twenty-four-hour presence and shall not have correctional duties at the

1 correctional facility in addition to the emergency response team while  
2 acting in a law enforcement capacity.

3 NEW SECTION. **Sec. 208.** A new section is added to chapter 71.09  
4 RCW to read as follows:

5 (1) By July 1, 2001, the department must provide the appropriate  
6 committees of the legislature with a transportation plan to address the  
7 issues of coordinating the movement of residents of the secure  
8 community transition facility established pursuant to section 201(1) of  
9 this act between McNeil Island and the mainland with the movement of  
10 others who must use the same docks or equipment within the funds  
11 appropriated for this purpose.

12 (2) If the department does not provide a separate vessel for  
13 transporting residents of the secure community transition facility  
14 established in section 201(1) of this act between McNeil Island and the  
15 mainland, the plan shall include at least the following components:

16 (a) The residents shall be separated from minors and vulnerable  
17 adults, except vulnerable adults who have been found to be sexually  
18 violent predators.

19 (b) The residents shall not be transported during times when  
20 children are normally coming to and from the mainland for school.

21 (3) The department shall designate a separate waiting area at the  
22 points of debarkation, and residents shall be required to remain in  
23 this area while awaiting transportation.

24 (4) The department shall provide law enforcement agencies in the  
25 counties and cities in which residents of the secure community  
26 transition facility established pursuant to section 201(1) of this act  
27 regularly participate in employment, education, or social services, or  
28 through which these persons are regularly transported, with a copy of  
29 the court's order of conditional release with respect to these persons.  
30 The department shall also provide these law enforcement agencies with  
31 a general plan of each resident's planned activities in the community,  
32 and update these plans as needed.

33 NEW SECTION. **Sec. 209.** A new section is added to chapter 71.09  
34 RCW to read as follows:

35 When considering whether a person civilly committed under this  
36 chapter and conditionally released to a secure community transition  
37 facility is appropriate for release to a placement that is less

1 restrictive than that facility, the court shall consider whether the  
2 person has progressed in treatment to the point that a significant  
3 change in the person's routine, including but not limited to a change  
4 of employment, education, residence, or sex offender treatment provider  
5 will not cause the person to regress to the point that the person  
6 presents a greater risk to the community than can reasonably be  
7 addressed in the proposed placement.

8 NEW SECTION. **Sec. 210.** A new section is added to chapter 71.09  
9 RCW to read as follows:

10 (1) Except with respect to the secure community transition facility  
11 established pursuant to section 201(1) of this act, a secure community  
12 transition facility shall meet the following minimum siting  
13 requirements:

14 (a) The location of the secure community transition facility shall  
15 enable:

16 (i) An average response time of five minutes or less by law  
17 enforcement officers who are qualified and designated to perform  
18 security response functions relative to the facility; and

19 (ii) An average response time by fire safety and emergency medical  
20 personnel that is comparable to the average of the local community.

21 (b) In no case shall a secure community transition facility be  
22 located adjacent to, immediately across a street or parking lot from,  
23 or within the line of sight of a risk potential activity or facility in  
24 existence at the time a site is listed for consideration. "Within the  
25 line of sight" means that it is possible to reasonably visually  
26 distinguish and recognize individuals.

27 (2) The secretary shall adopt rules that, at a minimum:

28 (a) Include the requirements set out in subsection (1) of this  
29 section;

30 (b) Give great weight to sites that are the farthest removed from  
31 any risk potential activity;

32 (c) Provide that the requirements of sections 211 and 212 of this  
33 act can be met with respect to any site chosen; and

34 (d) Include criteria to be considered in evaluating the  
35 appropriateness of a potential site for a secure community transition  
36 facility. At a minimum, the criteria shall include:

1 (i) Whether limited visibility between the facility and adjacent  
2 properties can be achieved, upon request of an adjacent property owner,  
3 prior to placement of any person;

4 (ii) The distance from, and number of, risk potential activities  
5 and facilities;

6 (iii) Reasonable proximity to available qualified medical, mental  
7 health, sex offender, and chemical dependency treatment providers and  
8 facilities. For purposes of this section the "availability" of  
9 qualified treatment providers is based upon an analysis of provider  
10 qualifications and willingness to provide services, average commute  
11 time, and cost of services;

12 (iv) Suitability of the location for programming, staffing, and  
13 support considerations; and

14 (v) Reasonable proximity to employment, educational, vocational,  
15 and other treatment plan components.

16 (3) In making a decision regarding a site, the secretary shall give  
17 priority to public safety and security considerations. Any analysis  
18 related to a decision to site a facility at a particular location shall  
19 be made available at the public hearings prescribed in section 214 of  
20 this act.

21 (4) Final regulations implementing this section may not be adopted  
22 prior to March 31, 2002.

23 NEW SECTION. **Sec. 211.** A new section is added to chapter 71.09  
24 RCW to read as follows:

25 (1) Security systems for all secure community transition facilities  
26 shall meet the following minimum qualifications:

27 (a) The security panel must be a commercial grade panel with  
28 tamper-proof switches and a key-lock to prevent unauthorized access.

29 (b) There must be an emergency electrical supply system which shall  
30 include a battery back-up system and a generator.

31 (c) The system must include personal panic devices for all staff.

32 (d) The security system must be capable of being monitored and  
33 signaled either by telephone through either a land or cellular  
34 telephone system or by private radio network in the event of a total  
35 dial-tone failure or through equivalent technologies.

36 (e) The department shall issue photo-identification badges to all  
37 staff which must be worn at all times.

1 (2) Security systems for secure community transition facilities  
2 designed to house more than six residents shall also include a fence  
3 and provide the maximum protection appropriate in a civil facility for  
4 persons in less than total confinement.

5 NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09  
6 RCW to read as follows:

7 (1) Secure community transition facilities shall meet the following  
8 minimum staffing requirements:

9 (a) At any time the census of a facility is six or fewer residents,  
10 the facility shall maintain a minimum staffing ratio of one staff per  
11 resident during normal waking hours and two awake staff per three  
12 residents during normal sleeping hours.

13 (b) At any time the census of a facility is six or fewer residents,  
14 all staff shall be classified as residential rehabilitation counselor  
15 II or have a classification that indicates a higher level of skill,  
16 experience, and training.

17 (c) Before being assigned to a facility, all staff shall have  
18 training in sex offender issues, self-defense, and crisis de-escalation  
19 skills in addition to departmental orientation and, as appropriate,  
20 management training. All staff with resident treatment or care duties  
21 must participate in ongoing in-service training.

22 (d) All staff must pass a departmental background check and the  
23 check is not subject to the limitations in chapter 9.96A RCW. A person  
24 who has been convicted of a felony, or any sex offense, may not be  
25 employed at the secure community transition facility or be approved as  
26 an escort for a resident of the facility.

27 (2) With respect to the facility established pursuant to section  
28 201(1) of this act, the department shall, no later than December 1,  
29 2001, provide a staffing plan to the appropriate committees of the  
30 legislature that will cover the growth of that facility to its full  
31 capacity.

32 NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09  
33 RCW to read as follows:

34 (1) Unless otherwise ordered by the court:

35 (a) Residents of a secure community transition facility shall wear  
36 electronic monitoring devices at all times. To the extent that  
37 electronic monitoring devices that employ global positioning system

1 technology are available and funds for this purpose are appropriated by  
2 the legislature, the department shall use these devices.

3 (b) At least one staff member, or other court-authorized and  
4 department-approved person must escort each resident when the resident  
5 leaves the secure community transition facility for appointments,  
6 employment, or other approved activities. Escorting persons must  
7 supervise the resident closely and maintain close proximity to the  
8 resident. The escort must immediately notify the department of any  
9 serious violation, as defined in section 216 of this act, by the  
10 resident and must immediately notify law enforcement of any violation  
11 of law by the resident. The escort may not be a relative of the  
12 resident.

13 (2) Staff members of the special commitment center and any other  
14 total confinement facility and any secure community transition facility  
15 must be trained in self-defense and appropriate crisis responses  
16 including incident de-escalation. Prior to escorting a person outside  
17 of a facility, staff members must also have training in the offense  
18 pattern of the offender they are escorting.

19 (3) Any escort must carry a cellular telephone or a similar device  
20 at all times when escorting a resident of a secure community transition  
21 facility.

22 (4) The department shall require training in offender pattern,  
23 self-defense, and incident response for all court-authorized escorts  
24 who are not employed by the department or the department of  
25 corrections.

26 NEW SECTION. **Sec. 214.** A new section is added to chapter 71.09  
27 RCW to read as follows:

28 (1) Whenever the department operates, or the secretary enters into  
29 a contract to operate, a secure community transition facility except  
30 the secure community transition facility established pursuant to  
31 section 201(1) of this act, the secure community transition facility  
32 may be operated only after the public notification and opportunities  
33 for review and comment as required by this section.

34 (2) The secretary shall establish a process for early and  
35 continuous public participation in establishing or relocating secure  
36 community transition facilities. The process shall include, at a  
37 minimum, public meetings in the local communities affected, as well as  
38 opportunities for written and oral comments, in the following manner:

1 (a) If there are more than three sites initially selected as  
2 potential locations and the selection process by the secretary or a  
3 service provider reduces the number of possible sites for a secure  
4 community transition facility to no fewer than three, the secretary or  
5 the chief operating officer of the service provider shall notify the  
6 public of the possible siting and hold at least two public hearings in  
7 each community where a secure community transition facility may be  
8 sited. The public hearings shall be conducted not less than forty-five  
9 days before a final selection is made.

10 (b) When the secretary or service provider has determined the  
11 secure community transition facility's location, the secretary or the  
12 chief operating officer of the service provider shall hold at least one  
13 additional public hearing in the community where the secure community  
14 transition facility will be sited.

15 (c) When the secretary has entered negotiations with a service  
16 provider and only one site is under consideration, then at least two  
17 public hearings shall be held.

18 (d) To provide adequate notice of, and opportunity for interested  
19 persons to comment on, a proposed location, the secretary or the chief  
20 operating officer of the service provider shall provide at least  
21 fourteen days' advance notice of the meeting to all newspapers of  
22 general circulation in the community, all radio and television stations  
23 generally available to persons in the community, any school district in  
24 which the secure community transition facility would be sited or whose  
25 boundary is within two miles of a proposed secure community transition  
26 facility, any library district in which the secure community transition  
27 facility would be sited, local business or fraternal organizations that  
28 request notification from the secretary or agency, and any person or  
29 property owner within a one-half mile radius of the proposed secure  
30 community transition facility. Before initiating this process, the  
31 department of social and health services shall contact local government  
32 planning agencies in the communities containing the proposed secure  
33 community transition facility. The department of social and health  
34 services shall coordinate with local government agencies to ensure that  
35 opportunities are provided for effective citizen input and to reduce  
36 the duplication of notice and meetings.

37 (3) If local government land use regulations require that a special  
38 use or conditional use permit be submitted and approved before a secure  
39 community transition facility can be sited, and the process for



1 obtaining such a permit includes public notice and hearing requirements  
2 similar to those required under this section, the requirements of this  
3 section shall not apply to the extent they would duplicate requirements  
4 under the local land use regulations.

5 (4) This section applies only to secure community transition  
6 facilities sited after the effective date of this section.

7 NEW SECTION. **Sec. 215.** A new section is added to chapter 71.09  
8 RCW to read as follows:

9 (1) The secretary shall develop a process with local governments  
10 that allows each community in which a secure community transition  
11 facility is located to establish operational advisory boards of at  
12 least seven persons for the secure community transition facilities.  
13 The department may conduct community awareness activities to publicize  
14 this opportunity. The operational advisory boards developed under this  
15 section shall be implemented following the decision to locate a secure  
16 community transition facility in a particular community.

17 (2) The operational advisory boards may review and make  
18 recommendations regarding the security and operations of the secure  
19 community transition facility and conditions or modifications necessary  
20 with relation to any person who the secretary proposes to place in the  
21 secure community transition facility.

22 (3) The facility management must consider the recommendations of  
23 the community advisory boards. Where the facility management does not  
24 implement an operational advisory board recommendation, the management  
25 must provide a written response to the operational advisory board  
26 stating its reasons for its decision not to implement the  
27 recommendation.

28 (4) The operational advisory boards, their members, and any agency  
29 represented by a member shall not be liable in any cause of action as  
30 a result of its recommendations unless the advisory board acts with  
31 gross negligence or bad faith in making a recommendation.

32 NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09  
33 RCW to read as follows:

34 (1) The secretary shall adopt a violation reporting policy for  
35 persons conditionally released to less restrictive alternative  
36 placements. The policy shall require written documentation by the  
37 department and service providers of all violations of conditions set by

1 the department, the department of corrections, or the court and  
2 establish criteria for returning a violator to the special commitment  
3 center or a secure community transition facility with a higher degree  
4 of security. Any conditionally released person who commits a serious  
5 violation of conditions shall be returned to the special commitment  
6 center, unless arrested by a law enforcement officer, and the court  
7 shall be notified immediately and shall initiate proceedings under RCW  
8 71.09.098 to revoke or modify the less restrictive alternative  
9 placement. Nothing in this section limits the authority of the  
10 department to return a person to the special commitment center based on  
11 a violation that is not a serious violation as defined in this section.  
12 For the purposes of this section, "serious violation" includes but is  
13 not limited to:

14 (a) The commission of any criminal offense;

15 (b) Any unlawful use or possession of a controlled substance; and

16 (c) Any violation of conditions targeted to address the person's  
17 documented pattern of offense that increases the risk to public safety.

18 (2) When a person is conditionally released to a less restrictive  
19 alternative under this chapter and is under the supervision of the  
20 department of corrections, notice of any violation of the person's  
21 conditions of release must also be made to the department of  
22 corrections.

23 (3) Whenever the secretary contracts with a service provider to  
24 operate a secure community transition facility, the contract shall  
25 include a requirement that the service provider must report to the  
26 department of social and health services any known violation of  
27 conditions committed by any resident of the secure community transition  
28 facility.

29 (4) The secretary shall document in writing all violations,  
30 penalties, actions by the department of social and health services to  
31 remove persons from a secure community transition facility, and  
32 contract terminations. The secretary shall compile this information  
33 and submit it to the appropriate committees of the legislature on an  
34 annual basis. The secretary shall give great weight to a service  
35 provider's record of violations, penalties, actions by the department  
36 of social and health services or the department of corrections to  
37 remove persons from a secure community transition facility, and  
38 contract terminations in determining whether to execute, renew, or  
39 renegotiate a contract with a service provider.

1        NEW SECTION.    **Sec. 217.**    A new section is added to chapter 71.09  
2    RCW to read as follows:

3        A conditional release from a total confinement facility to a less  
4    restrictive alternative is a release that subjects the conditionally  
5    released person to the registration requirements specified in RCW  
6    9A.44.130 and to community notification under RCW 4.24.550.

7        When a person is conditionally released to the secure community  
8    transition facility established pursuant to section 201(1) of this act,  
9    the sheriff must provide each household on McNeil Island with the  
10   community notification information provided for under RCW 4.24.550.

11       NEW SECTION.    **Sec. 218.**    A new section is added to chapter 71.09  
12    RCW to read as follows:

13       An employer who hires a person conditionally released to a less  
14    restrictive alternative must notify all other employees of the  
15    conditionally released person's status. Notification for conditionally  
16    released persons who enroll in institutions of higher education shall  
17    be made pursuant to the provisions of RCW 9A.44.130 related to sex  
18    offenders enrolled in institutions of higher education and RCW  
19    4.24.550. This section applies only to conditionally released persons  
20    whose court-approved treatment plan includes permission or a  
21    requirement for the person to obtain education or employment and to  
22    employment positions or educational programs that meet the requirements  
23    of the court-approved treatment plan.

24       NEW SECTION.    **Sec. 219.**    (1) A joint select committee on the  
25    equitable distribution of secure community transition facilities is  
26    established.

27       (2) The joint select committee shall consist of the following  
28    persons:

29       (a) Two members from each of the two largest caucuses of the  
30    senate, appointed by the president of the senate, at least one member  
31    being a member of the senate human services and corrections committee;

32       (b) Two members from each of the two largest caucuses of the house  
33    of representatives, appointed by the co-speakers of the house of  
34    representatives, at least one member being a member of the house  
35    criminal justice and corrections committee;

36       (c) One member from the department of social and health services;

37       (d) One member from the Washington state association of counties;

1 (e) One member from the association of Washington cities;

2 (f) One member representing crime victims, appointed jointly by the  
3 president of the senate and the co-speakers of the house of  
4 representatives;

5 (g) One person selected by the governor; and

6 (h) Two persons representing local law enforcement, one  
7 representing cities and one representing counties.

8 (3) The chair of the joint select committee shall be a legislative  
9 member chosen by the joint select committee members.

10 (4) The joint select committee shall review and make  
11 recommendations regarding:

12 (a) Any necessary revisions to the factors provided in section 201  
13 (5) and (6) of this act for the equitable distribution of secure  
14 community transition facilities;

15 (b) Any necessary revisions to the provisions related to siting and  
16 operating secure community transition facilities in sections 210, 211,  
17 212, 213, and 216 of this act;

18 (c) Whether the security measures implemented by the department  
19 with respect to the secure community transition facility authorized  
20 pursuant to section 201(1) of this act, including those required by  
21 section 211 of this act, are sufficient to adequately protect the  
22 community; and

23 (d) Except with respect to the facility established pursuant to  
24 section 201(1) of this act, a method for determining possible  
25 mitigation measures for compensating communities for any increased  
26 risks to public safety brought about by the siting of a secure  
27 community transition facility in a community.

28 (5) The joint select committee shall present a report of its  
29 findings and recommendations to the governor and the appropriate  
30 committees of the legislature, including any proposed legislation, not  
31 later than November 15, 2001.

32 (6) The joint select committee may, where feasible, consult with  
33 individuals from the public and private sector in carrying out its  
34 duties under this section.

35 (7) Nonlegislative members of the joint select committee shall  
36 serve without compensation, but shall be reimbursed for travel expenses  
37 as provided in RCW 43.03.050 and 43.03.060. Legislative members of the  
38 joint select committee shall be reimbursed for travel expenses as  
39 provided in RCW 44.04.120.

1 (8) Staff of senate committee services and the office of program  
2 research of the house of representatives shall provide support to the  
3 joint select committee.

4 (9) This section expires March 1, 2002.

5 NEW SECTION. **Sec. 220.** A new section is added to chapter 71.09  
6 RCW to read as follows:

7 Nothing in this act shall operate to restrict a court's authority  
8 to make less restrictive alternative placements to a committed person's  
9 individual residence or to a setting less restrictive than a secure  
10 community transition facility. A court-ordered less restrictive  
11 alternative placement to a committed person's individual residence is  
12 not a less restrictive alternative placement to a secure community  
13 transition facility.

14 NEW SECTION. **Sec. 221.** The legislature finds that the state needs  
15 an increasing number of certified sex offender treatment providers to  
16 treat sexually violent predators and meet the state's commitment to  
17 long-term treatment, help reduce recidivism, and more adequately  
18 provide for the community. The legislature recognizes that these  
19 treatment providers offer a valuable service to the people of  
20 Washington and may experience difficulty maintaining adequate liability  
21 protection given the inherent uncertainties of providing treatment to  
22 sexually violent predators. The legislature intends to provide very  
23 limited immunity, for instances of simple negligence only, to certified  
24 sex offender treatment providers for their treatment decisions  
25 involving sexually violent predators released to a less restrictive  
26 alternative under chapter 71.09 RCW.

27 **Sec. 222.** RCW 18.155.020 and 2000 c 171 s 33 and 2000 c 28 s 38  
28 are each reenacted and amended to read as follows:

29 Unless the context clearly requires otherwise, the definitions in  
30 this section apply throughout this chapter:

31 (1) "Certified sex offender treatment provider" means a licensed,  
32 certified, or registered health professional who is certified to  
33 examine and treat sex offenders pursuant to chapters 9.94A and 13.40  
34 RCW ((9.94A.670 and 13.40.160)) and sexually violent predators under  
35 chapter 71.09 RCW.

36 (2) "Department" means the department of health.

1 (3) "Secretary" means the secretary of health.

2 (4) "Sex offender treatment provider" means a person who counsels  
3 or treats sex offenders accused of or convicted of a sex offense as  
4 defined by RCW 9.94A.030.

5 **Sec. 223.** RCW 18.155.030 and 2000 c 171 s 34 and 2000 c 28 s 39  
6 are each reenacted and amended to read as follows:

7 (1) No person shall represent himself or herself as a certified sex  
8 offender treatment provider without first applying for and receiving a  
9 certificate pursuant to this chapter.

10 (2) Only a certified sex offender treatment provider may perform or  
11 provide the following services:

12 (a) Evaluations conducted for the purposes of and pursuant to RCW  
13 9.94A.670 and 13.40.160;

14 (b) Treatment of convicted sex offenders who are sentenced and  
15 ordered into treatment pursuant to ((RCW 9.94A.670)) chapter 9.94A RCW  
16 and adjudicated juvenile sex offenders who are ordered into treatment  
17 pursuant to ((RCW 13.40.160)) chapter 13.40 RCW;

18 (c) Except as provided under subsection (3) of this section,  
19 treatment of sexually violent predators who are conditionally released  
20 to a less restrictive alternative pursuant to chapter 71.09 RCW.

21 (3) A certified sex offender treatment provider may not perform or  
22 provide treatment of sexually violent predators under subsection (2)(c)  
23 of this section if the certified sex offender treatment provider has  
24 been:

25 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

26 (b) Convicted in any other jurisdiction of an offense that under  
27 the laws of this state would be classified as a sex offense as defined  
28 in RCW 9.94A.030; or

29 (c) Suspended or otherwise restricted from practicing any health  
30 care profession by competent authority in any state, federal, or  
31 foreign jurisdiction.

32 **NEW SECTION. Sec. 224.** A new section is added to chapter 4.24 RCW  
33 to read as follows:

34 (1) A certified sex offender treatment provider is not liable in a  
35 civil action for damages for the injuries or death of another caused by  
36 a sexually violent predator or level III sex offender being treated by  
37 the certified sex offender treatment provider if:

1 (a) The certified sex offender treatment provider is acting within  
2 the course of his or her duties in treating the sexually violent  
3 predator or sex offender;

4 (b) The sexually violent predator is being treated as a condition  
5 of release to a less restrictive alternative under chapter 71.09 RCW,  
6 or the level III sex offender on community custody is being treated  
7 pursuant to a court-ordered or department-ordered condition of  
8 sentence; and

9 (c) The certified sex offender treatment provider's act or omission  
10 did not constitute gross negligence or willful or wanton misconduct.

11 (2) Nothing in this section affects the certified sex offender  
12 treatment provider's civil liability for damages caused by the  
13 certified sex offender treatment provider's breach of any duty to warn  
14 or protect imposed by law.

15 (3) Nothing in this section affects the state's civil liability for  
16 damages for injuries or death of another caused by a sexually violent  
17 predator or level III sex offender.

18 (4) Nothing in this section affects any statutory or court-ordered  
19 requirements of the certified sex offender treatment provider to report  
20 any known violations of conditions by the sexually violent predator or  
21 level III sex offender. The certified sex offender treatment provider  
22 shall report any expressions of intent to harm or other predatory  
23 behavior, whether or not there is an ascertainable victim, in progress  
24 reports and other established processes that enable courts and  
25 supervising entities to assess and address the progress and  
26 appropriateness of treatment.

27 (5) A certified sex offender treatment provider acts within the  
28 scope of his or her profession when he or she provides services to the  
29 department of corrections by identifying and notifying the department  
30 of risk factors of sex offenders who are not amenable to treatment but  
31 who are required under court order to receive treatment.

32 NEW SECTION. **Sec. 225.** A new section is added to chapter 71.09  
33 RCW to read as follows:

34 (1) Examinations and treatment of sexually violent predators who  
35 are conditionally released to a less restrictive alternative under this  
36 chapter shall be conducted only by sex offender treatment providers  
37 certified by the department of health under chapter 18.155 RCW unless  
38 the court or the department of social and health services finds that:

1 (a) The court-ordered less restrictive alternative placement is located  
2 in another state; (b) the treatment provider is employed by the  
3 department; or (c)(i) all certified treatment providers become  
4 unavailable to provide treatment within a reasonable geographic  
5 distance of the person's home, as determined in rules adopted by the  
6 department of social and health services; and (ii) the evaluation and  
7 treatment plan comply with the rules adopted by the department of  
8 social and health services.

9 A treatment provider approved by the department of social and  
10 health services under (c) of this subsection, who is not certified by  
11 the department of health, shall consult with a certified provider  
12 during the person's period of treatment to ensure compliance with the  
13 rules adopted by the department of health. The frequency and content  
14 of the consultation shall be based on the recommendation of the  
15 certified provider.

16 (2) A treatment provider, whether or not he or she is employed or  
17 approved by the department of social and health services under  
18 subsection (1) of this section or otherwise certified, may not perform  
19 or provide treatment of sexually violent predators under this section  
20 if the treatment provider has been:

21 (a) Convicted of a sex offense, as defined in RCW 9.94A.030;

22 (b) Convicted in any other jurisdiction of an offense that under  
23 the laws of this state would be classified as a sex offense as defined  
24 in RCW 9.94A.030; or

25 (c) Suspended or otherwise restricted from practicing any health  
26 care profession by competent authority in any state, federal, or  
27 foreign jurisdiction.

28 (3) Nothing in this section prohibits a qualified expert from  
29 examining or evaluating a sexually violent predator who has been  
30 conditionally released for purposes of presenting an opinion in court  
31 proceedings.

### 32 PART III

### 33 SENTENCING STRUCTURE

34 **Sec. 301.** RCW 9.94A.030 and 2001 c 287 s 4 and 2001 c 95 s 1 are  
35 each reenacted and amended to read as follows:

36 Unless the context clearly requires otherwise, the definitions in  
37 this section apply throughout this chapter.



1       (1) "Board" means the indeterminate sentence review board created  
2 under chapter 9.95 RCW.

3       (2) "Collect," or any derivative thereof, "collect and remit," or  
4 "collect and deliver," when used with reference to the department,  
5 means that the department, either directly or through a collection  
6 agreement authorized by RCW 9.94A.145, is responsible for monitoring  
7 and enforcing the offender's sentence with regard to the legal  
8 financial obligation, receiving payment thereof from the offender, and,  
9 consistent with current law, delivering daily the entire payment to the  
10 superior court clerk without depositing it in a departmental account.

11       (~~(2)~~) (3) "Commission" means the sentencing guidelines  
12 commission.

13       (~~(3)~~) (4) "Community corrections officer" means an employee of  
14 the department who is responsible for carrying out specific duties in  
15 supervision of sentenced offenders and monitoring of sentence  
16 conditions.

17       (~~(4)~~) (5) "Community custody" means that portion of an offender's  
18 sentence of confinement in lieu of earned release time or imposed  
19 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,  
20 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the  
21 community subject to controls placed on the offender's movement and  
22 activities by the department. For offenders placed on community  
23 custody for crimes committed on or after July 1, 2000, the department  
24 shall assess the offender's risk of reoffense and may establish and  
25 modify conditions of community custody, in addition to those imposed by  
26 the court, based upon the risk to community safety.

27       (~~(5)~~) (6) "Community custody range" means the minimum and maximum  
28 period of community custody included as part of a sentence under RCW  
29 9.94A.715, as established by the commission or the legislature under  
30 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

31       (~~(6)~~) (7) "Community placement" means that period during which  
32 the offender is subject to the conditions of community custody and/or  
33 postrelease supervision, which begins either upon completion of the  
34 term of confinement (postrelease supervision) or at such time as the  
35 offender is transferred to community custody in lieu of earned release.  
36 Community placement may consist of entirely community custody, entirely  
37 postrelease supervision, or a combination of the two.

1       (~~(7)~~) (8) "Community service" means compulsory service, without  
2 compensation, performed for the benefit of the community by the  
3 offender.

4       (~~(8)~~) (9) "Community supervision" means a period of time during  
5 which a convicted offender is subject to crime-related prohibitions and  
6 other sentence conditions imposed by a court pursuant to this chapter  
7 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any  
8 offender has a chemical dependency that has contributed to his or her  
9 offense, the conditions of supervision may, subject to available  
10 resources, include treatment. For purposes of the interstate compact  
11 for out-of-state supervision of parolees and probationers, RCW  
12 9.95.270, community supervision is the functional equivalent of  
13 probation and should be considered the same as probation by other  
14 states.

15       (~~(9)~~) (10) "Confinement" means total or partial confinement.

16       (~~(10)~~) (11) "Conviction" means an adjudication of guilt pursuant  
17 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
18 guilty, and acceptance of a plea of guilty.

19       (~~(11)~~) (12) "Crime-related prohibition" means an order of a court  
20 prohibiting conduct that directly relates to the circumstances of the  
21 crime for which the offender has been convicted, and shall not be  
22 construed to mean orders directing an offender affirmatively to  
23 participate in rehabilitative programs or to otherwise perform  
24 affirmative conduct. However, affirmative acts necessary to monitor  
25 compliance with the order of a court may be required by the department.

26       (~~(12)~~) (13) "Criminal history" means the list of a defendant's  
27 prior convictions and juvenile adjudications, whether in this state, in  
28 federal court, or elsewhere. The history shall include, where known,  
29 for each conviction (a) whether the defendant has been placed on  
30 probation and the length and terms thereof; and (b) whether the  
31 defendant has been incarcerated and the length of incarceration.

32       (~~(13)~~) (14) "Day fine" means a fine imposed by the sentencing  
33 court that equals the difference between the offender's net daily  
34 income and the reasonable obligations that the offender has for the  
35 support of the offender and any dependents.

36       (~~(14)~~) (15) "Day reporting" means a program of enhanced  
37 supervision designed to monitor the offender's daily activities and  
38 compliance with sentence conditions, and in which the offender is

1 required to report daily to a specific location designated by the  
2 department or the sentencing court.

3 ~~((15))~~ (16) "Department" means the department of corrections.

4 ~~((16))~~ (17) "Determinate sentence" means a sentence that states  
5 with exactitude the number of actual years, months, or days of total  
6 confinement, of partial confinement, of community supervision, the  
7 number of actual hours or days of community service work, or dollars or  
8 terms of a legal financial obligation. The fact that an offender  
9 through earned release can reduce the actual period of confinement  
10 shall not affect the classification of the sentence as a determinate  
11 sentence.

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

24 ~~((18))~~ (19) "Drug offender sentencing alternative" is a  
25 sentencing option available to persons convicted of a felony offense  
26 other than a violent offense or a sex offense and who are eligible for  
27 the option under RCW 9.94A.660.

28 ~~((19))~~ (20) "Drug offense" means:

29 (a) Any felony violation of chapter 69.50 RCW except possession of  
30 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
31 controlled substance (RCW 69.50.403);

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

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

38 ~~((20))~~ (21) "Earned release" means earned release from  
39 confinement as provided in RCW 9.94A.150.

1       (~~(21)~~) (22) "Escape" means:

2       (a) (~~(Escape by a)~~) Sexually violent predator escape (RCW 9A.76.---  
3 (section 1, chapter 287, Laws of 2001, as amended by section 358,  
4 chapter ... (this act), Laws of 2001 1st sp. sess.)), escape in the  
5 first degree (RCW 9A.76.110), escape in the second degree (RCW  
6 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
7 willful failure to return from work release (RCW 72.65.070), or willful  
8 failure to be available for supervision by the department while in  
9 community custody (RCW 72.09.310); or

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

13       (~~(22)~~) (23) "Felony traffic offense" means:

14       (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
16 and-run injury-accident (RCW 46.52.020(4)); or

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

20       (~~(23)~~) (24) "Fine" means a specific sum of money ordered by the  
21 sentencing court to be paid by the offender to the court over a  
22 specific period of time.

23       (~~(24)~~) (25) "First-time offender" means any person who has no  
24 prior convictions for a felony and is eligible for the first-time  
25 offender waiver under RCW 9.94A.650.

26       (~~(25)~~) (26) "Home detention" means a program of partial  
27 confinement available to offenders wherein the offender is confined in  
28 a private residence subject to electronic surveillance.

29       (~~(26)~~) (27) "Legal financial obligation" means a sum of money  
30 that is ordered by a superior court of the state of Washington for  
31 legal financial obligations which may include restitution to the  
32 victim, statutorily imposed crime victims' compensation fees as  
33 assessed pursuant to RCW 7.68.035, court costs, county or interlocal  
34 drug funds, court-appointed attorneys' fees, and costs of defense,  
35 fines, and any other financial obligation that is assessed to the  
36 offender as a result of a felony conviction. Upon conviction for  
37 vehicular assault while under the influence of intoxicating liquor or  
38 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the  
39 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),

1 legal financial obligations may also include payment to a public agency  
2 of the expense of an emergency response to the incident resulting in  
3 the conviction, subject to RCW 38.52.430.

4 (~~((27))~~) (28) "Most serious offense" means any of the following  
5 felonies or a felony attempt to commit any of the following felonies:

6 (a) Any felony defined under any law as a class A felony or  
7 criminal solicitation of or criminal conspiracy to commit a class A  
8 felony;

9 (b) Assault in the second degree;

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

11 (d) Child molestation in the second degree;

12 (e) Controlled substance homicide;

13 (f) Extortion in the first degree;

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

15 (h) Indecent liberties;

16 (i) Kidnapping in the second degree;

17 (j) Leading organized crime;

18 (k) Manslaughter in the first degree;

19 (l) Manslaughter in the second degree;

20 (m) Promoting prostitution in the first degree;

21 (n) Rape in the third degree;

22 (o) Robbery in the second degree;

23 (p) Sexual exploitation;

24 (q) Vehicular assault;

25 (r) Vehicular homicide, when proximately caused by the driving of  
26 any vehicle by any person while under the influence of intoxicating  
27 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
28 any vehicle in a reckless manner;

29 (s) Any other class B felony offense with a finding of sexual  
30 motivation;

31 (t) Any other felony with a deadly weapon verdict under RCW  
32 9.94A.125;

33 (u) Any felony offense in effect at any time prior to December 2,  
34 1993, that is comparable to a most serious offense under this  
35 subsection, or any federal or out-of-state conviction for an offense  
36 that under the laws of this state would be a felony classified as a  
37 most serious offense under this subsection;

38 (v)(i) A prior conviction for indecent liberties under RCW  
39 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW  
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
6 if: (A) The crime was committed against a child under the age of  
7 fourteen; or (B) the relationship between the victim and perpetrator is  
8 included in the definition of indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
11 through July 27, 1997.

12 (~~(28)~~) (29) "Nonviolent offense" means an offense which is not a  
13 violent offense.

14 (~~(29)~~) (30) "Offender" means a person who has committed a felony  
15 established by state law and is eighteen years of age or older or is  
16 less than eighteen years of age but whose case is under superior court  
17 jurisdiction under RCW 13.04.030 or has been transferred by the  
18 appropriate juvenile court to a criminal court pursuant to RCW  
19 13.40.110. Throughout this chapter, the terms "offender" and  
20 "defendant" are used interchangeably.

21 (~~(30)~~) (31) "Partial confinement" means confinement for no more  
22 than one year in a facility or institution operated or utilized under  
23 contract by the state or any other unit of government, or, if home  
24 detention or work crew has been ordered by the court, in an approved  
25 residence, for a substantial portion of each day with the balance of  
26 the day spent in the community. Partial confinement includes work  
27 release, home detention, work crew, and a combination of work crew and  
28 home detention.

29 (~~(31)~~) (32) "Persistent offender" is an offender who:

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

32 (ii) Has, before the commission of the offense under (a) of this  
33 subsection, been convicted as an offender on at least two separate  
34 occasions, whether in this state or elsewhere, of felonies that under  
35 the laws of this state would be considered most serious offenses and  
36 would be included in the offender score under RCW 9.94A.360; provided  
37 that of the two or more previous convictions, at least one conviction  
38 must have occurred before the commission of any of the other most  
39 serious offenses for which the offender was previously convicted; or

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
2 of a child in the first degree, child molestation in the first degree,  
3 rape in the second degree, rape of a child in the second degree, or  
4 indecent liberties by forcible compulsion; (B) any of the following  
5 offenses with a finding of sexual motivation: Murder in the first  
6 degree, murder in the second degree, homicide by abuse, kidnapping in  
7 the first degree, kidnapping in the second degree, assault in the first  
8 degree, assault in the second degree, assault of a child in the first  
9 degree, or burglary in the first degree~~((, with a finding of sexual~~  
10 ~~motivation))~~; or (C) an attempt to commit any crime listed in this  
11 subsection ~~((+31))~~ (32)(b)(i); and

12 (ii) Has, before the commission of the offense under (b)(i) of this  
13 subsection, been convicted as an offender on at least one occasion,  
14 whether in this state or elsewhere, of an offense listed in (b)(i) of  
15 this subsection. A conviction for rape of a child in the first degree  
16 constitutes a conviction under (b)(i) of this subsection only when the  
17 offender was sixteen years of age or older when the offender committed  
18 the offense. A conviction for rape of a child in the second degree  
19 constitutes a conviction under (b)(i) of this subsection only when the  
20 offender was eighteen years of age or older when the offender committed  
21 the offense.

22 ~~((+32))~~ (33) "Postrelease supervision" is that portion of an  
23 offender's community placement that is not community custody.

24 ~~((+33))~~ (34) "Restitution" means a specific sum of money ordered  
25 by the sentencing court to be paid by the offender to the court over a  
26 specified period of time as payment of damages. The sum may include  
27 both public and private costs.

28 ~~((+34))~~ (35) "Risk assessment" means the application of an  
29 objective instrument supported by research and adopted by the  
30 department for the purpose of assessing an offender's risk of  
31 reoffense, taking into consideration the nature of the harm done by the  
32 offender, place and circumstances of the offender related to risk, the  
33 offender's relationship to any victim, and any information provided to  
34 the department by victims. The results of a risk assessment shall not  
35 be based on unconfirmed or unconfirmable allegations.

36 ~~((+35))~~ (36) "Serious traffic offense" means:

37 (a) Driving while under the influence of intoxicating liquor or any  
38 drug (RCW 46.61.502), actual physical control while under the influence  
39 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving

1 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));  
2 or

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

6 (~~(36)~~) (37) "Serious violent offense" is a subcategory of violent  
7 offense and means:

8 (a)(i) Murder in the first degree;

9 (ii) Homicide by abuse;

10 (iii) Murder in the second degree;

11 (iv) Manslaughter in the first degree;

12 (v) Assault in the first degree;

13 (vi) Kidnapping in the first degree;

14 (vii) Rape in the first degree;

15 (viii) Assault of a child in the first degree; or

16 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
17 commit one of these felonies; or

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

21 (~~(37)~~) (38) "Sex offense" means:

22 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
23 RCW 9A.44.130(11);

24 (ii) A violation of RCW 9A.64.020;

25 (iii) A felony that is a violation of chapter 9.68A RCW other than  
26 RCW 9.68A.070 or 9.68A.080; or

27 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
28 criminal solicitation, or criminal conspiracy to commit such crimes;

29 (b) Any conviction for a felony offense in effect at any time prior  
30 to July 1, 1976, that is comparable to a felony classified as a sex  
31 offense in (a) of this subsection;

32 (c) A felony with a finding of sexual motivation under RCW  
33 9.94A.127 or 13.40.135; or

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

37 (~~(38)~~) (39) "Sexual motivation" means that one of the purposes  
38 for which the defendant committed the crime was for the purpose of his  
39 or her sexual gratification.



1       (~~(39)~~) (40) "Standard sentence range" means the sentencing  
2 court's discretionary range in imposing a nonappealable sentence.

3       (~~(40)~~) (41) "Statutory maximum sentence" means the maximum length  
4 of time for which an offender may be confined as punishment for a crime  
5 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining  
6 the crime, or other statute defining the maximum penalty for a crime.

7       (~~(41)~~) (42) "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       (~~(42)~~) (43) "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       (~~(43)~~) (44) "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       (~~(44)~~) (45) "Violent offense" means:

21       (a) Any of the following felonies:

22       (i) Any felony defined under any law as a class A felony or an  
23 attempt to commit a class A felony;

24       (ii) Criminal solicitation of or criminal conspiracy to commit a  
25 class A felony;

26       (iii) Manslaughter in the first degree;

27       (iv) Manslaughter in the second degree;

28       (v) Indecent liberties if committed by forcible compulsion;

29       (vi) Kidnapping in the second degree;

30       (vii) Arson in the second degree;

31       (viii) Assault in the second degree;

32       (ix) Assault of a child in the second degree;

33       (x) Extortion in the first degree;

34       (xi) Robbery in the second degree;

35       (xii) Drive-by shooting;

36       (xiii) Vehicular assault; and

37       (xiv) Vehicular homicide, when proximately caused by the driving of  
38 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 (b) Any conviction for a felony offense in effect at any time prior  
4 to July 1, 1976, that is comparable to a felony classified as a violent  
5 offense in (a) of this subsection; and

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

9 ~~((45))~~ (46) "Work crew" means a program of partial confinement  
10 consisting of civic improvement tasks for the benefit of the community  
11 that complies with RCW 9.94A.135.

12 ~~((46))~~ (47) "Work ethic camp" means an alternative incarceration  
13 program as provided in RCW 9.94A.137 designed to reduce recidivism and  
14 lower the cost of corrections by requiring offenders to complete a  
15 comprehensive array of real-world job and vocational experiences,  
16 character-building work ethics training, life management skills  
17 development, substance abuse rehabilitation, counseling, literacy  
18 training, and basic adult education.

19 ~~((47))~~ (48) "Work release" means a program of partial confinement  
20 available to offenders who are employed or engaged as a student in a  
21 regular course of study at school.

22 **Sec. 302.** RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read  
23 as follows:

24 (1) When a court sentences a person to the custody of the  
25 department for a sex offense not sentenced under section 303 of this  
26 act, a violent offense, any crime against persons under RCW  
27 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW,  
28 committed on or after July 1, 2000, the court shall in addition to the  
29 other terms of the sentence, sentence the offender to community custody  
30 for the community custody range established under RCW 9.94A.040 or up  
31 to the period of earned release awarded pursuant to RCW 9.94A.150 (1)  
32 and (2), whichever is longer. The community custody shall begin: (a)  
33 Upon completion of the term of confinement; (b) at such time as the  
34 offender is transferred to community custody in lieu of earned release  
35 in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to  
36 offenders sentenced under RCW 9.94A.660, upon failure to complete or  
37 administrative termination from the special drug offender sentencing  
38 alternative program.

1 (2)(a) Unless a condition is waived by the court, the conditions of  
2 community custody shall include those provided for in RCW 9.94A.700(4).  
3 The conditions may also include those provided for in RCW 9.94A.700(5).  
4 The court may also order the offender to participate in rehabilitative  
5 programs or otherwise perform affirmative conduct reasonably related to  
6 the circumstances of the offense, the offender's risk of reoffending,  
7 or the safety of the community, and the department shall enforce such  
8 conditions pursuant to subsection (6) of this section.

9 (b) As part of any sentence that includes a term of community  
10 custody imposed under this subsection, the court shall also require the  
11 offender to comply with any conditions imposed by the department under  
12 RCW 9.94A.720. The department shall assess the offender's risk of  
13 reoffense and may establish and modify additional conditions of the  
14 offender's community custody based upon the risk to community safety.  
15 In addition, the department may require the offender to participate in  
16 rehabilitative programs, or otherwise perform affirmative conduct, and  
17 to obey all laws.

18 (c) The department may not impose conditions that are contrary to  
19 those ordered by the court and may not contravene or decrease court  
20 imposed conditions. The department shall notify the offender in  
21 writing of any such conditions or modifications. In setting,  
22 modifying, and enforcing conditions of community custody, the  
23 department shall be deemed to be performing a quasi-judicial function.

24 (3) If an offender violates conditions imposed by the court or the  
25 department pursuant to this section during community custody, the  
26 department may transfer the offender to a more restrictive confinement  
27 status and impose other available sanctions as provided in RCW  
28 9.94A.205 and 9.94A.207.

29 (4) Except for terms of community custody under RCW 9.94A.670, the  
30 department shall discharge the offender from community custody on a  
31 date determined by the department, which the department may modify,  
32 based on risk and performance of the offender, within the range or at  
33 the end of the period of earned release, whichever is later.

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

1 offender's term of community custody. If a violation of a condition  
2 extended under this subsection occurs after the expiration of the  
3 offender's term of community custody, it shall be deemed a violation of  
4 the sentence for the purposes of RCW 9.94A.195 and may be punishable as  
5 contempt of court as provided for in RCW 7.21.040. If the court  
6 extends a condition beyond the expiration of the term of community  
7 custody, the department is not responsible for supervision of the  
8 offender's compliance with the condition.

9 (6) Within the funds available for community custody, the  
10 department shall determine conditions and duration of community custody  
11 on the basis of risk to community safety, and shall supervise offenders  
12 during community custody on the basis of risk to community safety and  
13 conditions imposed by the court. The secretary shall adopt rules to  
14 implement the provisions of this subsection.

15 (7) By the close of the next business day after receiving notice of  
16 a condition imposed or modified by the department, an offender may  
17 request an administrative review under rules adopted by the department.  
18 The condition shall remain in effect unless the reviewing officer finds  
19 that it is not reasonably related to any of the following: (a) The  
20 crime of conviction; (b) the offender's risk of reoffending; or (c) the  
21 safety of the community.

22 NEW SECTION. **Sec. 303.** A new section is added to chapter 9.94A  
23 RCW to read as follows:

24 (1) An offender who is not a persistent offender shall be sentenced  
25 under this section if the offender:

26 (a) Is convicted of:

27 (i) Rape in the first degree, rape in the second degree, rape of a  
28 child in the first degree, child molestation in the first degree, rape  
29 of a child in the second degree, or indecent liberties by forcible  
30 compulsion;

31 (ii) Any of the following offenses with a finding of sexual  
32 motivation: Murder in the first degree, murder in the second degree,  
33 homicide by abuse, kidnapping in the first degree, kidnapping in the  
34 second degree, assault in the first degree, assault in the second  
35 degree, assault of a child in the first degree, or burglary in the  
36 first degree; or

37 (iii) An attempt to commit any crime listed in this subsection  
38 (1)(a);

1 committed on or after the effective date of this section; or

2 (b) Has a prior conviction for an offense listed in RCW  
3 9.94A.030(32)(b), and is convicted of any sex offense which was  
4 committed after the effective date of this section.

5 For purposes of this subsection (1)(b), failure to register is not  
6 a sex offense.

7 (2) Upon a finding that the offender is subject to sentencing under  
8 this section, the court shall impose a sentence to a maximum term  
9 consisting of the statutory maximum sentence for the offense and a  
10 minimum term either within the standard sentence range for the offense,  
11 or outside the standard sentence range pursuant to RCW 9.94A.390, if  
12 the offender is otherwise eligible for such a sentence.

13 (3) A person sentenced under subsection (2) of this section shall  
14 serve the sentence in a facility or institution operated, or utilized  
15 under contract, by the state.

16 (4) When a court sentences a person to the custody of the  
17 department under this section, the court shall, in addition to the  
18 other terms of the sentence, sentence the offender to community custody  
19 under the supervision of the department and the authority of the board  
20 for any period of time the person is released from total confinement  
21 before the expiration of the maximum sentence.

22 (5)(a) Unless a condition is waived by the court, the conditions of  
23 community custody shall include those provided for in RCW 9.94A.700(4).  
24 The conditions may also include those provided for in RCW 9.94A.700(5).  
25 The court may also order the offender to participate in rehabilitative  
26 programs or otherwise perform affirmative conduct reasonably related to  
27 the circumstances of the offense, the offender's risk of reoffending,  
28 or the safety of the community, and the department and the board shall  
29 enforce such conditions pursuant to sections 304, 307, and 308 of this  
30 act.

31 (b) As part of any sentence under this section, the court shall  
32 also require the offender to comply with any conditions imposed by the  
33 board under sections 304 and 306 through 309 of this act.

34 NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A  
35 RCW to read as follows:

36 (1) When an offender is sentenced under section 303 of this act,  
37 the department shall assess the offender's risk of recidivism and shall  
38 recommend to the board any additional or modified conditions of the

1 offender's community custody based upon the risk to community safety.  
2 In addition, the department shall make a recommendation with regard to,  
3 and the board may require the offender to participate in,  
4 rehabilitative programs, or otherwise perform affirmative conduct, and  
5 obey all laws. The board must consider and may impose department-  
6 recommended conditions.

7 (2) The department may not recommend and the board may not impose  
8 conditions that are contrary to those ordered by the court and may not  
9 contravene or decrease court-imposed conditions. The board shall  
10 notify the offender in writing of any such conditions or modifications.

11 (3) In setting, modifying, and enforcing conditions of community  
12 custody, the department shall be deemed to be performing a quasi-  
13 judicial function.

14 (4) If an offender violates conditions imposed by the court, the  
15 department, or the board during community custody, the board or the  
16 department may transfer the offender to a more restrictive confinement  
17 status and impose other available sanctions as provided in section 309  
18 of this act.

19 (5) By the close of the next business day, after receiving notice  
20 of a condition imposed by the board or the department, an offender may  
21 request an administrative hearing under rules adopted by the board.  
22 The condition shall remain in effect unless the hearing examiner finds  
23 that it is not reasonably related to any of the following:

- 24 (a) The crime of conviction;
- 25 (b) The offender's risk of reoffending; or
- 26 (c) The safety of the community.

27 (6) An offender released by the board under section 306 of this act  
28 shall be subject to the supervision of the department until the  
29 expiration of the maximum term of the sentence. The department shall  
30 monitor the offender's compliance with conditions of community custody  
31 imposed by the court, department, or board, and promptly report any  
32 violations to the board. Any violation of conditions of community  
33 custody established or modified by the board shall be subject to the  
34 provisions of sections 307 through 310 of this act.

35 (7) If the department finds that an emergency exists requiring the  
36 immediate imposition of conditions of release in addition to those set  
37 by the board under section 306 of this act and subsection (1) of this  
38 section in order to prevent the offender from committing a crime, the  
39 department may impose additional conditions. The department may not

1 impose conditions that are contrary to those set by the board or the  
2 court and may not contravene or decrease court-imposed or board-imposed  
3 conditions. Conditions imposed under this subsection shall take effect  
4 immediately after notice to the offender by personal service, but shall  
5 not remain in effect longer than seven working days unless approved by  
6 the board under subsection (1) of this section within seven working  
7 days.

8 NEW SECTION. **Sec. 305.** A new section is added to chapter 72.09  
9 RCW to read as follows:

10 The department shall provide offenders sentenced under section 303  
11 of this act with the opportunity for sex offender treatment during  
12 incarceration.

13 NEW SECTION. **Sec. 306.** A new section is added to chapter 9.95 RCW  
14 to read as follows:

15 (1)(a) Before the expiration of the minimum term, as part of the  
16 end of sentence review process under RCW 72.09.340, 72.09.345, and  
17 where appropriate, 72.09.370, the department shall conduct, and the  
18 offender shall participate in, an examination of the offender,  
19 incorporating methodologies that are recognized by experts in the  
20 prediction of sexual dangerousness, and including a prediction of the  
21 probability that the offender will engage in sex offenses if released.

22 (b) The board may contract for an additional, independent  
23 examination, subject to the standards in this section.

24 (2) The board shall impose the conditions and instructions provided  
25 for in RCW 9.94A.720. The board shall consider the department's  
26 recommendations and may impose conditions in addition to those  
27 recommended by the department. The board may impose or modify  
28 conditions of community custody following notice to the offender.

29 (3) No later than ninety days before expiration of the minimum  
30 term, but after the board receives the results from the end of sentence  
31 review process and the recommendations for additional or modified  
32 conditions of community custody from the department, the board shall  
33 conduct a hearing to determine whether it is more likely than not that  
34 the offender will engage in sex offenses if released on conditions to  
35 be set by the board. The board may consider an offender's failure to  
36 participate in an evaluation under subsection (1) of this section in  
37 determining whether to release the offender. The board shall order the

1 offender released, under such affirmative and other conditions as the  
2 board determines appropriate, unless the board determines by a  
3 preponderance of the evidence that, despite such conditions, it is more  
4 likely than not that the offender will commit sex offenses if released.  
5 If the board does not order the offender released, the board shall  
6 establish a new minimum term, not to exceed an additional two years.

7 NEW SECTION. **Sec. 307.** A new section is added to chapter 9.95 RCW  
8 to read as follows:

9 (1) Whenever the board or a community corrections officer of this  
10 state has reason to believe an offender released under section 306 of  
11 this act has violated a condition of community custody or the laws of  
12 this state, any community corrections officer may arrest or cause the  
13 arrest and detention of the offender pending a determination by the  
14 board whether sanctions should be imposed or the offender's community  
15 custody should be revoked. The community corrections officer shall  
16 report all facts and circumstances surrounding the alleged violation to  
17 the board, with recommendations.

18 (2) If the board or the department causes the arrest or detention  
19 of an offender for a violation that does not amount to a new crime and  
20 the offender is arrested or detained by local law enforcement or in a  
21 local jail, the board or department, whichever caused the arrest or  
22 detention, shall be financially responsible for local costs. Jail bed  
23 costs shall be allocated at the rate established under RCW  
24 9.94A.207(3).

25 NEW SECTION. **Sec. 308.** A new section is added to chapter 9.95 RCW  
26 to read as follows:

27 Any offender released under section 306 of this act who is arrested  
28 and detained in physical custody by the authority of a community  
29 corrections officer, or upon the written order of the board, shall not  
30 be released from custody on bail or personal recognizance, except upon  
31 approval of the board and the issuance by the board of an order  
32 reinstating the offender's release on the same or modified conditions.  
33 All chiefs of police, marshals of cities and towns, sheriffs of  
34 counties, and all police, prison, and peace officers and constables  
35 shall execute any such order in the same manner as any ordinary  
36 criminal process.



1        NEW SECTION.    **Sec. 309.**    A new section is added to chapter 9.95 RCW  
2 to read as follows:

3        (1) If an offender released by the board under section 306 of this  
4 act violates any condition or requirement of community custody, the  
5 board may transfer the offender to a more restrictive confinement  
6 status to serve up to the remaining portion of the sentence, less  
7 credit for any period actually spent in community custody or in  
8 detention awaiting disposition of an alleged violation and subject to  
9 the limitations of subsection (2) of this section.

10       (2) Following the hearing specified in subsection (3) of this  
11 section, the board may impose sanctions such as work release, home  
12 detention with electronic monitoring, work crew, community service,  
13 inpatient treatment, daily reporting, curfew, educational or counseling  
14 sessions, supervision enhanced through electronic monitoring, or any  
15 other sanctions available in the community, or may suspend or revoke  
16 the release to community custody whenever an offender released by the  
17 board under section 306 of this act violates any condition or  
18 requirement of community custody.

19       (3) If an offender released by the board under section 306 of this  
20 act is accused of violating any condition or requirement of community  
21 custody, he or she is entitled to a hearing before the board prior to  
22 the imposition of sanctions.    The hearing shall be considered as  
23 offender disciplinary proceedings and shall not be subject to chapter  
24 34.05 RCW.    The board shall develop hearing procedures and a structure  
25 of graduated sanctions consistent with the hearing procedures and  
26 graduated sanctions developed pursuant to RCW 9.94A.205.    The board may  
27 suspend the offender's release to community custody and confine the  
28 offender in a correctional institution owned, operated by, or operated  
29 under contract with the state prior to the hearing unless the offender  
30 has been arrested and confined for a new criminal offense.

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

33       (a) Hearings shall be conducted by members of the board unless the  
34 board enters into an agreement with the department to use the hearing  
35 officers established under RCW 9.94A.205;

36       (b) The board shall provide the offender with written notice of the  
37 violation, the evidence relied upon, and the reasons the particular  
38 sanction was imposed.    The notice shall include a statement of the  
39 rights specified in this subsection, and the offender's right to file

1 a personal restraint petition under court rules after the final  
2 decision of the board;

3 (c) The hearing shall be held unless waived by the offender, and  
4 shall be electronically recorded. For offenders not in total  
5 confinement, the hearing shall be held within fifteen working days, but  
6 not less than twenty-four hours after notice of the violation. For  
7 offenders in total confinement, the hearing shall be held within five  
8 working days, but not less than twenty-four hours after notice of the  
9 violation;

10 (d) The offender shall have the right to: (i) Be present at the  
11 hearing; (ii) have the assistance of a person qualified to assist the  
12 offender in the hearing, appointed by the hearing examiner if the  
13 offender has a language or communications barrier; (iii) testify or  
14 remain silent; (iv) call witnesses and present documentary evidence;  
15 (v) question witnesses who appear and testify; and (vi) be represented  
16 by counsel if revocation of the release to community custody is a  
17 possible sanction for the violation; and

18 (e) The sanction shall take effect if affirmed by the hearing  
19 examiner. Within seven days after the hearing examiner's decision, the  
20 offender may appeal the decision to a panel of three reviewing  
21 examiners designated by the chair of the board or by the chair's  
22 designee. The sanction shall be reversed or modified if a majority of  
23 the panel finds that the sanction was not reasonably related to any of  
24 the following: (i) The crime of conviction; (ii) the violation  
25 committed; (iii) the offender's risk of reoffending; or (iv) the safety  
26 of the community.

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

29 NEW SECTION. Sec. 310. A new section is added to chapter 9.95 RCW  
30 to read as follows:

31 In the event the board suspends release status of an offender  
32 released under section 306 of this act by reason of an alleged  
33 violation of a condition of release, or pending disposition of a new  
34 criminal charge, the board may nullify the suspension order and  
35 reinstate release under previous conditions or any new conditions the  
36 board determines advisable. Before the board may nullify a suspension  
37 order and reinstate release, it shall determine that the best interests

1 of society and the offender shall be served by such reinstatement  
2 rather than return to confinement.

3 **Sec. 311.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to  
4 read as follows:

5 (1) The commission consists of twenty voting members, one of whom  
6 the governor shall designate as chairperson. With the exception of ex  
7 officio voting members, the voting members of the commission shall be  
8 appointed by the governor, subject to confirmation by the senate.

9 (2) The voting membership consists of the following:

10 (a) The head of the state agency having general responsibility for  
11 adult correction programs, as an ex officio member;

12 (b) The director of financial management or designee, as an ex  
13 officio member;

14 (c) (~~Until the indeterminate sentence review board ceases to exist~~  
15 ~~pursuant to RCW 9.95.0011,~~) The chair of the indeterminate sentence  
16 review board, as an ex officio member;

17 (d) The head of the state agency, or the agency head's designee,  
18 having responsibility for juvenile corrections programs, as an ex  
19 officio member;

20 (e) Two prosecuting attorneys;

21 (f) Two attorneys with particular expertise in defense work;

22 (g) Four persons who are superior court judges;

23 (h) One person who is the chief law enforcement officer of a county  
24 or city;

25 (i) Four members of the public who are not prosecutors, defense  
26 attorneys, judges, or law enforcement officers, one of whom is a victim  
27 of crime or a crime victims' advocate;

28 (j) One person who is an elected official of a county government,  
29 other than a prosecuting attorney or sheriff;

30 (k) One person who is an elected official of a city government;

31 (l) One person who is an administrator of juvenile court services.

32 In making the appointments, the governor shall endeavor to assure  
33 that the commission membership includes adequate representation and  
34 expertise relating to both the adult criminal justice system and the  
35 juvenile justice system. In making the appointments, the governor  
36 shall seek the recommendations of Washington prosecutors in respect to  
37 the prosecuting attorney members, of the Washington state bar  
38 association in respect to the defense attorney members, of the

1 association of superior court judges in respect to the members who are  
2 judges, of the Washington association of sheriffs and police chiefs in  
3 respect to the member who is a law enforcement officer, of the  
4 Washington state association of counties in respect to the member who  
5 is a county official, of the association of Washington cities in  
6 respect to the member who is a city official, of the office of crime  
7 victims advocacy and other organizations of crime victims in respect to  
8 the member who is a victim of crime or a crime victims' advocate, and  
9 of the Washington association of juvenile court administrators in  
10 respect to the member who is an administrator of juvenile court  
11 services.

12 (3)(a) All voting members of the commission, except ex officio  
13 voting members, shall serve terms of three years and until their  
14 successors are appointed and confirmed.

15 (b) The governor shall stagger the terms of the members appointed  
16 under subsection (2)(j), (k), and (l) of this section by appointing one  
17 of them for a term of one year, one for a term of two years, and one  
18 for a term of three years.

19 (4) The speaker of the house of representatives and the president  
20 of the senate may each appoint two nonvoting members to the commission,  
21 one from each of the two largest caucuses in each house. The members  
22 so appointed shall serve two-year terms, or until they cease to be  
23 members of the house from which they were appointed, whichever occurs  
24 first.

25 (5) The members of the commission shall be reimbursed for travel  
26 expenses as provided in RCW 43.03.050 and 43.03.060. Legislative  
27 members shall be reimbursed by their respective houses as provided  
28 under RCW 44.04.120(~~(, as now existing or hereafter amended)~~). Members  
29 shall be compensated in accordance with RCW 43.03.250.

30 **Sec. 312.** RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read  
31 as follows:

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

34 (2)(a) The court shall impose a sentence as provided in the  
35 following sections and as applicable in the case:

36 (i) Unless another term of confinement applies, the court shall  
37 impose a sentence within the standard sentence range established in RCW  
38 9.94A.310;

- 1 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;  
2 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;  
3 (iv) RCW 9.94A.383, relating to community custody for offenders  
4 whose term of confinement is one year or less;  
5 (v) RCW 9.94A.560, relating to persistent offenders;  
6 (vi) RCW 9.94A.590, relating to mandatory minimum terms;  
7 (vii) RCW 9.94A.650, relating to the first-time offender waiver;  
8 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
9 alternative;  
10 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
11 alternative;  
12 (x) Section 303 of this act, relating to certain sex offenses;  
13 (xi) RCW 9.94A.390, relating to exceptional sentences;  
14 ~~((xi))~~ (xii) RCW 9.94A.400, relating to consecutive and  
15 concurrent sentences.

16 (b) If a standard sentence range has not been established for the  
17 offender's crime, the court shall impose a determinate sentence which  
18 may include not more than one year of confinement; community service  
19 work; until July 1, 2000, a term of community supervision not to exceed  
20 one year and on and after July 1, 2000, a term of community custody not  
21 to exceed one year, subject to conditions and sanctions as authorized  
22 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.  
23 The court may impose a sentence which provides more than one year of  
24 confinement if the court finds reasons justifying an exceptional  
25 sentence as provided in RCW 9.94A.390.

26 (3) If the court imposes a sentence requiring confinement of thirty  
27 days or less, the court may, in its discretion, specify that the  
28 sentence be served on consecutive or intermittent days. A sentence  
29 requiring more than thirty days of confinement shall be served on  
30 consecutive days. Local jail administrators may schedule court-ordered  
31 intermittent sentences as space permits.

32 (4) If a sentence imposed includes payment of a legal financial  
33 obligation, it shall be imposed as provided in RCW 9.94A.140,  
34 9.94A.142, and 9.94A.145.

35 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a  
36 court may not impose a sentence providing for a term of confinement or  
37 community supervision, community placement, or community custody which  
38 exceeds the statutory maximum for the crime as provided in chapter  
39 9A.20 RCW.

1 (6) The sentencing court shall give the offender credit for all  
2 confinement time served before the sentencing if that confinement was  
3 solely in regard to the offense for which the offender is being  
4 sentenced.

5 (7) The court shall order restitution as provided in RCW 9.94A.140  
6 and 9.94A.142.

7 (8) As a part of any sentence, the court may impose and enforce  
8 crime-related prohibitions and affirmative conditions as provided in  
9 this chapter.

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

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

25 (11) In sentencing an offender convicted of a crime of domestic  
26 violence, as defined in RCW 10.99.020, if the offender has a minor  
27 child, or if the victim of the offense for which the offender was  
28 convicted has a minor child, the court may, as part of any term of  
29 community supervision, community placement, or community custody, order  
30 the offender to participate in a domestic violence perpetrator program  
31 approved under RCW 26.50.150.

32 **Sec. 313.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read  
33 as follows:

34 (1) A sentence that includes a term or terms of confinement  
35 totaling more than one year shall be served in a facility or  
36 institution operated, or utilized under contract, by the state. Except  
37 as provided in subsection (3) or (5) of this section, a sentence of not  
38 more than one year of confinement shall be served in a facility

1 operated, licensed, or utilized under contract, by the county, or if  
2 home detention or work crew has been ordered by the court, in the  
3 residence of either the offender or a member of the offender's  
4 immediate family.

5 (2) If a county uses a state partial confinement facility for the  
6 partial confinement of a person sentenced to confinement for not more  
7 than one year, the county shall reimburse the state for the use of the  
8 facility as provided in this subsection. The office of financial  
9 management shall set the rate of reimbursement based upon the average  
10 per diem cost per offender in the facility. The office of financial  
11 management shall determine to what extent, if any, reimbursement shall  
12 be reduced or eliminated because of funds provided by the legislature  
13 to the department for the purpose of covering the cost of county use of  
14 state partial confinement facilities. The office of financial  
15 management shall reestablish reimbursement rates each even-numbered  
16 year.

17 (3) A person who is sentenced for a felony to a term of not more  
18 than one year, and who is committed or returned to incarceration in a  
19 state facility on another felony conviction, either under the  
20 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter  
21 shall serve all terms of confinement, including a sentence of not more  
22 than one year, in a facility or institution operated, or utilized under  
23 contract, by the state, consistent with the provisions of RCW  
24 9.94A.400.

25 (4) Notwithstanding any other provision of this section, a sentence  
26 imposed pursuant to RCW 9.94A.660 which has a standard sentence range  
27 of over one year, regardless of length, shall be served in a facility  
28 or institution operated, or utilized under contract, by the state.

29 (5) Sentences imposed pursuant to section 303 of this act shall be  
30 served in a facility or institution operated, or utilized under  
31 contract, by the state.

32 **Sec. 314.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read  
33 as follows:

34 The court may impose a sentence outside the standard sentence range  
35 for an offense if it finds, considering the purpose of this chapter,  
36 that there are substantial and compelling reasons justifying an  
37 exceptional sentence. Whenever a sentence outside the standard  
38 sentence range is imposed, the court shall set forth the reasons for

1 its decision in written findings of fact and conclusions of law. A  
2 sentence outside the standard sentence range shall be a determinate  
3 sentence unless it is imposed on an offender sentenced under section  
4 303 of this act. An exceptional sentence imposed on an offender  
5 sentenced under section 303 of this act shall be to a minimum term set  
6 by the court and a maximum term equal to the statutory maximum sentence  
7 for the offense of conviction under chapter 9A.20 RCW.

8 If the sentencing court finds that an exceptional sentence outside  
9 the standard sentence range should be imposed, the sentence is subject  
10 to review only as provided for in RCW 9.94A.210(4).

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

16 The following are illustrative factors which the court may consider  
17 in the exercise of its discretion to impose an exceptional sentence.  
18 The following are illustrative only and are not intended to be  
19 exclusive reasons for exceptional sentences.

20 (1) Mitigating Circumstances

21 (a) To a significant degree, the victim was an initiator, willing  
22 participant, aggressor, or provoker of the incident.

23 (b) Before detection, the defendant compensated, or made a good  
24 faith effort to compensate, the victim of the criminal conduct for any  
25 damage or injury sustained.

26 (c) The defendant committed the crime under duress, coercion,  
27 threat, or compulsion insufficient to constitute a complete defense but  
28 which significantly affected his or her conduct.

29 (d) The defendant, with no apparent predisposition to do so, was  
30 induced by others to participate in the crime.

31 (e) The defendant's capacity to appreciate the wrongfulness of his  
32 or her conduct, or to conform his or her conduct to the requirements of  
33 the law, was significantly impaired. Voluntary use of drugs or alcohol  
34 is excluded.

35 (f) The offense was principally accomplished by another person and  
36 the defendant manifested extreme caution or sincere concern for the  
37 safety or well-being of the victim.



1 (g) The operation of the multiple offense policy of RCW 9.94A.400  
2 results in a presumptive sentence that is clearly excessive in light of  
3 the purpose of this chapter, as expressed in RCW 9.94A.010.

4 (h) The defendant or the defendant's children suffered a continuing  
5 pattern of physical or sexual abuse by the victim of the offense and  
6 the offense is a response to that abuse.

7 (2) Aggravating Circumstances

8 (a) The defendant's conduct during the commission of the current  
9 offense manifested deliberate cruelty to the victim.

10 (b) The defendant knew or should have known that the victim of the  
11 current offense was particularly vulnerable or incapable of resistance  
12 due to extreme youth, advanced age, disability, or ill health.

13 (c) The current offense was a violent offense, and the defendant  
14 knew that the victim of the current offense was pregnant.

15 (d) The current offense was a major economic offense or series of  
16 offenses, so identified by a consideration of any of the following  
17 factors:

18 (i) The current offense involved multiple victims or multiple  
19 incidents per victim;

20 (ii) The current offense involved attempted or actual monetary loss  
21 substantially greater than typical for the offense;

22 (iii) The current offense involved a high degree of sophistication  
23 or planning or occurred over a lengthy period of time; or

24 (iv) The defendant used his or her position of trust, confidence,  
25 or fiduciary responsibility to facilitate the commission of the current  
26 offense.

27 (e) The current offense was a major violation of the Uniform  
28 Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to  
29 trafficking in controlled substances, which was more onerous than the  
30 typical offense of its statutory definition: The presence of ANY of  
31 the following may identify a current offense as a major VUCSA:

32 (i) The current offense involved at least three separate  
33 transactions in which controlled substances were sold, transferred, or  
34 possessed with intent to do so;

35 (ii) The current offense involved an attempted or actual sale or  
36 transfer of controlled substances in quantities substantially larger  
37 than for personal use;

38 (iii) The current offense involved the manufacture of controlled  
39 substances for use by other parties;

1 (iv) The circumstances of the current offense reveal the offender  
2 to have occupied a high position in the drug distribution hierarchy;

3 (v) The current offense involved a high degree of sophistication or  
4 planning, occurred over a lengthy period of time, or involved a broad  
5 geographic area of disbursement; or

6 (vi) The offender used his or her position or status to facilitate  
7 the commission of the current offense, including positions of trust,  
8 confidence or fiduciary responsibility (e.g., pharmacist, physician, or  
9 other medical professional).

10 (f) The current offense included a finding of sexual motivation  
11 pursuant to RCW 9.94A.127.

12 (g) The offense was part of an ongoing pattern of sexual abuse of  
13 the same victim under the age of eighteen years manifested by multiple  
14 incidents over a prolonged period of time.

15 (h) The current offense involved domestic violence, as defined in  
16 RCW 10.99.020, and one or more of the following was present:

17 (i) The offense was part of an ongoing pattern of psychological,  
18 physical, or sexual abuse of the victim manifested by multiple  
19 incidents over a prolonged period of time;

20 (ii) The offense occurred within sight or sound of the victim's or  
21 the offender's minor children under the age of eighteen years; or

22 (iii) The offender's conduct during the commission of the current  
23 offense manifested deliberate cruelty or intimidation of the victim.

24 (i) The operation of the multiple offense policy of RCW 9.94A.400  
25 results in a presumptive sentence that is clearly too lenient in light  
26 of the purpose of this chapter, as expressed in RCW 9.94A.010.

27 (j) The defendant's prior unscored misdemeanor or prior unscored  
28 foreign criminal history results in a presumptive sentence that is  
29 clearly too lenient in light of the purpose of this chapter, as  
30 expressed in RCW 9.94A.010.

31 (k) The offense resulted in the pregnancy of a child victim of  
32 rape.

33 (l) The defendant knew that the victim of the current offense was  
34 a youth who was not residing with a legal custodian and the defendant  
35 established or promoted the relationship for the primary purpose of  
36 victimization.

37 **Sec. 315.** RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read  
38 as follows:

1 (1) The following minimum terms of total confinement are mandatory  
2 and shall not be varied or modified under RCW 9.94A.390:

3 (a) An offender convicted of the crime of murder in the first  
4 degree shall be sentenced to a term of total confinement not less than  
5 twenty years.

6 (b) An offender convicted of the crime of assault in the first  
7 degree or assault of a child in the first degree where the offender  
8 used force or means likely to result in death or intended to kill the  
9 victim shall be sentenced to a term of total confinement not less than  
10 five years.

11 (c) An offender convicted of the crime of rape in the first degree  
12 shall be sentenced to a term of total confinement not less than five  
13 years.

14 (d) An offender convicted of the crime of sexually violent predator  
15 escape shall be sentenced to a minimum term of total confinement not  
16 less than sixty months.

17 (2) During such minimum terms of total confinement, no offender  
18 subject to the provisions of this section is eligible for community  
19 custody, earned release time, furlough, home detention, partial  
20 confinement, work crew, work release, or any other form of early  
21 release authorized under RCW 9.94A.150, or any other form of authorized  
22 leave of absence from the correctional facility while not in the direct  
23 custody of a corrections officer. The provisions of this subsection  
24 shall not apply: (a) In the case of an offender in need of emergency  
25 medical treatment; (b) for the purpose of commitment to an inpatient  
26 treatment facility in the case of an offender convicted of the crime of  
27 rape in the first degree; or (c) for an extraordinary medical placement  
28 when authorized under RCW 9.94A.150(4).

29 **Sec. 316.** RCW 9.94A.670 and 2000 c 28 s 20 are each amended to  
30 read as follows:

31 (1) Unless the context clearly requires otherwise, the definitions  
32 in this subsection apply to this section only.

33 (a) "Sex offender treatment provider" or "treatment provider" means  
34 a certified sex offender treatment provider as defined in RCW  
35 18.155.020.

36 (b) "Victim" means any person who has sustained emotional,  
37 psychological, physical, or financial injury to person or property as  
38 a result of the crime charged. "Victim" also means a parent or

1 guardian of a victim who is a minor child unless the parent or guardian  
2 is the perpetrator of the offense.

3 (2) An offender is eligible for the special sex offender sentencing  
4 alternative if:

5 (a) The offender has been convicted of a sex offense other than a  
6 violation of RCW 9A.44.050 or a sex offense that is also a serious  
7 violent offense;

8 (b) The offender has no prior convictions for a sex offense as  
9 defined in RCW 9.94A.030 or any other felony sex offenses in this or  
10 any other state; and

11 (c) The offender's standard sentence range for the offense includes  
12 the possibility of confinement for less than eleven years.

13 (3) If the court finds the offender is eligible for this  
14 alternative, the court, on its own motion or the motion of the state or  
15 the offender, may order an examination to determine whether the  
16 offender is amenable to treatment.

17 (a) The report of the examination shall include at a minimum the  
18 following:

19 (i) The offender's version of the facts and the official version of  
20 the facts;

21 (ii) The offender's offense history;

22 (iii) An assessment of problems in addition to alleged deviant  
23 behaviors;

24 (iv) The offender's social and employment situation; and

25 (v) Other evaluation measures used.

26 The report shall set forth the sources of the examiner's information.

27 (b) The examiner shall assess and report regarding the offender's  
28 amenability to treatment and relative risk to the community. A  
29 proposed treatment plan shall be provided and shall include, at a  
30 minimum:

31 (i) Frequency and type of contact between offender and therapist;

32 (ii) Specific issues to be addressed in the treatment and  
33 description of planned treatment modalities;

34 (iii) Monitoring plans, including any requirements regarding living  
35 conditions, lifestyle requirements, and monitoring by family members  
36 and others;

37 (iv) Anticipated length of treatment; and

38 (v) Recommended crime-related prohibitions.

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

7 (4) After receipt of the reports, the court shall consider whether  
8 the offender and the community will benefit from use of this  
9 alternative and consider the victim's opinion whether the offender  
10 should receive a treatment disposition under this section. If the  
11 court determines that this alternative is appropriate, the court shall  
12 then impose a sentence or, pursuant to section 303 of this act, a  
13 minimum term of sentence, within the standard sentence range. If the  
14 sentence imposed is less (~~then~~[~~than~~]) than eleven years of  
15 confinement, the court may suspend the execution of the sentence and  
16 impose the following conditions of suspension:

17 (a) The court shall place the offender on community custody for the  
18 length of the suspended sentence, the length of the maximum term  
19 imposed pursuant to section 303 of this act, or three years, whichever  
20 is greater, and require the offender to comply with any conditions  
21 imposed by the department under RCW 9.94A.720.

22 (b) The court shall order treatment for any period up to three  
23 years in duration. The court, in its discretion, shall order  
24 outpatient sex offender treatment or inpatient sex offender treatment,  
25 if available. A community mental health center may not be used for  
26 such treatment unless it has an appropriate program designed for sex  
27 offender treatment. The offender shall not change sex offender  
28 treatment providers or treatment conditions without first notifying the  
29 prosecutor, the community corrections officer, and the court. If any  
30 party or the court objects to a proposed change, the offender shall not  
31 change providers or conditions without court approval after a hearing.

32 (5) As conditions of the suspended sentence, the court may impose  
33 one or more of the following:

34 (a) Up to six months of confinement, not to exceed the sentence  
35 range of confinement for that offense;

36 (b) Crime-related prohibitions;

37 (c) Require the offender to devote time to a specific employment or  
38 occupation;

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

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

6 (f) Pay all court-ordered legal financial obligations as provided  
7 in RCW 9.94A.030;

8 (g) Perform community service work; or

9 (h) Reimburse the victim for the cost of any counseling required as  
10 a result of the offender's crime.

11 (6) At the time of sentencing, the court shall set a treatment  
12 termination hearing for three months prior to the anticipated date for  
13 completion of treatment.

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

21 (8) Prior to the treatment termination hearing, the treatment  
22 provider and community corrections officer shall submit written reports  
23 to the court and parties regarding the offender's compliance with  
24 treatment and monitoring requirements, and recommendations regarding  
25 termination from treatment, including proposed community custody  
26 conditions. Either party may request, and the court may order, another  
27 evaluation regarding the advisability of termination from treatment.  
28 The offender shall pay the cost of any additional evaluation ordered  
29 unless the court finds the offender to be indigent in which case the  
30 state shall pay the cost. At the treatment termination hearing the  
31 court may: (a) Modify conditions of community custody, and either (b)  
32 terminate treatment, or (c) extend treatment for up to the remaining  
33 period of community custody.

34 (9) If a violation of conditions occurs during community custody,  
35 the department shall either impose sanctions as provided for in RCW  
36 9.94A.205(2)(a) or refer the violation to the court and recommend  
37 revocation of the suspended sentence as provided for in subsections (6)  
38 and (8) of this section.

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

8 (11) Examinations and treatment ordered pursuant to this subsection  
9 shall only be conducted by sex offender treatment providers certified  
10 by the department of health pursuant to chapter 18.155 RCW unless the  
11 court finds that:

12 (a) The offender has already moved to another state or plans to  
13 move to another state for reasons other than circumventing the  
14 certification requirements; or

15 (b)(i) No certified providers are available for treatment within a  
16 reasonable geographical distance of the offender's home; and

17 (ii) The evaluation and treatment plan comply with this section and  
18 the rules adopted by the department of health.

19 (12) If the offender is less than eighteen years of age when the  
20 charge is filed, the state shall pay for the cost of initial evaluation  
21 and treatment.

22 NEW SECTION. Sec. 317. A new section is added to chapter 9.95 RCW  
23 to read as follows:

24 (1) "Board" means the indeterminate sentence review board.

25 (2) "Community custody" means that portion of an offender's  
26 sentence subject to controls including crime-related prohibitions and  
27 affirmative conditions from the court, the board, or the department of  
28 corrections based on risk to community safety, that is served under  
29 supervision in the community, and which may be modified or revoked for  
30 violations of release conditions.

31 (3) "Crime-related prohibition" has the meaning defined in RCW  
32 9.94A.030.

33 (4) "Department" means the department of corrections.

34 (5) "Parole" means that portion of a person's sentence for a crime  
35 committed before July 1, 1984, served on conditional release in the  
36 community subject to board controls and revocation and under  
37 supervision of the department.

1 (6) "Secretary" means the secretary of the department of  
2 corrections or his or her designee.

3 **Sec. 318.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read  
4 as follows:

5 The board shall meet at ~~((the penitentiary and the reformatory))~~  
6 major state correctional institutions at such times as may be necessary  
7 for a full and complete study of the cases of all convicted persons  
8 whose durations of confinement are to be determined by it ~~((or))~~i whose  
9 community custody supervision is under the board's authorityi or whose  
10 applications for parole come before it. Other times and places of  
11 meetings may also be fixed by the board.

12 The superintendents of the different institutions shall provide  
13 suitable quarters for the board and assistants while in the discharge  
14 of their duties.

15 **Sec. 319.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read  
16 as follows:

17 When a person, whose crime was committed before July 1, 1984, is  
18 convicted of any felony, except treason, murder in the first degree, or  
19 carnal knowledge of a child under ten years, and a new trial is not  
20 granted, the court shall sentence such person to the penitentiary, or,  
21 if the law allows and the court sees fit to exercise such discretion,  
22 to the reformatory, and shall fix the maximum term of such person's  
23 sentence only.

24 The maximum term to be fixed by the court shall be the maximum  
25 provided by law for the crime of which such person was convicted, if  
26 the law provides for a maximum term. If the law does not provide a  
27 maximum term for the crime of which such person was convicted the court  
28 shall fix such maximum term, which may be for any number of years up to  
29 and including life imprisonment but in any case where the maximum term  
30 is fixed by the court it shall be fixed at not less than twenty years.

31 **Sec. 320.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read  
32 as follows:

33 (1) When the court commits a convicted person to the department of  
34 corrections on or after July 1, 1986, for an offense committed before  
35 July 1, 1984, the court shall, at the time of sentencing or revocation  
36 of probation, fix the minimum term. The term so fixed shall not exceed



1 the maximum sentence provided by law for the offense of which the  
2 person is convicted.

3 The court shall attempt to set the minimum term reasonably  
4 consistent with the purposes, standards, and sentencing ranges adopted  
5 under RCW 9.94A.040, but the court is subject to the same limitations  
6 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through  
7 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The  
8 court's minimum term decision is subject to review to the same extent  
9 as a minimum term decision by the parole board before July 1, 1986.

10 Thereafter, the expiration of the minimum term set by the court  
11 minus any time credits earned under RCW 9.95.070 and 9.95.110  
12 constitutes the parole eligibility review date, at which time the board  
13 may consider the convicted person for parole under RCW 9.95.100 and  
14 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the  
15 board's authority to reduce or increase the minimum term, once set by  
16 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,  
17 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

18 (2) Not less than ninety days prior to the expiration of the  
19 minimum term of a person sentenced under section 303 of this act, for  
20 a sex offense committed on or after July 1, 2001, less any time credits  
21 permitted by statute, the board shall review the person for conditional  
22 release to community custody as provided in section 306 of this act.  
23 If the board does not release the person, it shall set a new minimum  
24 term not to exceed an additional two years. The board shall review the  
25 person again not less than ninety days prior to the expiration of the  
26 new minimum term.

27 **Sec. 321.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to  
28 read as follows:

29 (1) The board shall cause to be prepared criteria for duration of  
30 confinement, release on parole, and length of parole for persons  
31 committed to prison for crimes committed before July 1, 1984.

32 The proposed criteria should take into consideration RCW  
33 9.95.009(2). Before submission to the governor, the board shall  
34 solicit comments and review on their proposed criteria for parole  
35 release. These proposed criteria shall be submitted for consideration  
36 by the 1987 legislature.

37 (2) Persons committed to the department of corrections and who are  
38 under the authority of the board for crimes committed on or after July

1 1, 2001, are subject to the provisions for duration of confinement,  
2 release to community custody, and length of community custody  
3 established in sections 303 through 310 of this act.

4 **Sec. 322.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read  
5 as follows:

6 If the sentence of a person so convicted is not suspended by the  
7 court, the superintendent of (~~the penitentiary or the superintendent~~  
8 ~~of the reformatory~~) a major state correctional institution shall  
9 receive such person, if committed to his or her institution, and  
10 imprison (~~him~~) the person until released under the provisions of this  
11 chapter, under section 306 of this act, upon the completion of the  
12 statutory maximum sentence, or through the action of the governor.

13 **Sec. 323.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read  
14 as follows:

15 Such statement shall be signed by the prosecuting attorney and  
16 approved by the judge by whom the judgment was rendered and shall be  
17 delivered to the sheriff, traveling guard, department of corrections  
18 personnel, or other officer executing the sentence, and a copy of such  
19 statement shall be furnished to the defendant or his or her attorney.  
20 Such officer shall deliver the statement, at the time of the prisoner's  
21 commitment, to the superintendent of the institution to which such  
22 prisoner has been (~~sentenced and~~) committed. The superintendent  
23 shall make such statement available for use by the board (~~of prison~~  
24 ~~terms and paroles~~)).

25 **Sec. 324.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to  
26 read as follows:

27 At any time after the board (or the court after July 1, 1986) has  
28 determined the minimum term of confinement of any person subject to  
29 confinement in a state correctional institution for a crime committed  
30 before July 1, 1984, the board may request the superintendent of such  
31 correctional institution to conduct a full review of such person's  
32 prospects for rehabilitation and report to the board the facts of such  
33 review and the resulting findings. Upon the basis of such report and  
34 such other information and investigation that the board deems  
35 appropriate, the board may redetermine and refix such convicted

1 person's minimum term of confinement whether the term was set by the  
2 board or the court.

3 The board shall not reduce a person's minimum term of confinement  
4 unless the board has received from the department of corrections all  
5 institutional conduct reports relating to the person.

6 **Sec. 325.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read  
7 as follows:

8 The indeterminate sentence review board is hereby granted  
9 authority, in the event of a declaration by the governor that a war  
10 emergency exists, including a general mobilization, and for the  
11 duration thereof only, to reduce downward the minimum term, as set by  
12 the board, of any inmate under the jurisdiction of the board confined  
13 in a state correctional facility, who will be accepted by and inducted  
14 into the armed services: PROVIDED, That a reduction downward shall not  
15 be made under this section for those inmates who are confined for  
16 treason, murder in the first degree or carnal knowledge of a female  
17 child under ten years: AND PROVIDED FURTHER, That no such inmate shall  
18 be released under this section who is (~~found to be a sexual psychopath~~  
19 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being  
20 considered for civil commitment as a sexually violent predator under  
21 chapter 71.09 RCW or was sentenced under section 303 of this act for a  
22 crime committed on or after July 1, 2001.

23 **Sec. 326.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read  
24 as follows:

25 (1) In order to minimize the trauma to the victim, the court may  
26 attach conditions on release of (~~a defendant~~) an offender under RCW  
27 9.95.062, convicted of a crime committed before July 1, 1984, regarding  
28 the whereabouts of the defendant, contact with the victim, or other  
29 conditions.

30 (2) Offenders released under section 306 of this act are subject to  
31 crime-related prohibitions and affirmative conditions established by  
32 the court, the department of corrections, or the board pursuant to RCW  
33 9.94A.715 and sections 303 through 310 of this act.

34 **Sec. 327.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to  
35 read as follows:

1       (1) Every prisoner, convicted of a crime committed before July 1,  
2 1984, who has a favorable record of conduct at the penitentiary or the  
3 reformatory, and who performs in a faithful, diligent, industrious,  
4 orderly and peaceable manner the work, duties, and tasks assigned to  
5 him or her to the satisfaction of the superintendent of the  
6 penitentiary or reformatory, and in whose behalf the superintendent of  
7 the penitentiary or reformatory files a report certifying that his or  
8 her conduct and work have been meritorious and recommending allowance  
9 of time credits to him or her, shall upon, but not until, the adoption  
10 of such recommendation by the indeterminate sentence review board, be  
11 allowed time credit reductions from the term of imprisonment fixed by  
12 the board.

13       (2) Offenders sentenced under section 303 of this act for a crime  
14 committed on or after July 1, 2001, are subject to the earned release  
15 provisions for sex offenders established in RCW 9.94A.150.

16       **Sec. 328.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read  
17 as follows:

18       In case any ~~((convicted))~~ person convicted of a crime committed  
19 before July 1, 1984, and under the jurisdiction of the indeterminate  
20 sentence review board undergoing sentence in a state correctional  
21 ~~((facility))~~ institution commits any infractions of the rules and  
22 regulations of the institution, the board may revoke any order  
23 theretofore made determining the length of time such convicted person  
24 shall be imprisoned, including the forfeiture of all or a portion of  
25 credits earned or to be earned, pursuant to the provisions of RCW  
26 9.95.110, and make a new order determining the length of time the  
27 person shall serve, not exceeding the maximum penalty provided by law  
28 for the crime for which the person was convicted, or the maximum fixed  
29 by the court. Such revocation and redetermination shall not be had  
30 except upon a hearing before the indeterminate sentence review board.  
31 At such hearing the convicted person shall be present and entitled to  
32 be heard and may present evidence and witnesses in his or her behalf.

33       **Sec. 329.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to  
34 read as follows:

35       (1) The board shall require of every able bodied ~~((convicted person~~  
36 imprisoned in the penitentiary or the reformatory)) offender confined  
37 in a state correctional institution for a crime committed before July

1 1, 1984, as many hours of faithful labor in each and every day during  
2 his or her term of imprisonment as shall be prescribed by the rules and  
3 regulations of the institution in which he or she is confined.

4 (2) Offenders sentenced under section 303 of this act for crimes  
5 committed on or after July 1, 2001, shall perform work or other  
6 programming as required by the department of corrections during their  
7 term of confinement.

8 **Sec. 330.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to  
9 read as follows:

10 Any (~~convicted~~) person convicted of a felony committed before  
11 July 1, 1984, and undergoing sentence in (~~the penitentiary or the~~  
12 ~~reformatory~~) a state correctional institution, not sooner released  
13 under the provisions of this chapter, shall, in accordance with the  
14 provisions of law, be discharged from custody on serving the maximum  
15 punishment provided by law for the offense of which such person was  
16 convicted, or the maximum term fixed by the court where the law does  
17 not provide for a maximum term. The board shall not, however, until  
18 his or her maximum term expires, release a prisoner, unless in its  
19 opinion his or her rehabilitation has been complete and he or she is a  
20 fit subject for release.

21 **Sec. 331.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to  
22 read as follows:

23 (1) The board may permit (~~a convicted person~~) an offender  
24 convicted of a crime committed before July 1, 1984, to leave the  
25 buildings and enclosures of (~~the penitentiary or the reformatory~~) a  
26 state correctional institution on parole, after such convicted person  
27 has served the period of confinement fixed for him or her by the board,  
28 less time credits for good behavior and diligence in work: PROVIDED,  
29 That in no case shall an inmate be credited with more than one-third of  
30 his or her sentence as fixed by the board.

31 The board may establish rules and regulations under which (~~a~~  
32 ~~convicted person~~) an offender may be allowed to leave the confines of  
33 (~~the penitentiary or the reformatory~~) a state correctional  
34 institution on parole, and may return such person to the confines of  
35 the institution from which he or she was paroled, at its discretion.

36 (2) The board may permit an offender convicted of a crime committed  
37 on or after July 1, 2001, and sentenced under section 303 of this act,

1 to leave a state correctional institution on community custody  
2 according to the provisions of sections 303 through 310 of this act.  
3 The person may be returned to the institution following a violation of  
4 his or her conditions of release to community custody pursuant to the  
5 hearing provisions of section 309 of this act.

6 **Sec. 332.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read  
7 as follows:

8 The indeterminate sentence review board is hereby granted authority  
9 to parole any person sentenced to the custody of the department of  
10 corrections, under a mandatory life sentence for a crime committed  
11 ~~((prior to))~~ before July 1, 1984, except those persons sentenced to  
12 life without the possibility of parole. No such person shall be  
13 granted parole unless the person has been continuously confined therein  
14 for a period of twenty consecutive years less earned good time:  
15 PROVIDED, That no such person shall be released under parole who is  
16 ~~((found to be a sexual psychopath under the provisions of and as~~  
17 ~~defined by chapter 71.06 RCW))~~ subject to civil commitment as a  
18 sexually violent predator under chapter 71.09 RCW.

19 **Sec. 333.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to  
20 read as follows:

21 Whenever the board or a ~~((probation and parole))~~ community  
22 corrections officer of this state has reason to believe a ~~((convicted))~~  
23 person convicted of a crime committed before July 1, 1984, has breached  
24 a condition of his or her parole or violated the law of any state where  
25 he or she may then be or the rules and regulations of the board, any  
26 ~~((probation and parole))~~ community corrections officer of this state  
27 may arrest or cause the arrest and detention and suspension of parole  
28 of such convicted person pending a determination by the board whether  
29 the parole of such convicted person shall be revoked. All facts and  
30 circumstances surrounding the violation by such convicted person shall  
31 be reported to the board by the ~~((probation and parole))~~ community  
32 corrections officer, with recommendations. The board, after  
33 consultation with the secretary of corrections, shall make all rules  
34 and regulations concerning procedural matters, which shall include the  
35 time when state ~~((probation and parole))~~ community corrections officers  
36 shall file with the board reports required by this section, procedures  
37 pertaining thereto and the filing of such information as may be

1 necessary to enable the board to perform its functions under this  
2 section. On the basis of the report by the (~~probation and parole~~)  
3 community corrections officer, or at any time upon its own discretion,  
4 the board may revise or modify the conditions of parole or order the  
5 suspension of parole by the issuance of a written order bearing its  
6 seal, which order shall be sufficient warrant for all peace officers to  
7 take into custody any convicted person who may be on parole and retain  
8 such person in their custody until arrangements can be made by the  
9 board for his or her return to a state correctional institution for  
10 convicted felons. Any such revision or modification of the conditions  
11 of parole or the order suspending parole shall be personally served  
12 upon the parolee.

13 Any parolee arrested and detained in physical custody by the  
14 authority of a state (~~probation and parole~~) community corrections  
15 officer, or upon the written order of the board, shall not be released  
16 from custody on bail or personal recognizance, except upon approval of  
17 the board and the issuance by the board of an order of reinstatement on  
18 parole on the same or modified conditions of parole.

19 All chiefs of police, marshals of cities and towns, sheriffs of  
20 counties, and all police, prison, and peace officers and constables  
21 shall execute any such order in the same manner as any ordinary  
22 criminal process.

23 Whenever a paroled prisoner is accused of a violation of his or her  
24 parole, other than the commission of, and conviction for, a felony or  
25 misdemeanor under the laws of this state or the laws of any state where  
26 he or she may then be, he or she shall be entitled to a fair and  
27 impartial hearing of such charges within thirty days from the time that  
28 he or she is served with charges of the violation of conditions of  
29 (~~his~~) parole after his or her arrest and detention. The hearing  
30 shall be held before one or more members of the board at a place or  
31 places, within this state, reasonably near the site of the alleged  
32 violation or violations of parole.

33 In the event that the board suspends a parole by reason of an  
34 alleged parole violation or in the event that a parole is suspended  
35 pending the disposition of a new criminal charge, the board shall have  
36 the power to nullify the order of suspension and reinstate the  
37 individual to parole under previous conditions or any new conditions  
38 that the board may determine advisable. Before the board shall nullify  
39 an order of suspension and reinstate a parole they shall have

1 determined that the best interests of society and the individual shall  
2 best be served by such reinstatement rather than a return to a penal  
3 institution.

4 **Sec. 334.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to  
5 read as follows:

6 (1) For offenders convicted of crimes committed before July 1,  
7 1984, within fifteen days from the date of notice to the department of  
8 corrections of the arrest and detention of the alleged parole violator,  
9 he or she shall be personally served by a state ((probation and  
10 parole)) community corrections officer with a copy of the factual  
11 allegations of the violation of the conditions of parole, and, at the  
12 same time shall be advised of his or her right to an on-site parole  
13 revocation hearing and of his or her rights and privileges as provided  
14 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after  
15 service of the allegations of violations of the conditions of parole  
16 and the advice of rights may waive the on-site parole revocation  
17 hearing as provided in RCW 9.95.120, and admit one or more of the  
18 alleged violations of the conditions of parole. If the board accepts  
19 the waiver it shall either, (1) reinstate the parolee on parole under  
20 the same or modified conditions, or (2) revoke the parole of the  
21 parolee and enter an order of parole revocation and return to state  
22 custody. A determination of a new minimum sentence shall be made  
23 within thirty days of return to state custody which shall not exceed  
24 the maximum sentence as provided by law for the crime of which the  
25 parolee was originally convicted or the maximum fixed by the court.

26 If the waiver made by the parolee is rejected by the board it shall  
27 hold an on-site parole revocation hearing under the provisions of RCW  
28 9.95.120 through 9.95.126.

29 (2) Offenders sentenced under section 303 of this act are subject  
30 to the violation hearing process established in section 309 of this  
31 act.

32 **Sec. 335.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to  
33 read as follows:

34 (1) At any on-site parole revocation hearing for a person convicted  
35 of a crime committed before July 1, 1984, the alleged parole violator  
36 shall be entitled to be represented by an attorney of his or her own  
37 choosing and at his or her own expense, except, upon the presentation



1 of satisfactory evidence of indigency and the request for the  
2 appointment of an attorney by the alleged parole violator, the board  
3 may cause the appointment of an attorney to represent the alleged  
4 parole violator to be paid for at state expense, and, in addition, the  
5 board may assume all or such other expenses in the presentation of  
6 evidence on behalf of the alleged parole violator as it may have  
7 authorized: PROVIDED, That funds are available for the payment of  
8 attorneys' fees and expenses. Attorneys for the representation of  
9 alleged parole violators in on-site hearings shall be appointed by the  
10 superior courts for the counties wherein the on-site parole revocation  
11 hearing is to be held and such attorneys shall be compensated in such  
12 manner and in such amount as shall be fixed in a schedule of fees  
13 adopted by rule of the board.

14 (2) The rights of offenders sentenced under section 303 of this act  
15 are defined in section 309 of this act.

16 **Sec. 336.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to  
17 read as follows:

18 In conducting on-site parole or community custody revocation  
19 hearings or community custody violations hearings, the board shall have  
20 the authority to administer oaths and affirmations, examine witnesses,  
21 receive evidence, and issue subpoenas for the compulsory attendance of  
22 witnesses and the production of evidence for presentation at such  
23 hearings. Subpoenas issued by the board shall be effective throughout  
24 the state. Witnesses in attendance at any on-site parole or community  
25 custody revocation hearing shall be paid the same fees and allowances,  
26 in the same manner and under the same conditions as provided for  
27 witnesses in the courts of the state in accordance with chapter 2.40  
28 RCW (~~as now or hereafter amended~~). If any person fails or refuses to  
29 obey a subpoena issued by the board, or obeys the subpoena but refuses  
30 to testify concerning any matter under examination at the hearing, the  
31 board may petition the superior court of the county where the hearing  
32 is being conducted for enforcement of the subpoena: PROVIDED, That an  
33 offer to pay statutory fees and mileage has been made to the witness at  
34 the time of the service of the subpoena. The petition shall be  
35 accompanied by a copy of the subpoena and proof of service, and shall  
36 set forth in what specific manner the subpoena has not been complied  
37 with, and shall ask an order of the court to compel the witness to  
38 appear and testify before the board. The court, upon such petition,

1 shall enter an order directing the witness to appear before the court  
2 at a time and place to be fixed in such order and then and there to  
3 show cause why he or she has not responded to the subpoena or has  
4 refused to testify. A copy of the order shall be served upon the  
5 witness. If it appears to the court that the subpoena was properly  
6 issued and that the particular questions which the witness refuses to  
7 answer are reasonable and relevant, the court shall enter an order that  
8 the witness appear at the time and place fixed in the order and testify  
9 or produce the required papers, and on failing to obey ((said)) the  
10 order, the witness shall be dealt with as for contempt of court.

11 **Sec. 337.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to  
12 read as follows:

13 At all on-site parole revocation hearings for offenders convicted  
14 of crimes committed before July 1, 1984, the ((probation and parole))  
15 community corrections officers of the department of corrections, having  
16 made the allegations of the violations of the conditions of parole, may  
17 be represented by the attorney general. The attorney general may make  
18 independent recommendations to the board about whether the violations  
19 constitute sufficient cause for the revocation of the parole and the  
20 return of the parolee to a state correctional institution for convicted  
21 felons. The hearings shall be open to the public unless the board for  
22 specifically stated reasons closes the hearing in whole or in part.  
23 The hearings shall be recorded either manually or by a mechanical  
24 recording device. An alleged parole violator may be requested to  
25 testify and any such testimony shall not be used against him or her in  
26 any criminal prosecution. The board shall adopt rules governing the  
27 formal and informal procedures authorized by this chapter and make  
28 rules of practice before the board in on-site parole revocation  
29 hearings, together with forms and instructions.

30 **Sec. 338.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read  
31 as follows:

32 After the on-site parole revocation hearing for a person convicted  
33 of a crime committed before July 1, 1984, has been concluded, the  
34 members of the board having heard the matter shall enter their decision  
35 of record within ten days, and make findings and conclusions upon the  
36 allegations of the violations of the conditions of parole. If the  
37 member, or members having heard the matter, should conclude that the

1 allegations of violation of the conditions of parole have not been  
2 proven by a preponderance of the evidence, or, those which have been  
3 proven by a preponderance of the evidence are not sufficient cause for  
4 the revocation of parole, then the parolee shall be reinstated on  
5 parole on the same or modified conditions of parole. For parole  
6 violations not resulting in new convictions, modified conditions of  
7 parole may include sanctions according to an administrative sanction  
8 grid. If the member or members having heard the matter should conclude  
9 that the allegations of violation of the conditions of parole have been  
10 proven by a preponderance of the evidence and constitute sufficient  
11 cause for the revocation of parole, then such member or members shall  
12 enter an order of parole revocation and return the parole violator to  
13 state custody. Within thirty days of the return of such parole  
14 violator to a state correctional institution (~~((for convicted felons))~~)  
15 the board shall enter an order determining a new minimum term not  
16 exceeding the maximum penalty provided by law for the crime for which  
17 the parole violator was originally convicted or the maximum fixed by  
18 the court.

19 **Sec. 339.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read  
20 as follows:

21 All officers and employees of the state, counties, cities and  
22 political subdivisions of this state shall cooperate with the board  
23 (~~((of prison terms and paroles))~~) in making available suitable facilities  
24 for conducting parole or community custody revocation hearings.

25 **Sec. 340.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read  
26 as follows:

27 From and after the suspension, cancellation, or revocation of the  
28 parole of any (~~((convicted person))~~) offender convicted of a crime  
29 committed before July 1, 1984, and until his or her return to custody  
30 the (~~((convicted person))~~) offender shall be deemed an escapee and a  
31 fugitive from justice. The indeterminate sentence review board may  
32 deny credit against the maximum sentence any time during which he or  
33 she is an escapee and fugitive from justice.

34 **Sec. 341.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read  
35 as follows:

1       (1) The (~~indeterminate sentence review~~) board shall cause a  
2 complete record to be kept of every prisoner under the jurisdiction of  
3 the board released on parole or community custody. Such records shall  
4 be organized in accordance with the most modern methods of filing and  
5 indexing so that there will be always immediately available complete  
6 information about each such prisoner. Subject to information sharing  
7 provisions related to mentally ill offenders, the end of sentence  
8 review committee, and the department of corrections, the board may make  
9 rules as to the privacy of such records and their use by others than  
10 the board and its staff. (~~In determining the rules regarding~~  
11 ~~dissemination of information regarding convicted~~) Sex offenders  
12 convicted of crimes committed before July 1, 1984, who are under the  
13 board's jurisdiction(,-)) shall be subject to the determinations of the  
14 end of sentence review committee regarding risk level and subject to  
15 sex offender registration and community notification. The board  
16 (~~shall consider the provisions of section 116, chapter 3, Laws of 1990~~  
17 ~~and RCW 4.24.550 and~~) shall be immune from liability for the release  
18 of information concerning sex offenders as provided in RCW 4.24.550.

19       The superintendents of state correctional facilities and all  
20 officers and employees thereof and all other public officials shall at  
21 all times cooperate with the board and furnish to the board, its  
22 officers, and employees such information as may be necessary to enable  
23 it to perform its functions, and such superintendents and other  
24 employees shall at all times give the members of the board, its  
25 officers, and employees free access to all prisoners confined in the  
26 state correctional facilities.

27       (2) Offenders sentenced under section 303 of this act shall be  
28 subject to the determinations of the end of sentence review committee  
29 regarding risk level and subject to sex offender registration and  
30 community notification.

31       (3) The end of sentence review committee shall make law enforcement  
32 notifications for offenders under board jurisdiction on the same basis  
33 that it notifies law enforcement regarding offenders sentenced under  
34 chapter 9.94A RCW for crimes committed after July 1, 1984.

35       **Sec. 342.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read  
36 as follows:

37       The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall  
38 apply to all convicted persons serving time in a state correctional

1 facility for crimes committed before July 1, 1984, to the end that at  
2 all times the same provisions relating to sentences, imprisonments, and  
3 paroles of prisoners shall apply to all inmates thereof.

4 **Sec. 343.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to  
5 read as follows:

6 In order to carry out the provisions of this chapter 9.95 RCW the  
7 parole officers working under the supervision of the secretary of  
8 corrections shall be known as (~~probation and parole~~) community  
9 corrections officers.

10 **Sec. 344.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to  
11 read as follows:

12 The board may deputize any person (regularly employed by another  
13 state) to act as an officer and agent of this state in effecting the  
14 return of any person convicted of a crime committed before July 1,  
15 1984, who has violated the terms and conditions of parole or probation  
16 as granted by this state. In any matter relating to the return of such  
17 a person, any agent so deputized shall have all the powers of a police  
18 officer of this state.

19 **Sec. 345.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read  
20 as follows:

21 Any deputization pursuant to this statute with regard to an  
22 offender convicted of a crime committed before July 1, 1984, shall be  
23 in writing and any person authorized to act as an agent of this state  
24 pursuant hereto shall carry formal evidence of his or her deputization  
25 and shall produce the same upon demand.

26 **Sec. 346.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to  
27 read as follows:

28 The board may enter into contracts with similar officials of any  
29 other state or states for the purpose of sharing an equitable portion  
30 of the cost of effecting the return of any person who has violated the  
31 terms and conditions of parole (~~or~~), probation, or community custody  
32 as granted by this state.

33 **Sec. 347.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read  
34 as follows:

1       The purpose of RCW 9.95.310 through 9.95.370 is to provide  
2 necessary assistance, other than assistance which is authorized to be  
3 provided under the vocational rehabilitation laws, Title 28A RCW, under  
4 the public assistance laws, Title 74 RCW or the (~~department of~~)  
5 employment security department or other state agency, for parolees,  
6 inmates assigned to work/training release facilities, discharged  
7 prisoners and persons convicted of a felony committed before July 1,  
8 1984, and granted probation in need and whose capacity to earn a living  
9 under these circumstances is impaired; and to help such persons attain  
10 self-care and/or self-support for rehabilitation and restoration to  
11 independence as useful citizens as rapidly as possible thereby reducing  
12 the number of returnees to the institutions of this state to the  
13 benefit of such person and society as a whole.

14       **Sec. 348.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read  
15 as follows:

16       The secretary of corrections or his or her designee may provide to  
17 any parolee, inmate assigned to a work/training release facility,  
18 discharged prisoner and persons convicted of a felony committed before  
19 July 1, 1984, and granted probation in need and without necessary  
20 means, from any funds legally available therefor, such reasonable sums  
21 as he or she deems necessary for the subsistence of such person and his  
22 or her family until such person has become gainfully employed. Such  
23 aid may be made under such terms and conditions, and through local  
24 parole or probation officers if necessary, as the secretary of  
25 corrections or his or her designee may require and shall be  
26 supplementary to any moneys which may be provided under public  
27 assistance or from any other source.

28       **Sec. 349.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read  
29 as follows:

30       Any funds in the hands of the department of corrections, or which  
31 may come into its hands, which belong to discharged prisoners, inmates  
32 assigned to work/training release facilities, parolees or persons  
33 convicted of a felony and granted probation who absconded, or whose  
34 whereabouts are unknown, shall be deposited in the community services  
35 revolving fund. Said funds shall be used to defray the expenses of  
36 clothing and other necessities and for transporting discharged  
37 prisoners, inmates assigned to work/training release facilities,

1 parolees and persons convicted of a felony and granted probation who  
2 are without means to secure the same. All payments disbursed from  
3 these funds shall be repaid, whenever possible, by discharged  
4 prisoners, inmates assigned to work/training release facilities,  
5 parolees and persons convicted of a felony and granted probation for  
6 whose benefit they are made. Whenever any money belonging to such  
7 persons is so paid into the revolving fund, it shall be repaid to them  
8 in accordance with law if a claim therefor is filed with the department  
9 of corrections within five years of deposit into said fund and upon a  
10 clear showing of a legal right of such claimant to such money. This  
11 section applies to persons convicted of a felony committed before July  
12 1, 1984.

13 **Sec. 350.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read  
14 as follows:

15 All money or other property paid or delivered to a (~~probation or~~  
16 ~~parole~~) community corrections officer or employee of the department of  
17 corrections by or for the benefit of any discharged prisoner, inmate  
18 assigned to a work/training release facility, parolee or persons  
19 convicted of a felony and granted probation shall be immediately  
20 transmitted to the department of corrections and it shall enter the  
21 same upon its books to his or her credit. Such money or other property  
22 shall be used only under the direction of the department of  
23 corrections.

24 If such person absconds, the money shall be deposited in the  
25 revolving fund created by RCW 9.95.360, and any other property, if not  
26 called for within one year, shall be sold by the department of  
27 corrections and the proceeds credited to the revolving fund.

28 If any person, files a claim within five years after the deposit or  
29 crediting of such funds, and satisfies the department of corrections  
30 that he or she is entitled thereto, the department may make a finding  
31 to that effect and may make payment to the claimant in the amount to  
32 which he or she is entitled.

33 This section applies to persons convicted of a felony committed  
34 before July 1, 1984.

35 **Sec. 351.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read  
36 as follows:

1 The department of corrections shall create, maintain, and  
2 administer outside the state treasury a permanent revolving fund to be  
3 known as the "community services revolving fund" into which shall be  
4 deposited all moneys received by it under RCW 9.95.310 through 9.95.370  
5 and any appropriation made for the purposes of RCW 9.95.310 through  
6 9.95.370. All expenditures from this revolving fund shall be made by  
7 check or voucher signed by the secretary of corrections or his or her  
8 designee. The community services revolving fund shall be deposited by  
9 the department of corrections in such banks or financial institutions  
10 as it may select which shall give to the department a surety bond  
11 executed by a surety company authorized to do business in this state,  
12 or collateral eligible as security for deposit of state funds in at  
13 least the full amount of deposit.

14 This section applies to persons convicted of a felony committed  
15 before July 1, 1984.

16 **Sec. 352.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to  
17 read as follows:

18 The secretary of corrections or his or her designee shall enter  
19 into a written agreement with every person receiving funds under RCW  
20 9.95.310 through 9.95.370 that such person will repay such funds under  
21 the terms and conditions in said agreement. No person shall receive  
22 funds until such an agreement is validly made. This section applies to  
23 persons convicted of a felony committed before July 1, 1984.

24 **Sec. 353.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to  
25 read as follows:

26 (1) Except as provided in subsection (2) of this section, the  
27 following sections of law do not apply to any felony offense committed  
28 on or after July 1, 1984: RCW ((9.95.003, 9.95.005, 9.95.007,))  
29 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020, 9.95.030,  
30 9.95.031, 9.95.032,)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,  
31 ((9.95.070,)) 9.95.080, ((9.95.090,)) 9.95.100, ((9.95.110,)) 9.95.115,  
32 9.95.116, 9.95.120, ((9.95.121, 9.95.122, 9.95.123,)) 9.95.124,  
33 9.95.125, ((9.95.126,)) 9.95.130, ((9.95.140, 9.95.150, 9.95.160,  
34 9.95.170,)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,  
35 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,  
36 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,  
37 ((and)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.



1       (2) The following sections apply to any felony offense committed  
2 before July 1, 1984, and to any offense sentenced under section 303 of  
3 this act and committed on or after July 1, 2001: RCW 9.95.003,  
4 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055,  
5 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110,  
6 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,  
7 9.95.170, 9.95.300, and 9.96.050.

8       **Sec. 354.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to  
9 read as follows:

10       (1) A person is guilty of an attempt to commit a crime if, with  
11 intent to commit a specific crime, he or she does any act which is a  
12 substantial step toward the commission of that crime.

13       (2) If the conduct in which a person engages otherwise constitutes  
14 an attempt to commit a crime, it is no defense to a prosecution of such  
15 attempt that the crime charged to have been attempted was, under the  
16 attendant circumstances, factually or legally impossible of commission.

17       (3) An attempt to commit a crime is a:

18       (a) Class A felony when the crime attempted is murder in the first  
19 degree, murder in the second degree, (~~(or)~~) arson in the first degree,  
20 child molestation in the first degree, indecent liberties by forcible  
21 compulsion, rape in the first degree, rape in the second degree, rape  
22 of a child in the first degree, or rape of a child in the second  
23 degree;

24       (b) Class B felony when the crime attempted is a class A felony  
25 other than (~~(murder in the first degree, murder in the second degree,~~  
26 ~~or arson in the first degree)) an offense listed in (a) of this  
27 subsection;~~

28       (c) Class C felony when the crime attempted is a class B felony;

29       (d) Gross misdemeanor when the crime attempted is a class C felony;

30       (e) Misdemeanor when the crime attempted is a gross misdemeanor or  
31 misdemeanor.

32       **Sec. 355.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to  
33 read as follows:

34       (1) A person is guilty of assault in the second degree if he or  
35 she, under circumstances not amounting to assault in the first degree:

36       (a) Intentionally assaults another and thereby recklessly inflicts  
37 substantial bodily harm; or

1 (b) Intentionally and unlawfully causes substantial bodily harm to  
2 an unborn quick child by intentionally and unlawfully inflicting any  
3 injury upon the mother of such child; or

4 (c) Assaults another with a deadly weapon; or

5 (d) With intent to inflict bodily harm, administers to or causes to  
6 be taken by another, poison or any other destructive or noxious  
7 substance; or

8 (e) With intent to commit a felony, assaults another; or

9 (f) Knowingly inflicts bodily harm which by design causes such pain  
10 or agony as to be the equivalent of that produced by torture.

11 (2) Assault in the second degree is a class B felony, except that  
12 assault in the second degree with a finding of sexual motivation under  
13 RCW 9.94A.127 or 13.40.135 is a class A felony.

14 **Sec. 356.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are  
15 each amended to read as follows:

16 (1) A person is guilty of kidnapping in the second degree if he or  
17 she intentionally abducts another person under circumstances not  
18 amounting to kidnapping in the first degree.

19 (2) In any prosecution for kidnapping in the second degree, it is  
20 a defense if established by the defendant by a preponderance of the  
21 evidence that (a) the abduction does not include the use of or intent  
22 to use or threat to use deadly force, and (b) the actor is a relative  
23 of the person abducted, and (c) the actor's sole intent is to assume  
24 custody of that person. Nothing contained in this paragraph shall  
25 constitute a defense to a prosecution for, or preclude a conviction of,  
26 any other crime.

27 (3) Kidnapping in the second degree is a class B felony, except  
28 that kidnapping in the second degree with a finding of sexual  
29 motivation under RCW 9.94A.127 or 13.40.135 is a class A felony.

30 **Sec. 357.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to  
31 read as follows:

32 (1) A person is guilty of indecent liberties when he or she  
33 knowingly causes another person who is not his or her spouse to have  
34 sexual contact with him or her or another:

35 (a) By forcible compulsion;

1 (b) When the other person is incapable of consent by reason of  
2 being mentally defective, mentally incapacitated, or physically  
3 helpless;

4 (c) When the victim is developmentally disabled and the perpetrator  
5 is a person who is not married to the victim and who has supervisory  
6 authority over the victim;

7 (d) When the perpetrator is a health care provider, the victim is  
8 a client or patient, and the sexual contact occurs during a treatment  
9 session, consultation, interview, or examination. It is an affirmative  
10 defense that the defendant must prove by a preponderance of the  
11 evidence that the client or patient consented to the sexual contact  
12 with the knowledge that the sexual contact was not for the purpose of  
13 treatment;

14 (e) When the victim is a resident of a facility for mentally  
15 disordered or chemically dependent persons and the perpetrator is a  
16 person who is not married to the victim and has supervisory authority  
17 over the victim; or

18 (f) When the victim is a frail elder or vulnerable adult and the  
19 perpetrator is a person who is not married to the victim and who has a  
20 significant relationship with the victim.

21 (2) Indecent liberties is a class B felony, except that indecent  
22 liberties by forcible compulsion is a class A felony.

23 **Sec. 358.** RCW 9A.76.--- and 2001 c 287 s 1 are each amended to  
24 read as follows:

25 (1) A person is guilty of ~~((escape by a))~~ sexually violent predator  
26 escape if ~~((, having been committed to the department of social and~~  
27 ~~health services as a sexually violent predator under chapter 71.09 RCW,~~  
28 ~~he or she:~~

29 ~~(a) Escapes from custody;~~

30 ~~(b) Escapes from a commitment facility;~~

31 ~~(c) Escapes from a less restrictive alternative facility; or~~

32 ~~(d) While on conditional release and residing in a location other~~  
33 ~~than at a commitment center or less restrictive alternative facility,~~  
34 ~~leaves or remains absent from the state of Washington without prior~~  
35 ~~court authorization)):~~

36 (a) Having been found to be a sexually violent predator and  
37 confined to the special commitment center or another secure facility  
38 under court order, the person escapes from the secure facility;

1 (b) Having been found to be a sexually violent predator and being  
2 under an order of conditional release, the person leaves or remains  
3 absent from the state of Washington without prior court authorization;  
4 or

5 (c) Having been found to be a sexually violent predator and being  
6 under an order of conditional release, the person: (i) Without  
7 authorization, leaves or remains absent from his or her residence,  
8 place of employment, educational institution, or authorized outing;  
9 (ii) tampers with his or her electronic monitoring device or removes it  
10 without authorization; or (iii) escapes from his or her escort.

11 (2) (~~Escape by a~~) Sexually violent predator escape is a class  
12 ((B)) A felony with a minimum sentence of sixty months, and shall be  
13 sentenced under section 303 of this act.

14 **Sec. 359.** RCW 9.94A.320 and 2001 c 310 s 4, 2001 c 287 s 3, 2001  
15 c 224 s 3, 2001 c 222 s 24, and 2001 c 207 s 3 are each reenacted and  
16 amended to read as follows:

17 TABLE 2

18 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

19 XVI	Aggravated Murder 1 (RCW 10.95.020)
20 XV	Homicide by abuse (RCW 9A.32.055)
21	Malicious explosion 1 (RCW 70.74.280(1))
22	Murder 1 (RCW 9A.32.030)
23 XIV	Murder 2 (RCW 9A.32.050)
24 XIII	Malicious explosion 2 (RCW 70.74.280(2))
25	Malicious placement of an explosive 1 (RCW
26	70.74.270(1))
27 XII	Assault 1 (RCW 9A.36.011)
28	Assault of a Child 1 (RCW 9A.36.120)
29	Malicious placement of an imitation device
30	1 (RCW 70.74.272(1)(a))
31	Rape 1 (RCW 9A.44.040)
32	Rape of a Child 1 (RCW 9A.44.073)
33 XI	Manslaughter 1 (RCW 9A.32.060)
34	Rape 2 (RCW 9A.44.050)

1 Rape of a Child 2 (RCW 9A.44.076)

2 X Child Molestation 1 (RCW 9A.44.083)

3 ((~~Escape by a~~)) Sexually Violent Predator

4 Escape (RCW 9A.76.--- (section 1,

5 chapter 287, Laws of 2001, as amended

6 by section 358, chapter ... (this

7 act), Laws of 2001 1st sp. sess.))

8 Indecent Liberties (with forcible

9 compulsion) (RCW 9A.44.100(1)(a))

10 Kidnapping 1 (RCW 9A.40.020)

11 Leading Organized Crime (RCW

12 9A.82.060(1)(a))

13 Malicious explosion 3 (RCW 70.74.280(3))

14 Manufacture of methamphetamine (RCW

15 69.50.401(a)(1)(ii))

16 Over 18 and deliver heroin,

17 methamphetamine, a narcotic from

18 Schedule I or II, or flunitrazepam

19 from Schedule IV to someone under 18

20 (RCW 69.50.406)

21 IX Assault of a Child 2 (RCW 9A.36.130)

22 Controlled Substance Homicide (RCW

23 69.50.415)

24 Explosive devices prohibited (RCW

25 70.74.180)

26 Homicide by Watercraft, by being under the

27 influence of intoxicating liquor or

28 any drug (RCW 79A.60.050)

29 Inciting Criminal Profiteering (RCW

30 9A.82.060(1)(b))

31 Malicious placement of an explosive 2 (RCW

32 70.74.270(2))

33 Over 18 and deliver narcotic from Schedule

34 III, IV, or V or a nonnarcotic, except

35 flunitrazepam or methamphetamine, from

36 Schedule I-V to someone under 18 and 3

37 years junior (RCW 69.50.406)

38 Robbery 1 (RCW 9A.56.200)

1 Sexual Exploitation (RCW 9.68A.040)  
2 Vehicular Homicide, by being under the  
3 influence of intoxicating liquor or  
4 any drug (RCW 46.61.520)

5 VIII Arson 1 (RCW 9A.48.020)  
6 Deliver or possess with intent to deliver  
7 methamphetamine (RCW  
8 69.50.401(a)(1)(ii))  
9 Hit and Run--Death (RCW 46.52.020(4)(a))  
10 Homicide by Watercraft, by the operation of  
11 any vessel in a reckless manner (RCW  
12 79A.60.050)  
13 Manslaughter 2 (RCW 9A.32.070)  
14 Manufacture, deliver, or possess with  
15 intent to deliver amphetamine (RCW  
16 69.50.401(a)(1)(ii))  
17 Manufacture, deliver, or possess with  
18 intent to deliver heroin or cocaine  
19 (RCW 69.50.401(a)(1)(i))  
20 Possession of Ephedrine, Pseudoephedrine,  
21 or Anhydrous Ammonia with intent to  
22 manufacture methamphetamine (RCW  
23 69.50.440)  
24 Promoting Prostitution 1 (RCW 9A.88.070)  
25 Selling for profit (controlled or  
26 counterfeit) any controlled substance  
27 (RCW 69.50.410)  
28 Theft of Anhydrous Ammonia (RCW 69.55.010)  
29 Vehicular Homicide, by the operation of any  
30 vehicle in a reckless manner (RCW  
31 46.61.520)

32 VII Burglary 1 (RCW 9A.52.020)  
33 Child Molestation 2 (RCW 9A.44.086)  
34 Dealing in depictions of minor engaged in  
35 sexually explicit conduct (RCW  
36 9.68A.050)  
37 Drive-by Shooting (RCW 9A.36.045)

1 Homicide by Watercraft, by disregard for  
2 the safety of others (RCW 79A.60.050)  
3 Indecent Liberties (without forcible  
4 compulsion) (RCW 9A.44.100(1) (b) and  
5 (c))  
6 Introducing Contraband 1 (RCW 9A.76.140)  
7 Involving a minor in drug dealing (RCW  
8 69.50.401(f))  
9 Malicious placement of an explosive 3 (RCW  
10 70.74.270(3))  
11 Sending, bringing into state depictions of  
12 minor engaged in sexually explicit  
13 conduct (RCW 9.68A.060)  
14 Unlawful Possession of a Firearm in the  
15 first degree (RCW 9.41.040(1)(a))  
16 Use of a Machine Gun in Commission of a  
17 Felony (RCW 9.41.225)  
18 Vehicular Homicide, by disregard for the  
19 safety of others (RCW 46.61.520)  
20 VI Bail Jumping with Murder 1 (RCW  
21 9A.76.170(2)(a))  
22 Bribery (RCW 9A.68.010)  
23 Incest 1 (RCW 9A.64.020(1))  
24 Intimidating a Judge (RCW 9A.72.160)  
25 Intimidating a Juror/Witness (RCW  
26 9A.72.110, 9A.72.130)  
27 Malicious placement of an imitation device  
28 2 (RCW 70.74.272(1)(b))  
29 Manufacture, deliver, or possess with  
30 intent to deliver narcotics from  
31 Schedule I or II (except heroin or  
32 cocaine) or flunitrazepam from  
33 Schedule IV (RCW 69.50.401(a)(1)(i))  
34 Rape of a Child 3 (RCW 9A.44.079)  
35 Theft of a Firearm (RCW 9A.56.300)  
36 Unlawful Storage of Anhydrous Ammonia (RCW  
37 69.55.020)

1 V Abandonment of dependent person 1 (RCW  
2 9A.42.060)  
3 Advancing money or property for  
4 extortionate extension of credit (RCW  
5 9A.82.030)  
6 Bail Jumping with class A Felony (RCW  
7 9A.76.170(2)(b))  
8 Child Molestation 3 (RCW 9A.44.089)  
9 Criminal Mistreatment 1 (RCW 9A.42.020)  
10 Custodial Sexual Misconduct 1 (RCW  
11 9A.44.160)  
12 Delivery of imitation controlled substance  
13 by person eighteen or over to person  
14 under eighteen (RCW 69.52.030(2))  
15 Domestic Violence Court Order Violation  
16 (RCW 10.99.040, 10.99.050, 26.09.300,  
17 26.10.220, 26.26.138, 26.50.110,  
18 26.52.070, or 74.34.145)  
19 Extortion 1 (RCW 9A.56.120)  
20 Extortionate Extension of Credit (RCW  
21 9A.82.020)  
22 Extortionate Means to Collect Extensions of  
23 Credit (RCW 9A.82.040)  
24 Incest 2 (RCW 9A.64.020(2))  
25 Kidnapping 2 (RCW 9A.40.030)  
26 Perjury 1 (RCW 9A.72.020)  
27 Persistent prison misbehavior (RCW  
28 9.94.070)  
29 Possession of a Stolen Firearm (RCW  
30 9A.56.310)  
31 Rape 3 (RCW 9A.44.060)  
32 Rendering Criminal Assistance 1 (RCW  
33 9A.76.070)  
34 Sexual Misconduct with a Minor 1 (RCW  
35 9A.44.093)  
36 Sexually Violating Human Remains (RCW  
37 9A.44.105)  
38 Stalking (RCW 9A.46.110)  
39 IV Arson 2 (RCW 9A.48.030)



1 Assault 2 (RCW 9A.36.021)  
2 Assault by Watercraft (RCW 79A.60.060)  
3 Bribing a Witness/Bribe Received by Witness  
4 (RCW 9A.72.090, 9A.72.100)  
5 Commercial Bribery (RCW 9A.68.060)  
6 Counterfeiting (RCW 9.16.035(4))  
7 Escape 1 (RCW 9A.76.110)  
8 Hit and Run--Injury (RCW 46.52.020(4)(b))  
9 Hit and Run with Vessel--Injury Accident  
10 (RCW 79A.60.200(3))  
11 Indecent Exposure to Person Under Age  
12 Fourteen (subsequent sex offense) (RCW  
13 9A.88.010)  
14 Influencing Outcome of Sporting Event (RCW  
15 9A.82.070)  
16 Knowingly Trafficking in Stolen Property  
17 (RCW 9A.82.050(2))  
18 Malicious Harassment (RCW 9A.36.080)  
19 Manufacture, deliver, or possess with  
20 intent to deliver narcotics from  
21 Schedule III, IV, or V or nonnarcotics  
22 from Schedule I-V (except marijuana,  
23 amphetamine, methamphetamines, or  
24 flunitrazepam) (RCW 69.50.401(a)(1)  
25 (iii) through (v))  
26 Residential Burglary (RCW 9A.52.025)  
27 Robbery 2 (RCW 9A.56.210)  
28 Theft of Livestock 1 (RCW 9A.56.080)  
29 Threats to Bomb (RCW 9.61.160)  
30 Use of Proceeds of Criminal Profiteering  
31 (RCW 9A.82.080 (1) and (2))  
32 Vehicular Assault (RCW 46.61.522)  
33 Willful Failure to Return from Furlough  
34 (RCW 72.66.060)  
35 III Abandonment of dependent person 2 (RCW  
36 9A.42.070)  
37 Assault 3 (RCW 9A.36.031)  
38 Assault of a Child 3 (RCW 9A.36.140)

1 Bail Jumping with class B or C Felony (RCW  
2 9A.76.170(2)(c))  
3 Burglary 2 (RCW 9A.52.030)  
4 Communication with a Minor for Immoral  
5 Purposes (RCW 9.68A.090)  
6 Criminal Gang Intimidation (RCW 9A.46.120)  
7 Criminal Mistreatment 2 (RCW 9A.42.030)  
8 Custodial Assault (RCW 9A.36.100)  
9 Delivery of a material in lieu of a  
10 controlled substance (RCW  
11 69.50.401(c))  
12 Escape 2 (RCW 9A.76.120)  
13 Extortion 2 (RCW 9A.56.130)  
14 Harassment (RCW 9A.46.020)  
15 Intimidating a Public Servant (RCW  
16 9A.76.180)  
17 Introducing Contraband 2 (RCW 9A.76.150)  
18 Maintaining a Dwelling or Place for  
19 Controlled Substances (RCW  
20 69.50.402(a)(6))  
21 Malicious Injury to Railroad Property (RCW  
22 81.60.070)  
23 Manufacture, deliver, or possess with  
24 intent to deliver marijuana (RCW  
25 69.50.401(a)(1)(iii))  
26 Manufacture, distribute, or possess with  
27 intent to distribute an imitation  
28 controlled substance (RCW  
29 69.52.030(1))  
30 Patronizing a Juvenile Prostitute (RCW  
31 9.68A.100)  
32 Perjury 2 (RCW 9A.72.030)  
33 Possession of Incendiary Device (RCW  
34 9.40.120)  
35 Possession of Machine Gun or Short-Barreled  
36 Shotgun or Rifle (RCW 9.41.190)  
37 Promoting Prostitution 2 (RCW 9A.88.080)  
38 Recklessly Trafficking in Stolen Property  
39 (RCW 9A.82.050(1))

1 Securities Act violation (RCW 21.20.400)  
2 Tampering with a Witness (RCW 9A.72.120)  
3 Telephone Harassment (subsequent conviction  
4 or threat of death) (RCW 9.61.230)  
5 Theft of Livestock 2 (RCW 9A.56.080)  
6 Unlawful Imprisonment (RCW 9A.40.040)  
7 Unlawful possession of firearm in the  
8 second degree (RCW 9.41.040(1)(b))  
9 Unlawful Use of Building for Drug Purposes  
10 (RCW 69.53.010)  
11 Willful Failure to Return from Work Release  
12 (RCW 72.65.070)

13 II Computer Trespass 1 (RCW 9A.52.110)  
14 Counterfeiting (RCW 9.16.035(3))  
15 Create, deliver, or possess a counterfeit  
16 controlled substance (RCW  
17 69.50.401(b))  
18 Escape from Community Custody (RCW  
19 72.09.310)  
20 Health Care False Claims (RCW 48.80.030)  
21 Malicious Mischief 1 (RCW 9A.48.070)  
22 Possession of controlled substance that is  
23 either heroin or narcotics from  
24 Schedule I or II or flunitrazepam from  
25 Schedule IV (RCW 69.50.401(d))  
26 Possession of phencyclidine (PCP) (RCW  
27 69.50.401(d))  
28 Possession of Stolen Property 1 (RCW  
29 9A.56.150)  
30 Theft 1 (RCW 9A.56.030)  
31 Theft of Rental, Leased, or Lease-purchased  
32 Property (valued at one thousand five  
33 hundred dollars or more) (RCW  
34 9A.56.096(4))  
35 Trafficking in Insurance Claims (RCW  
36 48.30A.015)  
37 Unlawful Practice of Law (RCW 2.48.180)  
38 Unlicensed Practice of a Profession or  
39 Business (RCW 18.130.190(7))

1 I Attempting to Elude a Pursuing Police  
2 Vehicle (RCW 46.61.024)  
3 False Verification for Welfare (RCW  
4 74.08.055)  
5 Forged Prescription (RCW 69.41.020)  
6 Forged Prescription for a Controlled  
7 Substance (RCW 69.50.403)  
8 Forgery (RCW 9A.60.020)  
9 Malicious Mischief 2 (RCW 9A.48.080)  
10 Possess Controlled Substance that is a  
11 Narcotic from Schedule III, IV, or V  
12 or Non-narcotic from Schedule I-V  
13 (except phencyclidine or  
14 flunitrazepam) (RCW 69.50.401(d))  
15 Possession of Stolen Property 2 (RCW  
16 9A.56.160)  
17 Reckless Burning 1 (RCW 9A.48.040)  
18 Taking Motor Vehicle Without Permission  
19 (RCW 9A.56.070)  
20 Theft 2 (RCW 9A.56.040)  
21 Theft of Rental, Leased, or Lease-purchased  
22 Property (valued at two hundred fifty  
23 dollars or more but less than one  
24 thousand five hundred dollars) (RCW  
25 9A.56.096(4))  
26 Unlawful Issuance of Checks or Drafts (RCW  
27 9A.56.060)  
28 Unlawful Use of Food Stamps (RCW 9.91.140  
29 (2) and (3))  
30 Vehicle Prowl 1 (RCW 9A.52.095)

31 **Sec. 360.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to  
32 read as follows:

33 (1) The secretary shall identify offenders in confinement or  
34 partial confinement who: (a) Are reasonably believed to be dangerous  
35 to themselves or others; and (b) have a mental disorder. In  
36 determining an offender's dangerousness, the secretary shall consider  
37 behavior known to the department and factors, based on research, that  
38 are linked to an increased risk for dangerousness of mentally ill

1 offenders and shall include consideration of an offender's chemical  
2 dependency or abuse.

3 (2) Prior to release of an offender identified under this section,  
4 a team consisting of representatives of the department of corrections,  
5 the division of mental health, and, as necessary, the indeterminate  
6 sentence review board, other divisions or administrations within the  
7 department of social and health services, specifically including the  
8 division of alcohol and substance abuse and the division of  
9 developmental disabilities, the appropriate regional support network,  
10 and the providers, as appropriate, shall develop a plan, as determined  
11 necessary by the team, for delivery of treatment and support services  
12 to the offender upon release. The team may include a school district  
13 representative for offenders under the age of twenty-one. The team  
14 shall consult with the offender's counsel, if any, and, as appropriate,  
15 the offender's family and community. The team shall notify the crime  
16 victim/witness program, which shall provide notice to all people  
17 registered to receive notice under RCW 9.94A.155 of the proposed  
18 release plan developed by the team. Victims, witnesses, and other  
19 interested people notified by the department may provide information  
20 and comments to the department on potential safety risk to specific  
21 individuals or classes of individuals posed by the specific offender.  
22 The team may recommend: (a) That the offender be evaluated by the  
23 county designated mental health professional, as defined in chapter  
24 71.05 RCW; (b) department-supervised community treatment; or (c)  
25 voluntary community mental health or chemical dependency or abuse  
26 treatment.

27 (3) Prior to release of an offender identified under this section,  
28 the team shall determine whether or not an evaluation by a county  
29 designated mental health professional is needed. If an evaluation is  
30 recommended, the supporting documentation shall be immediately  
31 forwarded to the appropriate county designated mental health  
32 professional. The supporting documentation shall include the  
33 offender's criminal history, history of judicially required or  
34 administratively ordered involuntary antipsychotic medication while in  
35 confinement, and any known history of involuntary civil commitment.

36 (4) If an evaluation by a county designated mental health  
37 professional is recommended by the team, such evaluation shall occur  
38 not more than ten days, nor less than five days, prior to release.

1 (5) A second evaluation by a county designated mental health  
2 professional shall occur on the day of release if requested by the  
3 team, based upon new information or a change in the offender's mental  
4 condition, and the initial evaluation did not result in an emergency  
5 detention or a summons under chapter 71.05 RCW.

6 (6) If the county designated mental health professional determines  
7 an emergency detention under chapter 71.05 RCW is necessary, the  
8 department shall release the offender only to a state hospital or to a  
9 consenting evaluation and treatment facility. The department shall  
10 arrange transportation of the offender to the hospital or facility.

11 (7) If the county designated mental health professional believes  
12 that a less restrictive alternative treatment is appropriate, he or she  
13 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,  
14 to require the offender to appear at an evaluation and treatment  
15 facility. If a summons is issued, the offender shall remain within the  
16 corrections facility until completion of his or her term of confinement  
17 and be transported, by corrections personnel on the day of completion,  
18 directly to the identified evaluation and treatment facility.

19 (8) The secretary shall adopt rules to implement this section.

20 NEW SECTION. Sec. 361. A new section is added to chapter 9.95 RCW  
21 to read as follows:

22 The indeterminate sentence review board, in fulfilling its duties  
23 under the provisions of this act, shall be considered a parole board as  
24 that concept was treated in law under the state's indeterminate  
25 sentencing statutes.

26 **PART IV**  
27 **TECHNICAL PROVISIONS**

28 NEW SECTION. Sec. 401. The following acts or parts of acts are  
29 each repealed:

30 (1) RCW 9.95.0011 (Indeterminate sentence review board--Report--  
31 Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986  
32 c 224 s 12; and

33 (2) RCW 9.95.145 (Sex offenders--Release of information--  
34 Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

1        NEW SECTION.     **Sec. 402.**     The secretary of corrections, the  
2 secretary of social and health services, and the indeterminate sentence  
3 review board may adopt rules to implement this act.

4        NEW SECTION.     **Sec. 403.**     (1) Sections 301 through 361 of this act  
5 shall not affect the validity of any sentence imposed under any other  
6 law for any offense committed before, on, or after the effective date  
7 of this section.

8        (2) Sections 301 through 361 of this act shall apply to offenses  
9 committed on or after the effective date of this section.

10       NEW SECTION.     **Sec. 404.**     If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 remainder of the act or the application of the provision to other  
13 persons or circumstances is not affected.

14       NEW SECTION.     **Sec. 405.**     This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 July 1, 2001, except for sections 101 through 225 of this act which  
18 take effect immediately."

19       Correct the title.

EFFECT:     (1) Reduces the total number of beds authorized for the  
McNeil Island secure community transition facility (SCTF) to fifteen.

(2) Requires the DSHS to cease its current efforts to site  
additional SCTFs and instead use the following process in siting future  
facilities: If the DSHS and the attorney general determine that future  
SCTFs are needed, the DSHS must prepare a projected list of counties  
where the facilities need to be sited over the next six years, and  
every six years thereafter. The DSHS must provide for the equitable  
distribution of these facilities among and within counties after  
consulting with the joint select committee and local governments. No  
additional SCTFs may be sited in Pierce County until after June 30,  
2008. The total number of beds sited between the effective date of the  
act and June 30, 2008, in a county cannot exceed the number of persons  
civilly committed from that county as of April 2001. The same rule is  
repeated for 2008-2015, with the cap calculated based on the number of  
persons civilly committed as of July 1, 2008. The equitable  
distribution is to be based on an analysis of the number of persons  
civilly committed from each county as of April 1, 2001, per thousand  
residents of the county; the number of existing and projected state  
mental hospital, SCTF, and correctional facility beds in each county  
per thousand residents of the county; and the number of registered

level II, III, and homeless sex offenders per thousand residents of the county.

(3) Limits subsequent placement of residents from the McNeil Island SCTF into Pierce County until June 30, 2003.

(4) Requires the mitigation agreement negotiations for the McNeil Island SCTF to include other impacted parties. Mitigation is for increased risks to public safety as a result of the facility.

(5) Deletes the incentive grant program for employers and educational institutions who hire or enroll residents of the SCTF.

(6) Requires the DSHS to provide local law enforcement with a general plan of the SCTF residents' planned activities in the community.

(7) Sets forth siting requirements and criteria for future SCTFs to include an average response time of five minutes or less by local law enforcement and a prohibition on placing a facility adjacent to, across a street or parking lot from, or with the line of sight of a risk potential activity.

(8) Prohibits a felon, or a person convicted of any sex offense, from working at the secure community transition facility or serving as an escort to a resident of the facility. Prohibits a relative of a resident of the secure community transition facility from serving as his or her escort.

(9) Requires escorts to immediately report violations of release conditions and/or violations of law. Requires the DSHS to submit a record of all violations, penalties, actions taken, and contract terminations to the legislature on an annual basis.

(10) Deletes the schedule of monetary penalties for contractors operating SCTFs.

(11) Requires the joint select committee to review and make recommendations regarding factors for the equitable distribution of SCTFs, siting and operation criteria, security measures, and a method for determining mitigation for future SCTFs.

(12) Requires that treatment of conditionally released sexually violent predators be conducted by certified treatment providers, unless specified exceptions apply. Prohibits a sex offender treatment provider from treating sexually violent predators if he or she has been convicted of a sex offense, or restricted from practice as a health care professional. Provides that a certified sex offender treatment provider is not liable for damages caused by a sexually violent predator or level III sex offender he or she is treating if the provider acted within the course of his or her duties and his or her actions did not constitute gross negligence or willful or wanton misconduct. Requires certified sex offender treatment providers to report expressions of intent to harm or other predatory behavior.

(13) Deletes the predatory findings required with respect to certain crimes for sentencing under the new indeterminate sentencing scheme.

(14) Clarifies that an offender sentenced under the new indeterminate sentencing scheme could be eligible for SSOSA (Special Sex Offender Sentencing Alternative) and would receive a community custody term equal to the length of the maximum term of his or her suspended sentence.

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