

2 SSB 6151 - S AMD 301

3 By Senators Hargrove, Long, Costa, Brown, Stevens and Hewitt

4 ADOPTED 04/12/01

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 establish secure community transition facilities throughout the state.

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. Most persons civilly
18 committed under chapter 71.09 RCW who become eligible for release to a
19 less restrictive alternative do not have housing. Because a lack of
20 housing may unduly restrict a person's ability to obtain an order to a
21 less restrictive alternative, the legislature recognizes that the state
22 must provide some housing facilities. Facilities to house persons
23 conditionally released to a less restrictive alternative under chapter
24 71.09 RCW are essential public facilities. Public protests and local
25 government moratoriums on zoning and permitting processes have
26 hampered the state's ability to comply with constitutional and
27 statutory requirements and with court orders to create housing for less
28 restrictive alternative placements. The legislature, therefore,
29 intends to provide statewide guidance and assistance in the siting of
30 secure community transition facilities for persons conditionally
31 released to less restrictive alternatives under chapter 71.09 RCW.

32 (c) Some high-risk sex offenders are most appropriately managed
33 through an indeterminate sentencing structure in which they will be
34 supervised and can be retained in or returned to a state correctional
35 institution until the statutory maximum sentence has expired. The

1 state does not currently have an indeterminate sentencing structure.
2 Consequently, the state must make changes to its sentencing structure
3 to effectively manage these high-risk sex offenders.

4 (2) Therefore, the legislature intends to:

5 (a) 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 (b) Ensure the prompt siting and timely operation of a secure
10 community transition facility on McNeil Island, ensure the continued
11 progress toward the construction and operation of the total confinement
12 facility already planned for McNeil Island, to further the treatment
13 and management of persons civilly committed under chapter 71.09 RCW,
14 and establish a framework for the establishment of additional secure
15 community transition facilities;

16 (c) Maximize public safety and enhance the potential for successful
17 treatment of sexually violent predators through the tightly managed use
18 of less restrictive alternatives in secure community transition
19 facilities;

20 (d) Maximize the safety of communities in which secure community
21 transition facilities are located and ensure public input into
22 decisions involving the siting and ongoing operation of these essential
23 public facilities; strengthening the safeguards in placement,
24 oversight, and monitoring of conditionally released persons; and
25 establishing minimum standards for the siting and operation of secure
26 community transition facilities; and

27 (e) Comply with federal court orders and require the siting of
28 secure community transition facilities and thereby preclude the
29 possibility that the department of social and health services would be
30 unable to site a facility due to local moratoriums and requirements.

31 **Sec. 102.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to
32 read as follows:

33 Unless the context clearly requires otherwise, the definitions in
34 this section apply throughout this chapter.

35 (1) (~~"Sexually violent predator" means any person who has been~~
36 ~~convicted of or charged with a crime of sexual violence and who suffers~~
37 ~~from a mental abnormality or personality disorder which makes the~~

1 person likely to engage in predatory acts of sexual violence if not
2 confined in a secure facility.

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

7 "Department" means the department of social and health services.

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

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

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

21 (5) "Predatory" means acts directed towards: (a) Strangers ((or));
22 (b) individuals with whom a relationship has been established or
23 promoted for the primary purpose of victimization; or (c) persons of
24 casual acquaintance with whom no substantial personal relationship
25 exists.

26 ~~((+5))~~ (6) "Recent overt act" means any act or threat that has
27 either caused harm of a sexually violent nature or creates a reasonable
28 apprehension of such harm in the mind of an objective person who knows
29 of the history and mental condition of the person engaging in the act.

30 ~~((+6))~~ (7) "Risk potential activity" or "risk potential facility"
31 means an activity or facility that provides a higher incidence of risk
32 to the public from persons conditionally released from the special
33 commitment center. Risk potential activities and facilities include:
34 Public and private schools, school bus stops, licensed day care and
35 licensed preschool facilities, public parks, publicly dedicated trails,
36 sports fields, playgrounds, recreational and community centers,
37 churches, synagogues, temples, mosques, and public libraries.

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

1 (9) "Secure facility" means a residential facility for persons
2 civilly confined under the provisions of this chapter that includes
3 security measures sufficient to protect the community. Such facilities
4 include total confinement facilities, secure community transition
5 facilities, and any residence used as a court-ordered placement under
6 RCW 71.09.096.

7 (10) "Secure community transition facility" means a residential
8 facility for persons civilly committed and conditionally released to a
9 less restrictive alternative under this chapter. A secure community
10 transition facility has supervision and security, and either provides
11 or ensures the provision of sex offender treatment services. Secure
12 community transition facilities include but are not limited to the
13 step-down facility established under section 201 of this act and any
14 community-based facilities established under this chapter and operated
15 by the secretary or under contract with the secretary.

16 (11) "Sexually violent offense" means an act committed on, before,
17 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
18 rape in the first degree, rape in the second degree by forcible
19 compulsion, rape of a child in the first or second degree, statutory
20 rape in the first or second degree, indecent liberties by forcible
21 compulsion, indecent liberties against a child under age fourteen,
22 incest against a child under age fourteen, or child molestation in the
23 first or second degree; (b) a felony offense in effect at any time
24 prior to July 1, 1990, that is comparable to a sexually violent offense
25 as defined in (a) of this subsection, or any federal or out-of-state
26 conviction for a felony offense that under the laws of this state would
27 be a sexually violent offense as defined in this subsection; (c) an act
28 of murder in the first or second degree, assault in the first or second
29 degree, assault of a child in the first or second degree, kidnapping in
30 the first or second degree, burglary in the first degree, residential
31 burglary, or unlawful imprisonment, which act, either at the time of
32 sentencing for the offense or subsequently during civil commitment
33 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
34 a reasonable doubt to have been sexually motivated, as that term is
35 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28
36 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
37 to commit one of the felonies designated in (a), (b), or (c) of this
38 subsection.

1 (4) The number of residents at the secure community transition
2 facility established by this section shall not exceed thirty-six
3 persons.

4 (5) No additional secure community transition facilities for more
5 than three persons may be sited in a county where the special
6 commitment center and the secure community transition facility
7 established pursuant to this section are located.

8 NEW SECTION. **Sec. 202.** Beginning on the effective date of this
9 section, the state shall immediately enter into negotiations for a
10 mitigation agreement with the county in which the secure community
11 transition facility established pursuant to section 201 of this act is
12 located, and with each community in which the persons will reside or
13 regularly spend time in the community pursuant to court orders for
14 regular work or education, or to receive social services, or will
15 regularly be transported through to reach those communities. The
16 negotiations must be toward an agreement that will provide state
17 funding, as appropriated for this purpose, in an amount adequate to
18 mitigate anticipated or realized increased costs in law enforcement
19 resulting from any increased risks to public safety brought about by
20 the presence of sexually violent predators in those communities due to
21 the siting of the step-down facility established pursuant to section
22 201 of this act.

23 NEW SECTION. **Sec. 203.** A new section is added to chapter 71.09
24 RCW to read as follows:

25 When a person civilly committed under this chapter is conditionally
26 released to a less restrictive alternative placement at a facility
27 owned or operated under contract with the state, any employer who hires
28 the person for a position or any educational institution that enrolls
29 the person for a program is eligible for an incentive grant from the
30 state up to five thousand dollars per year that the person remains
31 employed or enrolled on at least a half-time basis in a job or program
32 that meets requirements approved by the court. The provisions of this
33 section may not establish employer or educational institution liability
34 for the subsequent criminal acts of a conditionally released person for
35 the decision to hire or enroll that person. An employer or educational
36 institution that accepts an incentive grant under this section shall
37 not be civilly liable for the subsequent criminal acts of a

1 conditionally released person unless the employer's or educational
2 institution's conduct constitutes gross negligence or intentional
3 misconduct. An employer that hires a conditionally released person
4 must notify all other employees of the conditionally released person's
5 status. Notification for conditionally released persons who enroll in
6 an institution of higher education shall be made pursuant to the
7 provisions of RCW 9A.44.130 related to sex offenders enrolled in
8 institutions of higher education and RCW 4.24.550. This provision
9 applies only to conditionally released persons whose court approved
10 treatment plan includes permission or a requirement for the person to
11 obtain education or employment and to employment positions or
12 educational programs that meet the requirements of the court-approved
13 treatment plan.

14 NEW SECTION. **Sec. 204.** On or before December 1, 2002, the
15 department of social and health services shall submit a report to the
16 appropriate committees of the legislature regarding policies for the
17 subsequent placement of sexually violent predators on court-ordered
18 conditional release residing in the secure community transition
19 facility established pursuant to section 201 of this act. The report
20 shall address the following:

21 (1) The anticipated number of persons who may be eligible for
22 conditional release to a setting less restrictive than the facility
23 established pursuant to section 201 of this act during the 2003-2005
24 and 2005-2007 biennia;

25 (2) The anticipated need, if any, for secure community transition
26 facilities smaller than the facility established pursuant to section
27 201 of this act;

28 (3) Policies that will be implemented to ensure that placement of
29 persons eligible in the future for conditional release to a setting
30 less restrictive than the facility established pursuant to section 201
31 of this act will be equitably distributed among the counties, and
32 within each county, among jurisdictions in the county.

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

35 The department shall make reasonable efforts to distribute the
36 impact of the employment, education, and social services needs of the

1 residents of a step-down facility among the adjoining counties and not
2 to concentrate the residents' use of resources in any one community.

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

8 The purpose of the public hearings is to seek input from county and
9 city officials, local law enforcement officials, and the public
10 regarding operations and security measures needed to adequately protect
11 the community from any increased risk to public safety brought about by
12 the presence of persons conditionally released from the special
13 commitment center in these communities due to the siting of the
14 facility.

15 **Sec. 207.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended
16 to read as follows:

17 State agencies shall comply with the local comprehensive plans and
18 development regulations and amendments thereto adopted pursuant to this
19 chapter except as otherwise provided in section 201 of this act.

20 NEW SECTION. **Sec. 208.** The secretary of social and health
21 services shall coordinate with the secretary of corrections and the
22 appropriate local or state law enforcement agency or agencies to
23 establish a twenty-four-hour law enforcement presence on McNeil Island
24 before any person is admitted to the step-down facility established
25 under section 201 of this act. Law enforcement shall coordinate with
26 the emergency response team for McNeil Island to provide planning and
27 coordination in the event of an escape from the special commitment
28 center or the step-down facility.

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

1 twenty-four-hour presence and shall not have correctional duties at the
2 correctional facility in addition to the emergency response team while
3 acting in a law enforcement capacity.

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

6 Security systems for a step-down facility shall include a fence and
7 provide the maximum protection appropriate in a civil facility for
8 persons in less than total confinement.

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

11 A step-down facility shall meet the following minimum staffing
12 requirements:

13 (1) At any time the facility has six or fewer residents, a minimum
14 staffing ratio of one staff per resident during normal waking hours and
15 two awake staff per three residents during normal sleeping hours.

16 (2) By December 1, 2001, the department will provide a staffing
17 plan to the appropriate committees of the legislature that will cover
18 the growth of the step-down facility established pursuant to section
19 201 of this act to its full capacity.

20 (3) At any time any secure community transition facility has six or
21 fewer residents, all staff shall be classified as residential
22 rehabilitation counselor II or have a classification that indicates a
23 higher level of skill, experience, and training. Before being assigned
24 to a secure community transition facility all staff shall have training
25 in sex offender issues, self-defense, and crisis de-escalation skills
26 in addition to departmental orientation and, as appropriate management
27 training. All staff with resident treatment or care duties must
28 participate in ongoing in-service training.

29 (4) All staff must pass a departmental background check and the
30 check is not subject to the limitations in chapter 9.96A RCW.

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

33 Residents of the step-down facility established in section 201 of
34 this act must be separated from minors and vulnerable adults except
35 minors or vulnerable adults who have been found to be sexually violent

1 predators when being transported between the mainland and McNeil
2 Island.

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

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

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

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

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

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

34 (5) Members of a board shall be reimbursed for travel expenses as
35 provided in RCW 43.03.050 and 43.03.060.

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

1 (1) The secretary shall adopt a violation reporting policy for
2 persons conditionally released to less restrictive alternative
3 placements in secure community transition facilities. The policy shall
4 require written documentation by the department and service providers
5 of all violations of conditions set by the department, the department
6 of corrections, or the court and establish criteria for returning a
7 violator to the special commitment center or a step-down facility. Any
8 conditionally released person who commits a serious violation of
9 conditions shall be returned to the special commitment center, unless
10 arrested by a law enforcement officer, and the court shall be notified
11 immediately and shall initiate proceedings under RCW 71.09.098 to
12 revoke or modify the less restrictive alternative placement. Nothing
13 in this section limits the authority of the department to return a
14 person to the special commitment center based on a violation that is
15 not a serious violation as defined in this section. For the purposes
16 of this section, "serious violation" includes but is not limited to:

- 17 (a) The commission of any criminal offense;
- 18 (b) Any unlawful use or possession of a controlled substance; and
- 19 (c) Any violation of conditions targeted to address the person's
20 documented pattern of offense that increases the risk to public safety.

21 When a person is released to a less restrictive alternative in a
22 secure community transition facility under this chapter and is under
23 the supervision of the department of corrections, notice of any
24 violation of the person's conditions of release must also be made to
25 the department of corrections.

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

32 (3) The secretary shall document in writing all violations,
33 penalties, actions by the department of social and health services to
34 remove persons from a secure community transition facility, and
35 contract terminations. The secretary shall give great weight to a
36 service provider's record of violations, penalties, actions by the
37 department of social and health services or the department of
38 corrections to remove persons from a secure community transition

1 facility, and contract terminations in determining to execute, renew,
2 or renegotiate a contract with a service provider.

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

5 The secretary shall adopt rules that contain a schedule of monetary
6 penalties for contractors operating secure community transition
7 facilities, not to exceed the total compensation set forth in the
8 contract, and include provisions for termination of all contracts with
9 a service provider that has repeated or serious violations of section
10 213 of this act.

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

13 (1) Unless otherwise ordered by the court:

14 (a) Residents of a secure community transition facility must wear
15 electronic monitoring devices at all times; and

16 (b) At least one staff member, or other court-authorized and
17 department-approved person must escort each resident when the resident
18 leaves the secure community transition facility for appointments,
19 employment, or other approved activities. Escorting persons must
20 supervise the resident closely and maintain close proximity to the
21 resident.

22 (2) Staff members of the special commitment center and any other
23 secure facility and any secure community transition facility must be
24 trained in self-defense and appropriate crisis responses including
25 incident de-escalation. Prior to escorting a person outside of a
26 facility, staff members must also have training in the offense pattern
27 of the offender they are escorting.

28 (3) Any escort must carry a cellular telephone or a similar device
29 at all times when escorting a resident of the step-down facility.

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

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

1 (1) Except with respect to the secure community transition facility
2 established pursuant to section 201 of this act, the secretary shall
3 adopt rules that balance the average response time of emergency
4 services to the general area of a proposed secure community transition
5 facility against the proximity of the proposed site to risk potential
6 activities and facilities in existence at the time the site is listed
7 for consideration.

8 (2) In balancing the competing criteria of proximity and response
9 time the rule shall endeavor to achieve an average law enforcement
10 response time not greater than five minutes and in no case shall the
11 rule permit location of a facility adjacent to, immediately across a
12 street or parking lot from, or within the line of sight of a risk
13 potential activity or facility in existence at the time a site is
14 listed for consideration. "Within the line of sight" means that it is
15 possible to reasonably visually distinguish and recognize individuals.

16 (3) The rule shall require that great weight be given to sites that
17 are the farthest removed from any risk potential activity.

18 (4) The rule shall specify how distance from the location is
19 measured and any variations in the measurement based on the size of the
20 property within which a proposed facility is to be located.

21 (5) The rule shall establish a method to analyze and compare the
22 criteria for each site in terms of public safety and security, site
23 characteristics, and program components. In making a decision
24 regarding a site following the analysis and comparison, the secretary
25 shall give priority to public safety and security considerations. The
26 analysis and comparison of the criteria are to be documented and made
27 available at the public hearings prescribed in section 220 of this act.

28 NEW SECTION. **Sec. 217.** By December 1, 2001, the secretary of the
29 department of social and health services shall determine and report to
30 the legislature whether there is a significant group of potential
31 locations that are outside of a five-minute law enforcement response
32 time zone that are more than two miles from any risk potential
33 activities and whether, in the secretary's judgment, the legislature
34 should require the rule to be revised to permit consideration of these
35 properties.

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

1 The secretary shall establish criteria for the siting of secure
2 community transition facilities, other than the secure community
3 transition facility established pursuant to section 201 of this act,
4 which shall include at least the following minimum requirements:

5 (1) Any real property listed for consideration for the location of
6 or use as a secure community transition facility must meet all of the
7 following criteria:

8 (a) The proximity and response time criteria established under
9 section 216 of this act;

10 (b) The site or building is available for lease for the anticipated
11 use period or for purchase;

12 (c) Security monitoring services and appropriate back-up systems
13 are available and reliable;

14 (d) Appropriate mental health and sex offender treatment providers
15 must be available within a reasonable commute; and

16 (e) Appropriate permitting for a secure community transition
17 facility must be possible under the zoning code of the local
18 jurisdiction.

19 (2) For sites which meet the criteria of subsection (1) of this
20 section, the department shall analyze and compare the criteria in
21 subsections (3) through (5) of this section using the method
22 established in section 216 of this act.

23 (3) Public safety and security criteria shall include at least the
24 following:

25 (a) Whether limited visibility between the facility and adjacent
26 properties can be achieved prior to placement of any person;

27 (b) The distance from, and number of, risk potential activities and
28 facilities, as measured using the rules adopted under section 216 of
29 this act;

30 (c) The existence of or ability to establish barriers between the
31 site and the risk potential facilities and activities;

32 (d) Suitability of the buildings to be used for the secure
33 community transition facility with regard to existing or feasibly
34 modified features; and

35 (e) The availability of electronic monitoring that allows a
36 resident's location to be determined with specificity.

37 (4) Site characteristics criteria shall include at least the
38 following:

1 (a) Reasonableness of rental, lease, or sale terms including length
2 and renewability of a lease or rental agreement;

3 (b) Traffic and access patterns associated with the real property;

4 (c) Feasibility of complying with zoning requirements within the
5 necessary time frame; and

6 (d) A contractor or contractors are available to install, monitor,
7 and repair the necessary security and alarm systems.

8 (5) Program characteristics criteria shall include at least the
9 following:

10 (a) Reasonable proximity to available medical, mental health, sex
11 offender, and chemical dependency treatment providers and facilities;

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

14 (c) Proximity to employment, educational, vocational, and other
15 treatment plan components; and

16 (6) For purposes of this section "available" or "availability" of
17 qualified treatment providers includes provider qualifications and
18 willingness to provide services, average commute time, and cost of
19 services.

20 NEW SECTION. **Sec. 219.** A new section is added to chapter 71.09
21 RCW to read as follows:

22 Security systems for secure community transition facilities
23 designed to house five or fewer residents shall meet the following
24 minimum qualifications:

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

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

29 (2) The system must include personal panic devices for all staff.

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

34 (4) The department shall issue photo-identification badges to all
35 staff which must be worn at all times.

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

1 (1) Whenever the department operates, or the secretary enters into
2 a contract to operate, a secure community transition facility except
3 the step-down facility established pursuant to section 201 of this act,
4 the secure community transition facility may be operated only after the
5 public notification and opportunities for review and comment as
6 required by this section.

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

12 (a) If there are more than three sites initially selected as
13 potential locations and the selection process by the secretary or a
14 service provider reduces the number of possible sites for a secure
15 community transition facility to no fewer than three, the secretary or
16 the chief operating officer of the service provider shall notify the
17 public of the possible siting and hold at least two public hearings in
18 each community where a secure community transition facility may be
19 sited.

20 (b) When the secretary or service provider has determined the
21 secure community transition facility's location, the secretary or the
22 chief operating officer of the service provider shall hold at least one
23 additional public hearing in the community where the secure community
24 transition facility will be sited.

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

28 (d) To provide adequate notice of, and opportunity for interested
29 persons to comment on, a proposed location, the secretary or the chief
30 operating officer of the service provider shall provide at least
31 fourteen days' advance notice of the meeting to all newspapers of
32 general circulation in the community, all radio and television stations
33 generally available to persons in the community, any school district in
34 which the secure community transition facility would be sited or whose
35 boundary is within two miles of a proposed secure community transition
36 facility, any library district in which the secure community transition
37 facility would be sited, local business or fraternal organizations that
38 request notification from the secretary or agency, and any person or
39 property owner within a one-half mile radius of the proposed secure

1 community transition facility. Before initiating this process, the
2 department of social and health services shall contact local government
3 planning agencies in the communities containing the proposed secure
4 community transition facility. The department of social and health
5 services shall coordinate with local government agencies to ensure that
6 opportunities are provided for effective citizen input and to reduce
7 the duplication of notice and meetings.

8 (3) This section applies only to secure community transition
9 facilities sited after the effective date of this section.

10 NEW SECTION. **Sec. 221.** A new section is added to chapter 36.70A
11 RCW to read as follows:

12 (1) The department of social and health services shall prepare a
13 projected list of counties in which secure community transition
14 facilities will need to be sited over the next six years and transmit
15 that to the office of financial management for inclusion on the list of
16 projected essential public facilities kept under RCW 36.70A.200.

17 (2) When a county is notified by the department of social and
18 health services of the projected need to site secure community
19 transition facilities, the county shall review and shall, if necessary,
20 take action to revise the countywide planning policies adopted under
21 RCW 36.70A.210 to address the siting of such facilities. The county
22 must include all cities in such review and must solicit the
23 participation of the department of social and health services regarding
24 policies, statutes, and rules applicable to the siting of secure
25 community transition facilities.

26 (3) Each county and city identified in the countywide planning
27 policies developed under subsection (2) of this section for projected
28 siting of secure community transition facilities within such county or
29 city shall make any necessary revisions to its comprehensive plan and
30 development regulations. The provisions of the comprehensive plan and
31 development regulations shall be consistent with the policies,
32 statutes, and rules applicable to the siting of secure community
33 transition facilities. Any amendments may be combined with the next
34 scheduled adoption of revisions, but in any event not later than the
35 date provided for comprehensive review and revision of plans pursuant
36 to RCW 36.70A.130(1).

37 (4) Nothing in this section precludes a local government from
38 requiring that a special use or a conditional use permit be obtained to

1 site a secure community transition facility that does not comply with
2 its comprehensive plan and development regulations, provided that the
3 comprehensive plan and development regulations are consistent with this
4 section. The local government shall establish timelines for processing
5 any required permits that are no longer than those established for
6 other comparable project permits under RCW 36.70B.080.

7 NEW SECTION. **Sec. 222.** A new section is added to chapter 36.70
8 RCW to read as follows:

9 Counties planning under this chapter must adopt a countywide
10 planning policy for the siting of secure community transition
11 facilities that complies with the timelines and requirements of section
12 221 of this act.

13 **Sec. 223.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
14 read as follows:

15 (1) The comprehensive plan of each county and city that is planning
16 under this chapter shall include a process for identifying and siting
17 essential public facilities. Essential public facilities include those
18 facilities that are typically difficult to site, such as airports,
19 state education facilities and state or regional transportation
20 facilities as defined in RCW 47.06.140, state and local correctional
21 facilities, solid waste handling facilities, and in-patient facilities
22 including substance abuse facilities, mental health facilities, ((and))
23 group homes, and secure community transition facilities as defined in
24 RCW 71.09.020.

25 (2) The office of financial management shall maintain a list of
26 those essential state public facilities that are required or likely to
27 be built within the next six years. The office of financial management
28 may at any time add facilities to the list. No local comprehensive
29 plan or development regulation may preclude the siting of essential
30 public facilities.

31 NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09
32 RCW to read as follows:

33 Nothing in this act shall operate to restrict a court's authority
34 to make less restrictive alternative placements to a committed person's
35 individual residence. A court-ordered less restrictive alternative

1 placement to a committed person's individual residence is not a less
2 restrictive placement to a secure community transition facility.

3 **PART III**
4 **SENTENCING STRUCTURE**

5 **Sec. 301.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
6 as follows:

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

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

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

19 ~~((+2))~~ (3) "Commission" means the sentencing guidelines
20 commission.

21 ~~((+3))~~ (4) "Community corrections officer" means an employee of
22 the department who is responsible for carrying out specific duties in
23 supervision of sentenced offenders and monitoring of sentence
24 conditions.

25 ~~((+4))~~ (5) "Community custody" means that portion of an offender's
26 sentence of confinement in lieu of earned release time or imposed
27 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
28 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
29 community subject to controls placed on the offender's movement and
30 activities by the department. For offenders placed on community
31 custody for crimes committed on or after July 1, 2000, the department
32 shall assess the offender's risk of reoffense and may establish and
33 modify conditions of community custody, in addition to those imposed by
34 the court, based upon the risk to community safety.

35 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
36 period of community custody included as part of a sentence under RCW

1 9.94A.715, as established by the commission or the legislature under
2 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

3 ~~((+6))~~ (7) "Community placement" means that period during which
4 the offender is subject to the conditions of community custody and/or
5 postrelease supervision, which begins either upon completion of the
6 term of confinement (postrelease supervision) or at such time as the
7 offender is transferred to community custody in lieu of earned release.
8 Community placement may consist of entirely community custody, entirely
9 postrelease supervision, or a combination of the two.

10 ~~((+7))~~ (8) "Community service" means compulsory service, without
11 compensation, performed for the benefit of the community by the
12 offender.

13 ~~((+8))~~ (9) "Community supervision" means a period of time during
14 which a convicted offender is subject to crime-related prohibitions and
15 other sentence conditions imposed by a court pursuant to this chapter
16 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
17 offender has a chemical dependency that has contributed to his or her
18 offense, the conditions of supervision may, subject to available
19 resources, include treatment. For purposes of the interstate compact
20 for out-of-state supervision of parolees and probationers, RCW
21 9.95.270, community supervision is the functional equivalent of
22 probation and should be considered the same as probation by other
23 states.

24 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

25 ~~((+10))~~ (11) "Conviction" means an adjudication of guilt pursuant
26 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
27 guilty, and acceptance of a plea of guilty.

28 ~~((+11))~~ (12) "Crime-related prohibition" means an order of a court
29 prohibiting conduct that directly relates to the circumstances of the
30 crime for which the offender has been convicted, and shall not be
31 construed to mean orders directing an offender affirmatively to
32 participate in rehabilitative programs or to otherwise perform
33 affirmative conduct. However, affirmative acts necessary to monitor
34 compliance with the order of a court may be required by the department.

35 ~~((+12))~~ (13) "Criminal history" means the list of a defendant's
36 prior convictions and juvenile adjudications, whether in this state, in
37 federal court, or elsewhere. The history shall include, where known,
38 for each conviction (a) whether the defendant has been placed on

1 probation and the length and terms thereof; and (b) whether the
2 defendant has been incarcerated and the length of incarceration.

3 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
4 court that equals the difference between the offender's net daily
5 income and the reasonable obligations that the offender has for the
6 support of the offender and any dependents.

7 ~~((14))~~ (15) "Day reporting" means a program of enhanced
8 supervision designed to monitor the offender's daily activities and
9 compliance with sentence conditions, and in which the offender is
10 required to report daily to a specific location designated by the
11 department or the sentencing court.

12 ~~((15))~~ (16) "Department" means the department of corrections.

13 ~~((16))~~ (17) "Determinate sentence" means a sentence that states
14 with exactitude the number of actual years, months, or days of total
15 confinement, of partial confinement, of community supervision, the
16 number of actual hours or days of community service work, or dollars or
17 terms of a legal financial obligation. The fact that an offender
18 through earned release can reduce the actual period of confinement
19 shall not affect the classification of the sentence as a determinate
20 sentence.

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

33 ~~((18))~~ (19) "Drug offender sentencing alternative" is a
34 sentencing option available to persons convicted of a felony offense
35 other than a violent offense or a sex offense and who are eligible for
36 the option under RCW 9.94A.660.

37 ~~((19))~~ (20) "Drug offense" means:

1 (a) Any felony violation of chapter 69.50 RCW except possession of
2 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
3 controlled substance (RCW 69.50.403);

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

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

10 ~~((+20+))~~ (21) "Earned release" means earned release from
11 confinement as provided in RCW 9.94A.150.

12 ~~((+21+))~~ (22) "Escape" means:

13 (a) Sexually violent predator escape (section 357 of this act),
14 escape in the first degree (RCW 9A.76.110), escape in the second degree
15 (RCW 9A.76.120), willful failure to return from furlough (RCW
16 72.66.060), willful failure to return from work release (RCW
17 72.65.070), or willful failure to be available for supervision by the
18 department while in community custody (RCW 72.09.310); or

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

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

23 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
24 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
25 and-run injury-accident (RCW 46.52.020(4)); or

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

29 ~~((+23+))~~ (24) "Fine" means a specific sum of money ordered by the
30 sentencing court to be paid by the offender to the court over a
31 specific period of time.

32 ~~((+24+))~~ (25) "First-time offender" means any person who has no
33 prior convictions for a felony and is eligible for the first-time
34 offender waiver under RCW 9.94A.650.

35 ~~((+25+))~~ (26) "Home detention" means a program of partial
36 confinement available to offenders wherein the offender is confined in
37 a private residence subject to electronic surveillance.

38 ~~((+26+))~~ (27) "Legal financial obligation" means a sum of money
39 that is ordered by a superior court of the state of Washington for

1 legal financial obligations which may include restitution to the
2 victim, statutorily imposed crime victims' compensation fees as
3 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
4 drug funds, court-appointed attorneys' fees, and costs of defense,
5 fines, and any other financial obligation that is assessed to the
6 offender as a result of a felony conviction. Upon conviction for
7 vehicular assault while under the influence of intoxicating liquor or
8 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
9 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
10 legal financial obligations may also include payment to a public agency
11 of the expense of an emergency response to the incident resulting in
12 the conviction, subject to RCW 38.52.430.

13 ~~((27))~~ (28) "Most serious offense" means any of the following
14 felonies or a felony attempt to commit any of the following felonies:

15 (a) Any felony defined under any law as a class A felony or
16 criminal solicitation of or criminal conspiracy to commit a class A
17 felony;

18 (b) Assault in the second degree;

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

20 (d) Child molestation in the second degree;

21 (e) Controlled substance homicide;

22 (f) Extortion in the first degree;

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

24 (h) Indecent liberties;

25 (i) Kidnapping in the second degree;

26 (j) Leading organized crime;

27 (k) Manslaughter in the first degree;

28 (l) Manslaughter in the second degree;

29 (m) Promoting prostitution in the first degree;

30 (n) Rape in the third degree;

31 (o) Robbery in the second degree;

32 (p) Sexual exploitation;

33 (q) Vehicular assault;

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

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

1 (t) Any other felony with a deadly weapon verdict under RCW
2 9.94A.125;

3 (u) Any felony offense in effect at any time prior to December 2,
4 1993, that is comparable to a most serious offense under this
5 subsection, or any federal or out-of-state conviction for an offense
6 that under the laws of this state would be a felony classified as a
7 most serious offense under this subsection;

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

13 (ii) A prior conviction for indecent liberties under RCW
14 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
15 if: (A) The crime was committed against a child under the age of
16 fourteen; or (B) the relationship between the victim and perpetrator is
17 included in the definition of indecent liberties under RCW
18 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
19 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
20 through July 27, 1997.

21 (~~(28)~~) (29) "Nonviolent offense" means an offense which is not a
22 violent offense.

23 (~~(29)~~) (30) "Offender" means a person who has committed a felony
24 established by state law and is eighteen years of age or older or is
25 less than eighteen years of age but whose case is under superior court
26 jurisdiction under RCW 13.04.030 or has been transferred by the
27 appropriate juvenile court to a criminal court pursuant to RCW
28 13.40.110. Throughout this chapter, the terms "offender" and
29 "defendant" are used interchangeably.

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

38 (~~(31)~~) (32) "Persistent offender" is an offender who:

1 (a)(i) Has been convicted in this state of any felony considered a
2 most serious offense; and
3 (ii) Has, before the commission of the offense under (a) of this
4 subsection, been convicted as an offender on at least two separate
5 occasions, whether in this state or elsewhere, of felonies that under
6 the laws of this state would be considered most serious offenses and
7 would be included in the offender score under RCW 9.94A.360; provided
8 that of the two or more previous convictions, at least one conviction
9 must have occurred before the commission of any of the other most
10 serious offenses for which the offender was previously convicted; or
11 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
12 of a child in the first degree, child molestation in the first degree,
13 rape in the second degree, rape of a child in the second degree, or
14 indecent liberties by forcible compulsion; (B) any of the following
15 offenses with a finding of sexual motivation: Murder in the first
16 degree, murder in the second degree, homicide by abuse, kidnapping in
17 the first degree, kidnapping in the second degree, assault in the first
18 degree, assault in the second degree, assault of a child in the first
19 degree, or burglary in the first degree~~((, with a finding of sexual~~
20 ~~motivation))~~; or (C) an attempt to commit any crime listed in this
21 subsection ~~((+31+))~~ (32)(b)(i); and
22 (ii) Has, before the commission of the offense under (b)(i) of this
23 subsection, been convicted as an offender on at least one occasion,
24 whether in this state or elsewhere, of an offense listed in (b)(i) of
25 this subsection. A conviction for rape of a child in the first degree
26 constitutes a conviction under (b)(i) of this subsection only when the
27 offender was sixteen years of age or older when the offender committed
28 the offense. A conviction for rape of a child in the second degree
29 constitutes a conviction under (b)(i) of this subsection only when the
30 offender was eighteen years of age or older when the offender committed
31 the offense.
32 ~~((+32+))~~ (33) "Postrelease supervision" is that portion of an
33 offender's community placement that is not community custody.
34 ~~((+33+))~~ (34) "Predatory" means acts directed towards:
35 (a) Strangers;
36 (b) Individuals with whom a relationship has been established or
37 promoted for the primary purpose of victimization; or
38 (c) Persons of casual acquaintance with whom no substantial
39 relationship exists.

1 (35) "Restitution" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (~~(34)~~) (36) "Risk assessment" means the application of an
6 objective instrument supported by research and adopted by the
7 department for the purpose of assessing an offender's risk of
8 reoffense, taking into consideration the nature of the harm done by the
9 offender, place and circumstances of the offender related to risk, the
10 offender's relationship to any victim, and any information provided to
11 the department by victims. The results of a risk assessment shall not
12 be based on unconfirmed or unconfirmable allegations.

13 (~~(35)~~) (37) "Serious traffic offense" means:

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

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

22 (~~(36)~~) (38) "Serious violent offense" is a subcategory of violent
23 offense and means:

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

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

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

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

34 (b) 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 serious
36 violent offense under (a) of this subsection.

37 (~~(37)~~) (39) "Sex offense" means:

38 (a) A felony that is a violation of:

39 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);

1 (ii) RCW 9A.64.020;
2 (iii) RCW 9.68A.090; or
3 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
4 criminal solicitation, or criminal conspiracy to commit such crimes;
5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a sex
7 offense in (a) of this subsection;
8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or
10 (d) Any federal or out-of-state conviction for an offense that
11 under the laws of this state would be a felony classified as a sex
12 offense under (a) of this subsection.
13 ~~((+38+))~~ (40) "Sexual motivation" means that one of the purposes
14 for which the defendant committed the crime was for the purpose of his
15 or her sexual gratification.
16 ~~((+39+))~~ (41) "Standard sentence range" means the sentencing
17 court's discretionary range in imposing a nonappealable sentence.
18 ~~((+40+))~~ (42) "Statutory maximum sentence" means the maximum length
19 of time for which an offender may be confined as punishment for a crime
20 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
21 the crime, or other statute defining the maximum penalty for a crime.
22 ~~((+41+))~~ (43) "Total confinement" means confinement inside the
23 physical boundaries of a facility or institution operated or utilized
24 under contract by the state or any other unit of government for twenty-
25 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
26 ~~((+42+))~~ (44) "Transition training" means written and verbal
27 instructions and assistance provided by the department to the offender
28 during the two weeks prior to the offender's successful completion of
29 the work ethic camp program. The transition training shall include
30 instructions in the offender's requirements and obligations during the
31 offender's period of community custody.
32 ~~((+43+))~~ (45) "Victim" means any person who has sustained
33 emotional, psychological, physical, or financial injury to person or
34 property as a direct result of the crime charged.
35 ~~((+44+))~~ (46) "Violent offense" means:
36 (a) Any of the following felonies:
37 (i) Any felony defined under any law as a class A felony or an
38 attempt to commit a class A felony;

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

3 (iii) Manslaughter in the first degree;

4 (iv) Manslaughter in the second degree;

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

6 (vi) Kidnapping in the second degree;

7 (vii) Arson in the second degree;

8 (viii) Assault in the second degree;

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

10 (x) Extortion in the first degree;

11 (xi) Robbery in the second degree;

12 (xii) Drive-by shooting;

13 (xiii) Vehicular assault; and

14 (xiv) Vehicular homicide, when proximately caused by the driving of
15 any vehicle by any person while under the influence of intoxicating
16 liquor or any drug as defined by RCW 46.61.502, or by the operation of
17 any vehicle in a reckless manner;

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

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

24 (~~(45)~~) (47) "Work crew" means a program of partial confinement
25 consisting of civic improvement tasks for the benefit of the community
26 that complies with RCW 9.94A.135.

27 (~~(46)~~) (48) "Work ethic camp" means an alternative incarceration
28 program as provided in RCW 9.94A.137 designed to reduce recidivism and
29 lower the cost of corrections by requiring offenders to complete a
30 comprehensive array of real-world job and vocational experiences,
31 character-building work ethics training, life management skills
32 development, substance abuse rehabilitation, counseling, literacy
33 training, and basic adult education.

34 (~~(47)~~) (49) "Work release" means a program of partial confinement
35 available to offenders who are employed or engaged as a student in a
36 regular course of study at school.

37 **Sec. 302.** RCW 9.94A.715 and 2000 c 28 s 25 are each amended to
38 read as follows:

1 (1) When a court sentences a person to the custody of the
2 department for a sex offense not sentenced under section 303 of this
3 act, a violent offense, any crime against persons under RCW
4 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not
5 sentenced under RCW 9.94A.660, committed on or after July 1, 2000, the
6 court shall in addition to the other terms of the sentence, sentence
7 the offender to community custody for the community custody range
8 established under RCW 9.94A.040 or up to the period of earned release
9 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.
10 The community custody shall begin either upon completion of the term of
11 confinement or at such time as the offender is transferred to community
12 custody in lieu of earned release in accordance with RCW 9.94A.150 (1)
13 and (2).

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

22 (b) As part of any sentence that includes a term of community
23 custody imposed under this subsection, the court shall also require the
24 offender to comply with any conditions imposed by the department under
25 RCW 9.94A.720. The department shall assess the offender's risk of
26 reoffense and may establish and modify additional conditions of the
27 offender's community custody based upon the risk to community safety.
28 In addition, the department may require the offender to participate in
29 rehabilitative programs, or otherwise perform affirmative conduct, and
30 to obey all laws.

31 (c) The department may not impose conditions that are contrary to
32 those ordered by the court and may not contravene or decrease court_
33 imposed conditions. The department shall notify the offender in
34 writing of any such conditions or modifications. In setting,
35 modifying, and enforcing conditions of community custody, the
36 department shall be deemed to be performing a quasi-judicial function.

37 (3) If an offender violates conditions imposed by the court or the
38 department pursuant to this section during community custody, the
39 department may transfer the offender to a more restrictive confinement

1 status and impose other available sanctions as provided in RCW
2 9.94A.205 and 9.94A.207.

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

8 (5) At any time prior to the completion or termination of a sex
9 offender's term of community custody, if the court finds that public
10 safety would be enhanced, the court may impose and enforce an order
11 extending any or all of the conditions imposed pursuant to this section
12 for a period up to the maximum allowable sentence for the crime as it
13 is classified in chapter 9A.20 RCW, regardless of the expiration of the
14 offender's term of community custody. If a violation of a condition
15 extended under this subsection occurs after the expiration of the
16 offender's term of community custody, it shall be deemed a violation of
17 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
18 contempt of court as provided for in RCW 7.21.040. If the court
19 extends a condition beyond the expiration of the term of community
20 custody, the department is not responsible for supervision of the
21 offender's compliance with the condition.

22 (6) Within the funds available for community custody, the
23 department shall determine conditions and duration of community custody
24 on the basis of risk to community safety, and shall supervise offenders
25 during community custody on the basis of risk to community safety and
26 conditions imposed by the court. The secretary shall adopt rules to
27 implement the provisions of this subsection.

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

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

1 (1)(a) Except when (b) of this subsection applies, an offender who
2 is not a persistent offender shall be sentenced under this section if
3 the offender has:

4 (i) Been convicted of:

5 (A) Rape in the first degree or rape in the second degree;

6 (B) Rape of a child in the first degree, child molestation in the
7 first degree, or rape of a child in the second degree, with a finding
8 that the offense was predatory or where the offender used forcible
9 compulsion to commit the crime;

10 (C) Indecent liberties by forcible compulsion;

11 (D) Any of the following offenses with a finding of sexual
12 motivation: Murder in the first degree, murder in the second degree,
13 homicide by abuse, kidnapping in the first degree, kidnapping in the
14 second degree, assault in the first degree, assault in the second
15 degree, assault of a child in the first degree, or burglary in the
16 first degree; or

17 (E) An attempt to commit any crime listed in this subsection
18 (1)(a)(i);

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

20 (ii) A prior conviction for an offense listed in RCW
21 9.94A.030(32)(b), and is convicted of any sex offense, which the trier
22 of fact finds was predatory and which was committed after the effective
23 date of this section.

24 (b) An offender convicted of rape of a child in the first or second
25 degree who was seventeen years of age or younger at the time of the
26 offense shall not be sentenced under this section unless the trier of
27 fact finds that the offense was predatory or committed using forcible
28 compulsion.

29 For purposes of (a)(ii) of this subsection, failure to register is
30 not a sex offense.

31 (2) Upon a finding that the offender is subject to sentencing under
32 this section, the court shall impose a sentence to a maximum term
33 consisting of the statutory maximum sentence for the offense and a
34 minimum term either within the standard sentence range for the offense,
35 or outside the standard sentence range pursuant to RCW 9.94A.390, if
36 the offender is otherwise eligible for such a sentence.

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

1 (4) When a court sentences a person to the custody of the
2 department under this section, the court shall, in addition to the
3 other terms of the sentence, sentence the offender to community custody
4 under the supervision of the department and the authority of the board
5 for any period of time the person is released from total confinement
6 before the expiration of the maximum sentence.

7 (5)(a) Unless a condition is waived by the court, the conditions of
8 community custody shall include those provided for in RCW 9.94A.700(4).
9 The conditions may also include those provided for in RCW 9.94A.700(5).
10 The court may also order the offender to participate in rehabilitative
11 programs or otherwise perform affirmative conduct reasonably related to
12 the circumstances of the offense, the offender's risk of reoffending,
13 or the safety of the community, and the department and the board shall
14 enforce such conditions pursuant to sections 305, 308, and 309 of this
15 act.

16 (b) As part of any sentence under this section, the court shall
17 also require the offender to comply with any conditions imposed by the
18 board under sections 305 and 307 through 310 of this act.

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

21 (1) The prosecuting attorney shall file a special allegation that
22 the offense was predatory and may file a special allegation that the
23 offense was committed by forcible compulsion in every criminal case in
24 which the defendant is charged with rape of a child in the first or
25 second degree, child molestation in the first degree, or in any sex
26 offense when the offender has a prior conviction for an offense listed
27 in RCW 9.94A.030(32)(b), when sufficient admissible evidence exists,
28 which, when considered with the most plausible, reasonably foreseeable
29 defense that could be raised under the evidence, would justify a
30 finding that the offense was predatory or was committed by forcible
31 compulsion by a reasonable and objective fact-finder.

32 (2) In a criminal case wherein there has been a special allegation
33 the state shall prove beyond a reasonable doubt that the offense was
34 predatory. The court shall make a finding of fact of whether or not an
35 offense was predatory or was committed by forcible compulsion, or if a
36 jury trial is had, the jury shall, if it finds the defendant guilty,
37 also find a special verdict as to whether or not the offense was
38 predatory or was committed by forcible compulsion.

1 (3) The prosecuting attorney shall not withdraw the special
2 allegation that an offense was predatory or was committed by forcible
3 compulsion without approval of the court through an order of dismissal
4 of the special allegation. The court shall not dismiss this special
5 allegation unless it finds that such an order is necessary to correct
6 an error in the initial charging decision or unless there are
7 evidentiary problems which make proving the special allegation
8 doubtful.

9 NEW SECTION. **Sec. 305.** A new section is added to chapter 9.94A
10 RCW to read as follows:

11 (1) When an offender is sentenced under section 303 of this act,
12 the department shall assess the offender's risk of recidivism and shall
13 recommend to the board any additional or modified conditions of the
14 offender's community custody based upon the risk to community safety.
15 In addition, the department shall make a recommendation with regard to,
16 and the board may require the offender to participate in,
17 rehabilitative programs, or otherwise perform affirmative conduct, and
18 obey all laws. The board must consider and may impose department-
19 recommended conditions.

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

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

27 (4) If an offender violates conditions imposed by the court, the
28 department, or the board during community custody, the board or the
29 department may transfer the offender to a more restrictive confinement
30 status and impose other available sanctions as provided in section 310
31 of this act.

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

37 (a) The crime of conviction;

38 (b) The offender's risk of reoffending; or

1 (c) The safety of the community.

2 (6) An offender released by the board under section 307 of this act
3 shall be subject to the supervision of the department until the
4 expiration of the maximum term of the sentence. The department shall
5 monitor the offender's compliance with conditions of community custody
6 imposed by the court, department, or board, and promptly report any
7 violations to the board. Any violation of conditions of community
8 custody established or modified by the board shall be subject to the
9 provisions of sections 308 through 311 of this act.

10 (7) If the department finds that an emergency exists requiring the
11 immediate imposition of conditions of release in addition to those set
12 by the board under section 307 of this act and subsection (1) of this
13 section in order to prevent the offender from committing a crime, the
14 department may impose additional conditions. The department may not
15 impose conditions that are contrary to those set by the board or the
16 court and may not contravene or decrease court-imposed or board-imposed
17 conditions. Conditions imposed under this subsection shall take effect
18 immediately after notice to the offender by personal service, but shall
19 not remain in effect longer than seven working days unless approved by
20 the board under subsection (6) of this section within seven working
21 days.

22 NEW SECTION. Sec. 306. A new section is added to chapter 72.09
23 RCW to read as follows:

24 The department shall provide offenders sentenced under section 303
25 of this act with the opportunity for sex offender treatment during
26 incarceration.

27 NEW SECTION. Sec. 307. A new section is added to chapter 9.95 RCW
28 to read as follows:

29 (1)(a) Before the expiration of the minimum term, as part of the
30 end of sentence review process under RCW 72.09.340, 72.09.345, and
31 where appropriate, 72.09.370, the department shall conduct, and the
32 offender shall participate in, an examination of the offender,
33 incorporating methodologies that are recognized by experts in the
34 prediction of sexual dangerousness, and including a prediction of the
35 probability that the offender will engage in sex offenses if released.

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

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

6 (3) No later than ninety days before expiration of the minimum
7 term, but after the board receives the results from the end of sentence
8 review process and the recommendations for additional or modified
9 conditions of community custody from the department, the board shall
10 conduct a hearing to determine whether it is more likely than not that
11 the offender will engage in sex offenses if released on conditions to
12 be set by the board. The board may consider an offender's failure to
13 participate in an evaluation under subsection (1) of this section in
14 determining whether to release the offender. The board shall order the
15 offender released, under such affirmative and other conditions as the
16 board determines appropriate, unless the board determines by a
17 preponderance of the evidence that, despite such conditions, it is more
18 likely than not that the offender will commit sex offenses if released.
19 If the board does not order the offender released, the board shall
20 establish a new minimum term, not to exceed an additional two years.

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

23 (1) Whenever the board or a community corrections officer of this
24 state has reason to believe an offender released under section 307 of
25 this act has violated a condition of community custody or the laws of
26 this state, any community corrections officer may arrest or cause the
27 arrest and detention of the offender pending a determination by the
28 board whether sanctions should be imposed or the offender's community
29 custody should be revoked. The community corrections officer shall
30 report all facts and circumstances surrounding the alleged violation to
31 the board, with recommendations.

32 (2) If the board or the department causes the arrest or detention
33 of an offender for a violation that does not amount to a new crime and
34 the offender is arrested or detained by local law enforcement or in a
35 local jail, the board or department, whichever caused the arrest or
36 detention, shall be financially responsible for local costs. Jail bed
37 costs shall be allocated at the rate established under RCW
38 9.94A.207(3).

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

3 Any offender released under section 307 of this act who is arrested
4 and detained in physical custody by the authority of a community
5 corrections officer, or upon the written order of the board, shall not
6 be released from custody on bail or personal recognizance, except upon
7 approval of the board and the issuance by the board of an order
8 reinstating the offender's release on the same or modified conditions.
9 All chiefs of police, marshals of cities and towns, sheriffs of
10 counties, and all police, prison, and peace officers and constables
11 shall execute any such order in the same manner as any ordinary
12 criminal process.

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

15 (1) If an offender released by the board under section 307 of this
16 act violates any condition or requirement of community custody, the
17 board may transfer the offender to a more restrictive confinement
18 status to serve up to the remaining portion of the sentence, less
19 credit for any period actually spent in community custody or in
20 detention awaiting disposition of an alleged violation and subject to
21 the limitations of subsection (2) of this section.

22 (2) Following the hearing specified in subsection (3) of this
23 section, the board may impose sanctions such as work release, home
24 detention with electronic monitoring, work crew, community service,
25 inpatient treatment, daily reporting, curfew, educational or counseling
26 sessions, supervision enhanced through electronic monitoring, or any
27 other sanctions available in the community, or may suspend or revoke
28 the release to community custody whenever an offender released by the
29 board under section 307 of this act violates any condition or
30 requirement of community custody.

31 (3) If an offender released by the board under section 307 of this
32 act is accused of violating any condition or requirement of community
33 custody, he or she is entitled to a hearing before the board prior to
34 the imposition of sanctions. The hearing shall be considered as
35 offender disciplinary proceedings and shall not be subject to chapter
36 34.05 RCW. The board shall develop hearing procedures and a structure
37 of graduated sanctions consistent with the hearing procedures and
38 graduated sanctions developed pursuant to RCW 9.94A.205. The board may

1 suspend the offender's release to community custody and confine the
2 offender in a correctional institution owned, operated by, or operated
3 under contract with the state prior to the hearing unless the offender
4 has been arrested and confined for a new criminal offense.

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

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

10 (b) The board shall provide the offender with written notice of the
11 violation, the evidence relied upon, and the reasons the particular
12 sanction was imposed. The notice shall include a statement of the
13 rights specified in this subsection, and the offender's right to file
14 a personal restraint petition under court rules after the final
15 decision of the board;

16 (c) The hearing shall be held unless waived by the offender, and
17 shall be electronically recorded. For offenders not in total
18 confinement, the hearing shall be held within fifteen working days, but
19 not less than twenty-four hours after notice of the violation. For
20 offenders in total confinement, the hearing shall be held within five
21 working days, but not less than twenty-four hours after notice of the
22 violation;

23 (d) The offender shall have the right to: (i) Be present at the
24 hearing; (ii) have the assistance of a person qualified to assist the
25 offender in the hearing, appointed by the hearing examiner if the
26 offender has a language or communications barrier; (iii) testify or
27 remain silent; (iv) call witnesses and present documentary evidence;
28 (v) question witnesses who appear and testify; and (vi) be represented
29 by counsel if revocation of the release to community custody is a
30 possible sanction for the violation; and

31 (e) The sanction shall take effect if affirmed by the hearing
32 examiner. Within seven days after the hearing examiner's decision, the
33 offender may appeal the decision to a panel of three reviewing
34 examiners designated by the chair of the board or by the chair's
35 designee. The sanction shall be reversed or modified if a majority of
36 the panel finds that the sanction was not reasonably related to any of
37 the following: (i) The crime of conviction; (ii) the violation
38 committed; (iii) the offender's risk of reoffending; or (iv) the safety
39 of the community.

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

3 NEW SECTION. **Sec. 311.** A new section is added to chapter 9.95 RCW
4 to read as follows:

5 In the event the board suspends release status of an offender
6 released under section 307 of this act by reason of an alleged
7 violation of a condition of release, or pending disposition of a new
8 criminal charge, the board may nullify the suspension order and
9 reinstate release under previous conditions or any new conditions the
10 board determines advisable. Before the board may nullify a suspension
11 order and reinstate release, it shall determine that the best interests
12 of society and the offender shall be served by such reinstatement
13 rather than return to confinement.

14 **Sec. 312.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to
15 read as follows:

16 (1) The commission consists of twenty voting members, one of whom
17 the governor shall designate as chairperson. With the exception of ex
18 officio voting members, the voting members of the commission shall be
19 appointed by the governor, subject to confirmation by the senate.

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

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

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

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

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

31 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

8 In making the appointments, the governor shall endeavor to assure
9 that the commission membership includes adequate representation and
10 expertise relating to both the adult criminal justice system and the
11 juvenile justice system. In making the appointments, the governor
12 shall seek the recommendations of Washington prosecutors in respect to
13 the prosecuting attorney members, of the Washington state bar
14 association in respect to the defense attorney members, of the
15 association of superior court judges in respect to the members who are
16 judges, of the Washington association of sheriffs and police chiefs in
17 respect to the member who is a law enforcement officer, of the
18 Washington state association of counties in respect to the member who
19 is a county official, of the association of Washington cities in
20 respect to the member who is a city official, of the office of crime
21 victims advocacy and other organizations of crime victims in respect to
22 the member who is a victim of crime or a crime victims' advocate, and
23 of the Washington association of juvenile court administrators in
24 respect to the member who is an administrator of juvenile court
25 services.

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

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

33 (4) The speaker of the house of representatives and the president
34 of the senate may each appoint two nonvoting members to the commission,
35 one from each of the two largest caucuses in each house. The members
36 so appointed shall serve two-year terms, or until they cease to be
37 members of the house from which they were appointed, whichever occurs
38 first.

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

6 **Sec. 313.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and
7 2000 c 28 s 5 are each reenacted and amended to read as follows:

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

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

12 (i) Unless another term of confinement applies, the court shall
13 impose a sentence within the standard sentence range established in RCW
14 9.94A.310;

15 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

16 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

17 (iv) RCW 9.94A.383, relating to community custody for offenders
18 whose term of confinement is one year or less;

19 (v) RCW 9.94A.560, relating to persistent offenders;

20 (vi) RCW 9.94A.590, relating to mandatory minimum terms;

21 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

22 (viii) RCW 9.94A.660, relating to the drug offender sentencing
23 alternative;

24 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
25 alternative;

26 (x) Section 303 of this act, relating to certain sex offenses;

27 (xi) RCW 9.94A.390, relating to exceptional sentences;

28 (~~(xi)~~) (xii) RCW 9.94A.400, relating to consecutive and
29 concurrent sentences.

30 (b) If a standard sentence range has not been established for the
31 offender's crime, the court shall impose a determinate sentence which
32 may include not more than one year of confinement; community service
33 work; until July 1, 2000, a term of community supervision not to exceed
34 one year and on and after July 1, 2000, a term of community custody not
35 to exceed one year, subject to conditions and sanctions as authorized
36 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
37 The court may impose a sentence which provides more than one year of

1 confinement if the court finds reasons justifying an exceptional
2 sentence as provided in RCW 9.94A.390.

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

9 (4) If a sentence imposed includes payment of a legal financial
10 obligation, it shall be imposed as provided in RCW 9.94A.140,
11 9.94A.142, and 9.94A.145.

12 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
13 court may not impose a sentence providing for a term of confinement or
14 community supervision, community placement, or community custody which
15 exceeds the statutory maximum for the crime as provided in chapter
16 9A.20 RCW.

17 (6) The sentencing court shall give the offender credit for all
18 confinement time served before the sentencing if that confinement was
19 solely in regard to the offense for which the offender is being
20 sentenced.

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

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

26 (9) The court may order an offender whose sentence includes
27 community placement or community supervision to undergo a mental status
28 evaluation and to participate in available outpatient mental health
29 treatment, if the court finds that reasonable grounds exist to believe
30 that the offender is a mentally ill person as defined in RCW 71.24.025,
31 and that this condition is likely to have influenced the offense. An
32 order requiring mental status evaluation or treatment must be based on
33 a presentence report and, if applicable, mental status evaluations that
34 have been filed with the court to determine the offender's competency
35 or eligibility for a defense of insanity. The court may order
36 additional evaluations at a later date if deemed appropriate.

37 (10) In any sentence of partial confinement, the court may require
38 the offender to serve the partial confinement in work release, in a

1 program of home detention, on work crew, or in a combined program of
2 work crew and home detention.

3 (11) In sentencing an offender convicted of a crime of domestic
4 violence, as defined in RCW 10.99.020, if the offender has a minor
5 child, or if the victim of the offense for which the offender was
6 convicted has a minor child, the court may, as part of any term of
7 community supervision, community placement, or community custody, order
8 the offender to participate in a domestic violence perpetrator program
9 approved under RCW 26.50.150.

10 **Sec. 314.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
11 as follows:

12 (1) A sentence that includes a term or terms of confinement
13 totaling more than one year shall be served in a facility or
14 institution operated, or utilized under contract, by the state. Except
15 as provided in subsection (3) or (5) of this section, a sentence of not
16 more than one year of confinement shall be served in a facility
17 operated, licensed, or utilized under contract, by the county, or if
18 home detention or work crew has been ordered by the court, in the
19 residence of either the offender or a member of the offender's
20 immediate family.

21 (2) If a county uses a state partial confinement facility for the
22 partial confinement of a person sentenced to confinement for not more
23 than one year, the county shall reimburse the state for the use of the
24 facility as provided in this subsection. The office of financial
25 management shall set the rate of reimbursement based upon the average
26 per diem cost per offender in the facility. The office of financial
27 management shall determine to what extent, if any, reimbursement shall
28 be reduced or eliminated because of funds provided by the legislature
29 to the department for the purpose of covering the cost of county use of
30 state partial confinement facilities. The office of financial
31 management shall reestablish reimbursement rates each even-numbered
32 year.

33 (3) A person who is sentenced for a felony to a term of not more
34 than one year, and who is committed or returned to incarceration in a
35 state facility on another felony conviction, either under the
36 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter
37 shall serve all terms of confinement, including a sentence of not more
38 than one year, in a facility or institution operated, or utilized under

1 contract, by the state, consistent with the provisions of RCW
2 9.94A.400.

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

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

10 **Sec. 315.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
11 as follows:

12 The court may impose a sentence outside the standard sentence range
13 for an offense if it finds, considering the purpose of this chapter,
14 that there are substantial and compelling reasons justifying an
15 exceptional sentence. Whenever a sentence outside the standard
16 sentence range is imposed, the court shall set forth the reasons for
17 its decision in written findings of fact and conclusions of law. A
18 sentence outside the standard sentence range shall be a determinate
19 sentence unless it is imposed on an offender sentenced under section
20 303 of this act. An exceptional sentence imposed on an offender
21 sentenced under section 303 of this act shall be to a minimum term set
22 by the court and a maximum term equal to the statutory maximum sentence
23 for the offense of conviction under chapter 9A.20 RCW.

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

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

32 The following are illustrative factors which the court may consider
33 in the exercise of its discretion to impose an exceptional sentence.
34 The following are illustrative only and are not intended to be
35 exclusive reasons for exceptional sentences.

36 (1) Mitigating Circumstances

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

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

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

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

9 (e) The defendant's capacity to appreciate the wrongfulness of his
10 or her conduct, or to conform his or her conduct to the requirements of
11 the law, was significantly impaired. Voluntary use of drugs or alcohol
12 is excluded.

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

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

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

22 (2) Aggravating Circumstances

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

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

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

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

33 (i) The current offense involved multiple victims or multiple
34 incidents per victim;

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

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

1 (iv) The defendant used his or her position of trust, confidence,
2 or fiduciary responsibility to facilitate the commission of the current
3 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (k) The offense resulted in the pregnancy of a child victim of
9 rape.

10 (l) The defendant knew that the victim of the current offense was
11 a youth who was not residing with a legal custodian and the defendant
12 established or promoted the relationship for the primary purpose of
13 victimization.

14 NEW SECTION. Sec. 316. A new section is added to chapter 9.95 RCW
15 to read as follows:

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

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

23 (3) "Crime-related prohibition" has the meaning defined in RCW
24 9.94A.030.

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

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

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

32 **Sec. 317.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read
33 as follows:

34 The board shall meet at (~~the penitentiary and the reformatory~~)
35 major state correctional institutions at such times as may be necessary
36 for a full and complete study of the cases of all convicted persons
37 whose durations of confinement are to be determined by it (~~(or)~~)i whose

1 community custody supervision is under the board's authority; or whose
2 applications for parole come before it. Other times and places of
3 meetings may also be fixed by the board.

4 The superintendents of the different institutions shall provide
5 suitable quarters for the board and assistants while in the discharge
6 of their duties.

7 **Sec. 318.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read
8 as follows:

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

16 The maximum term to be fixed by the court shall be the maximum
17 provided by law for the crime of which such person was convicted, if
18 the law provides for a maximum term. If the law does not provide a
19 maximum term for the crime of which such person was convicted the court
20 shall fix such maximum term, which may be for any number of years up to
21 and including life imprisonment but in any case where the maximum term
22 is fixed by the court it shall be fixed at not less than twenty years.

23 **Sec. 319.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read
24 as follows:

25 (1) When the court commits a convicted person to the department of
26 corrections on or after July 1, 1986, for an offense committed before
27 July 1, 1984, the court shall, at the time of sentencing or revocation
28 of probation, fix the minimum term. The term so fixed shall not exceed
29 the maximum sentence provided by law for the offense of which the
30 person is convicted.

31 The court shall attempt to set the minimum term reasonably
32 consistent with the purposes, standards, and sentencing ranges adopted
33 under RCW 9.94A.040, but the court is subject to the same limitations
34 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
35 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
36 court's minimum term decision is subject to review to the same extent
37 as a minimum term decision by the parole board before July 1, 1986.

1 Thereafter, the expiration of the minimum term set by the court
2 minus any time credits earned under RCW 9.95.070 and 9.95.110
3 constitutes the parole eligibility review date, at which time the board
4 may consider the convicted person for parole under RCW 9.95.100 and
5 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
6 board's authority to reduce or increase the minimum term, once set by
7 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
8 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

9 (2) Not less than ninety days prior to the expiration of the
10 minimum term of a person sentenced under section 303 of this act, for
11 a sex offense committed on or after July 1, 2001, less any time credits
12 permitted by statute, the board shall review the person for conditional
13 release to community custody as provided in section 307 of this act.
14 If the board does not release the person, it shall set a new minimum
15 term not to exceed two years. The board shall review the person again
16 not less than ninety days prior to the expiration of the new minimum
17 term.

18 **Sec. 320.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to
19 read as follows:

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

23 The proposed criteria should take into consideration RCW
24 9.95.009(2). Before submission to the governor, the board shall
25 solicit comments and review on their proposed criteria for parole
26 release. These proposed criteria shall be submitted for consideration
27 by the 1987 legislature.

28 (2) Persons committed to the department of corrections and who are
29 under the authority of the board for crimes committed on or after July
30 1, 2001, are subject to the provisions for duration of confinement,
31 release to community custody, and length of community custody
32 established in sections 303 through 311 of this act.

33 **Sec. 321.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read
34 as follows:

35 If the sentence of a person so convicted is not suspended by the
36 court, the superintendent of (~~the penitentiary or the superintendent~~
37 ~~of the reformatory)) a major state correctional institution shall~~

1 receive such person, if committed to his or her institution, and
2 imprison ((him)) the person until released under the provisions of this
3 chapter, under section 307 of this act, upon the completion of the
4 statutory maximum sentence, or through the action of the governor.

5 **Sec. 322.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read
6 as follows:

7 Such statement shall be signed by the prosecuting attorney and
8 approved by the judge by whom the judgment was rendered and shall be
9 delivered to the sheriff, traveling guard, department of corrections
10 personnel, or other officer executing the sentence, and a copy of such
11 statement shall be furnished to the defendant or his or her attorney.
12 Such officer shall deliver the statement, at the time of the prisoner's
13 commitment, to the superintendent of the institution to which such
14 prisoner has been ((sentenced and)) committed. The superintendent
15 shall make such statement available for use by the board ((of prison
16 terms and paroles)).

17 **Sec. 323.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to
18 read as follows:

19 At any time after the board (or the court after July 1, 1986) has
20 determined the minimum term of confinement of any person subject to
21 confinement in a state correctional institution for a crime committed
22 before July 1, 1984, the board may request the superintendent of such
23 correctional institution to conduct a full review of such person's
24 prospects for rehabilitation and report to the board the facts of such
25 review and the resulting findings. Upon the basis of such report and
26 such other information and investigation that the board deems
27 appropriate, the board may redetermine and refix such convicted
28 person's minimum term of confinement whether the term was set by the
29 board or the court.

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

33 **Sec. 324.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read
34 as follows:

35 The indeterminate sentence review board is hereby granted
36 authority, in the event of a declaration by the governor that a war

1 emergency exists, including a general mobilization, and for the
2 duration thereof only, to reduce downward the minimum term, as set by
3 the board, of any inmate under the jurisdiction of the board confined
4 in a state correctional facility, who will be accepted by and inducted
5 into the armed services: PROVIDED, That a reduction downward shall not
6 be made under this section for those inmates who are confined for
7 treason, murder in the first degree or carnal knowledge of a female
8 child under ten years: AND PROVIDED FURTHER, That no such inmate shall
9 be released under this section who is (~~found to be a sexual psychopath~~
10 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being
11 considered for civil commitment as a sexually violent predator under
12 chapter 71.09 RCW or was sentenced under section 303 of this act for a
13 crime committed on or after July 1, 2001.

14 **Sec. 325.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read
15 as follows:

16 (1) In order to minimize the trauma to the victim, the court may
17 attach conditions on release of (~~a defendant~~) an offender under RCW
18 9.95.062, convicted of a crime committed before July 1, 1984, regarding
19 the whereabouts of the defendant, contact with the victim, or other
20 conditions.

21 (2) Offenders released under section 307 of this act are subject to
22 crime-related prohibitions and affirmative conditions established by
23 the court, the department of corrections, or the board pursuant to RCW
24 9.94A.715 and sections 303 through 311 of this act.

25 **Sec. 326.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to
26 read as follows:

27 (1) Every prisoner, convicted of a crime committed before July 1,
28 1984, who has a favorable record of conduct at the penitentiary or the
29 reformatory, and who performs in a faithful, diligent, industrious,
30 orderly and peaceable manner the work, duties, and tasks assigned to
31 him or her to the satisfaction of the superintendent of the
32 penitentiary or reformatory, and in whose behalf the superintendent of
33 the penitentiary or reformatory files a report certifying that his or
34 her conduct and work have been meritorious and recommending allowance
35 of time credits to him or her, shall upon, but not until, the adoption
36 of such recommendation by the indeterminate sentence review board, be

1 allowed time credit reductions from the term of imprisonment fixed by
2 the board.

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

6 **Sec. 327.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read
7 as follows:

8 In case any (~~convicted~~) person convicted of a crime committed
9 before July 1, 1984, and under the jurisdiction of the indeterminate
10 sentence review board undergoing sentence in a state correctional
11 (facility) institution commits any infractions of the rules and
12 regulations of the institution, the board may revoke any order
13 theretofore made determining the length of time such convicted person
14 shall be imprisoned, including the forfeiture of all or a portion of
15 credits earned or to be earned, pursuant to the provisions of RCW
16 9.95.110, and make a new order determining the length of time the
17 person shall serve, not exceeding the maximum penalty provided by law
18 for the crime for which the person was convicted, or the maximum fixed
19 by the court. Such revocation and redetermination shall not be had
20 except upon a hearing before the indeterminate sentence review board.
21 At such hearing the convicted person shall be present and entitled to
22 be heard and may present evidence and witnesses in his or her behalf.

23 **Sec. 328.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to
24 read as follows:

25 (1) The board shall require of every able bodied (~~convicted person~~
26 imprisoned in the penitentiary or the reformatory)) offender confined
27 in a state correctional institution for a crime committed before July
28 1, 1984, as many hours of faithful labor in each and every day during
29 his or her term of imprisonment as shall be prescribed by the rules and
30 regulations of the institution in which he or she is confined.

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

35 **Sec. 329.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to
36 read as follows:

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

12 **Sec. 330.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to
13 read as follows:

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

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

27 (2) The board may permit an offender convicted of a crime committed
28 on or after July 1, 2001, and sentenced under section 303 of this act,
29 to leave a state correctional institution on community custody
30 according to the provisions of sections 303 through 311 of this act.
31 The person may be returned to the institution following a violation of
32 his or her conditions of release to community custody pursuant to the
33 hearing provisions of section 310 of this act.

34 **Sec. 331.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read
35 as follows:

36 The indeterminate sentence review board is hereby granted authority
37 to parole any person sentenced to the custody of the department of

1 corrections, under a mandatory life sentence for a crime committed
2 (~~prior to~~) before July 1, 1984, except those persons sentenced to
3 life without the possibility of parole. No such person shall be
4 granted parole unless the person has been continuously confined therein
5 for a period of twenty consecutive years less earned good time:
6 PROVIDED, That no such person shall be released under parole who is
7 (~~found to be a sexual psychopath under the provisions of and as~~
8 ~~defined by chapter 71.06 RCW~~) subject to civil commitment as a
9 sexually violent predator under chapter 71.09 RCW.

10 **Sec. 332.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to
11 read as follows:

12 Whenever the board or a (~~probation and parole~~) community
13 corrections officer of this state has reason to believe a (~~convicted~~)
14 person convicted of a crime committed before July 1, 1984, has breached
15 a condition of his or her parole or violated the law of any state where
16 he or she may then be or the rules and regulations of the board, any
17 (~~probation and parole~~) community corrections officer of this state
18 may arrest or cause the arrest and detention and suspension of parole
19 of such convicted person pending a determination by the board whether
20 the parole of such convicted person shall be revoked. All facts and
21 circumstances surrounding the violation by such convicted person shall
22 be reported to the board by the (~~probation and parole~~) community
23 corrections officer, with recommendations. The board, after
24 consultation with the secretary of corrections, shall make all rules
25 and regulations concerning procedural matters, which shall include the
26 time when state (~~probation and parole~~) community corrections officers
27 shall file with the board reports required by this section, procedures
28 pertaining thereto and the filing of such information as may be
29 necessary to enable the board to perform its functions under this
30 section. On the basis of the report by the (~~probation and parole~~)
31 community corrections officer, or at any time upon its own discretion,
32 the board may revise or modify the conditions of parole or order the
33 suspension of parole by the issuance of a written order bearing its
34 seal, which order shall be sufficient warrant for all peace officers to
35 take into custody any convicted person who may be on parole and retain
36 such person in their custody until arrangements can be made by the
37 board for his or her return to a state correctional institution for
38 convicted felons. Any such revision or modification of the conditions

1 of parole or the order suspending parole shall be personally served
2 upon the parolee.

3 Any parolee arrested and detained in physical custody by the
4 authority of a state (~~((probation and parole))~~) community corrections
5 officer, or upon the written order of the board, shall not be released
6 from custody on bail or personal recognizance, except upon approval of
7 the board and the issuance by the board of an order of reinstatement on
8 parole on the same or modified conditions of parole.

9 All chiefs of police, marshals of cities and towns, sheriffs of
10 counties, and all police, prison, and peace officers and constables
11 shall execute any such order in the same manner as any ordinary
12 criminal process.

13 Whenever a paroled prisoner is accused of a violation of his or her
14 parole, other than the commission of, and conviction for, a felony or
15 misdemeanor under the laws of this state or the laws of any state where
16 he or she may then be, he or she shall be entitled to a fair and
17 impartial hearing of such charges within thirty days from the time that
18 he or she is served with charges of the violation of conditions of
19 (~~((his))~~) parole after his or her arrest and detention. The hearing
20 shall be held before one or more members of the board at a place or
21 places, within this state, reasonably near the site of the alleged
22 violation or violations of parole.

23 In the event that the board suspends a parole by reason of an
24 alleged parole violation or in the event that a parole is suspended
25 pending the disposition of a new criminal charge, the board shall have
26 the power to nullify the order of suspension and reinstate the
27 individual to parole under previous conditions or any new conditions
28 that the board may determine advisable. Before the board shall nullify
29 an order of suspension and reinstate a parole they shall have
30 determined that the best interests of society and the individual shall
31 best be served by such reinstatement rather than a return to a penal
32 institution.

33 **Sec. 333.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to
34 read as follows:

35 (1) For offenders convicted of crimes committed before July 1,
36 1984, within fifteen days from the date of notice to the department of
37 corrections of the arrest and detention of the alleged parole violator,
38 he or she shall be personally served by a state (~~((probation and~~

1 parole)) community corrections officer with a copy of the factual
2 allegations of the violation of the conditions of parole, and, at the
3 same time shall be advised of his or her right to an on-site parole
4 revocation hearing and of his or her rights and privileges as provided
5 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after
6 service of the allegations of violations of the conditions of parole
7 and the advice of rights may waive the on-site parole revocation
8 hearing as provided in RCW 9.95.120, and admit one or more of the
9 alleged violations of the conditions of parole. If the board accepts
10 the waiver it shall either, (1) reinstate the parolee on parole under
11 the same or modified conditions, or (2) revoke the parole of the
12 parolee and enter an order of parole revocation and return to state
13 custody. A determination of a new minimum sentence shall be made
14 within thirty days of return to state custody which shall not exceed
15 the maximum sentence as provided by law for the crime of which the
16 parolee was originally convicted or the maximum fixed by the court.

17 If the waiver made by the parolee is rejected by the board it shall
18 hold an on-site parole revocation hearing under the provisions of RCW
19 9.95.120 through 9.95.126.

20 (2) Offenders sentenced under section 303 of this act are subject
21 to the violation hearing process established in section 310 of this
22 act.

23 **Sec. 334.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to
24 read as follows:

25 (1) At any on-site parole revocation hearing for a person convicted
26 of a crime committed before July 1, 1984, the alleged parole violator
27 shall be entitled to be represented by an attorney of his or her own
28 choosing and at his or her own expense, except, upon the presentation
29 of satisfactory evidence of indigency and the request for the
30 appointment of an attorney by the alleged parole violator, the board
31 may cause the appointment of an attorney to represent the alleged
32 parole violator to be paid for at state expense, and, in addition, the
33 board may assume all or such other expenses in the presentation of
34 evidence on behalf of the alleged parole violator as it may have
35 authorized: PROVIDED, That funds are available for the payment of
36 attorneys' fees and expenses. Attorneys for the representation of
37 alleged parole violators in on-site hearings shall be appointed by the
38 superior courts for the counties wherein the on-site parole revocation

1 hearing is to be held and such attorneys shall be compensated in such
2 manner and in such amount as shall be fixed in a schedule of fees
3 adopted by rule of the board.

4 (2) The rights of offenders sentenced under section 303 of this act
5 are defined in section 310 of this act.

6 **Sec. 335.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to
7 read as follows:

8 In conducting on-site parole or community custody revocation
9 hearings or community custody violations hearings, the board shall have
10 the authority to administer oaths and affirmations, examine witnesses,
11 receive evidence, and issue subpoenas for the compulsory attendance of
12 witnesses and the production of evidence for presentation at such
13 hearings. Subpoenas issued by the board shall be effective throughout
14 the state. Witnesses in attendance at any on-site parole or community
15 custody revocation hearing shall be paid the same fees and allowances,
16 in the same manner and under the same conditions as provided for
17 witnesses in the courts of the state in accordance with chapter 2.40
18 RCW (~~as now or hereafter amended~~). If any person fails or refuses to
19 obey a subpoena issued by the board, or obeys the subpoena but refuses
20 to testify concerning any matter under examination at the hearing, the
21 board may petition the superior court of the county where the hearing
22 is being conducted for enforcement of the subpoena: PROVIDED, That an
23 offer to pay statutory fees and mileage has been made to the witness at
24 the time of the service of the subpoena. The petition shall be
25 accompanied by a copy of the subpoena and proof of service, and shall
26 set forth in what specific manner the subpoena has not been complied
27 with, and shall ask an order of the court to compel the witness to
28 appear and testify before the board. The court, upon such petition,
29 shall enter an order directing the witness to appear before the court
30 at a time and place to be fixed in such order and then and there to
31 show cause why he or she has not responded to the subpoena or has
32 refused to testify. A copy of the order shall be served upon the
33 witness. If it appears to the court that the subpoena was properly
34 issued and that the particular questions which the witness refuses to
35 answer are reasonable and relevant, the court shall enter an order that
36 the witness appear at the time and place fixed in the order and testify
37 or produce the required papers, and on failing to obey (~~said~~) the
38 order, the witness shall be dealt with as for contempt of court.

1 **Sec. 336.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to
2 read as follows:

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

20 **Sec. 337.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read
21 as follows:

22 After the on-site parole revocation hearing for a person convicted
23 of a crime committed before July 1, 1984, has been concluded, the
24 members of the board having heard the matter shall enter their decision
25 of record within ten days, and make findings and conclusions upon the
26 allegations of the violations of the conditions of parole. If the
27 member, or members having heard the matter, should conclude that the
28 allegations of violation of the conditions of parole have not been
29 proven by a preponderance of the evidence, or, those which have been
30 proven by a preponderance of the evidence are not sufficient cause for
31 the revocation of parole, then the parolee shall be reinstated on
32 parole on the same or modified conditions of parole. For parole
33 violations not resulting in new convictions, modified conditions of
34 parole may include sanctions according to an administrative sanction
35 grid. If the member or members having heard the matter should conclude
36 that the allegations of violation of the conditions of parole have been
37 proven by a preponderance of the evidence and constitute sufficient
38 cause for the revocation of parole, then such member or members shall

1 enter an order of parole revocation and return the parole violator to
2 state custody. Within thirty days of the return of such parole
3 violator to a state correctional institution (~~((for convicted felons))~~)
4 the board shall enter an order determining a new minimum term not
5 exceeding the maximum penalty provided by law for the crime for which
6 the parole violator was originally convicted or the maximum fixed by
7 the court.

8 **Sec. 338.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read
9 as follows:

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

14 **Sec. 339.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read
15 as follows:

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

23 **Sec. 340.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read
24 as follows:

25 (1) The (~~((indeterminate sentence review))~~) board shall cause a
26 complete record to be kept of every prisoner under the jurisdiction of
27 the board released on parole or community custody. Such records shall
28 be organized in accordance with the most modern methods of filing and
29 indexing so that there will be always immediately available complete
30 information about each such prisoner. Subject to information sharing
31 provisions related to mentally ill offenders, the end of sentence
32 review committee, and the department of corrections, the board may make
33 rules as to the privacy of such records and their use by others than
34 the board and its staff. (~~((In determining the rules regarding~~
35 ~~dissemination of information regarding convicted))~~) Sex offenders
36 convicted of crimes committed before July 1, 1984, who are under the

1 board's jurisdiction(~~(7)~~) shall be subject to the determinations of the
2 end of sentence review committee regarding risk level and subject to
3 sex offender registration and community notification. The board
4 (~~shall consider the provisions of section 116, chapter 3, Laws of 1990~~
5 ~~and RCW 4.24.550 and~~) shall be immune from liability for the release
6 of information concerning sex offenders as provided in RCW 4.24.550.

7 The superintendents of state correctional facilities and all
8 officers and employees thereof and all other public officials shall at
9 all times cooperate with the board and furnish to the board, its
10 officers, and employees such information as may be necessary to enable
11 it to perform its functions, and such superintendents and other
12 employees shall at all times give the members of the board, its
13 officers, and employees free access to all prisoners confined in the
14 state correctional facilities.

15 (2) Offenders sentenced under section 303 of this act shall be
16 subject to the determinations of the end of sentence review committee
17 regarding risk level and subject to sex offender registration and
18 community notification.

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

23 **Sec. 341.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read
24 as follows:

25 The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall
26 apply to all convicted persons serving time in a state correctional
27 facility for crimes committed before July 1, 1984, to the end that at
28 all times the same provisions relating to sentences, imprisonments, and
29 paroles of prisoners shall apply to all inmates thereof.

30 **Sec. 342.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to
31 read as follows:

32 In order to carry out the provisions of this chapter 9.95 RCW the
33 parole officers working under the supervision of the secretary of
34 corrections shall be known as (~~probation and parole~~) community
35 corrections officers.

1 **Sec. 343.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to
2 read as follows:

3 The board may deputize any person (regularly employed by another
4 state) to act as an officer and agent of this state in effecting the
5 return of any person convicted of a crime committed before July 1,
6 1984, who has violated the terms and conditions of parole or probation
7 as granted by this state. In any matter relating to the return of such
8 a person, any agent so deputized shall have all the powers of a police
9 officer of this state.

10 **Sec. 344.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read
11 as follows:

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

17 **Sec. 345.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to
18 read as follows:

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

24 **Sec. 346.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read
25 as follows:

26 The purpose of RCW 9.95.310 through 9.95.370 is to provide
27 necessary assistance, other than assistance which is authorized to be
28 provided under the vocational rehabilitation laws, Title 28A RCW, under
29 the public assistance laws, Title 74 RCW or the (~~department of~~)
30 employment security department or other state agency, for parolees,
31 inmates assigned to work/training release facilities, discharged
32 prisoners and persons convicted of a felony committed before July 1,
33 1984, and granted probation in need and whose capacity to earn a living
34 under these circumstances is impaired; and to help such persons attain
35 self-care and/or self-support for rehabilitation and restoration to
36 independence as useful citizens as rapidly as possible thereby reducing

1 the number of returnees to the institutions of this state to the
2 benefit of such person and society as a whole.

3 **Sec. 347.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read
4 as follows:

5 The secretary of corrections or his or her designee may provide to
6 any parolee, inmate assigned to a work/training release facility,
7 discharged prisoner and persons convicted of a felony committed before
8 July 1, 1984, and granted probation in need and without necessary
9 means, from any funds legally available therefor, such reasonable sums
10 as he or she deems necessary for the subsistence of such person and his
11 or her family until such person has become gainfully employed. Such
12 aid may be made under such terms and conditions, and through local
13 parole or probation officers if necessary, as the secretary of
14 corrections or his or her designee may require and shall be
15 supplementary to any moneys which may be provided under public
16 assistance or from any other source.

17 **Sec. 348.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read
18 as follows:

19 Any funds in the hands of the department of corrections, or which
20 may come into its hands, which belong to discharged prisoners, inmates
21 assigned to work/training release facilities, parolees or persons
22 convicted of a felony and granted probation who absconded, or whose
23 whereabouts are unknown, shall be deposited in the community services
24 revolving fund. Said funds shall be used to defray the expenses of
25 clothing and other necessities and for transporting discharged
26 prisoners, inmates assigned to work/training release facilities,
27 parolees and persons convicted of a felony and granted probation who
28 are without means to secure the same. All payments disbursed from
29 these funds shall be repaid, whenever possible, by discharged
30 prisoners, inmates assigned to work/training release facilities,
31 parolees and persons convicted of a felony and granted probation for
32 whose benefit they are made. Whenever any money belonging to such
33 persons is so paid into the revolving fund, it shall be repaid to them
34 in accordance with law if a claim therefor is filed with the department
35 of corrections within five years of deposit into said fund and upon a
36 clear showing of a legal right of such claimant to such money. This

1 section applies to persons convicted of a felony committed before July
2 1, 1984.

3 **Sec. 349.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read
4 as follows:

5 All money or other property paid or delivered to a (~~probation or~~
6 ~~parole~~) community corrections officer or employee of the department of
7 corrections by or for the benefit of any discharged prisoner, inmate
8 assigned to a work/training release facility, parolee or persons
9 convicted of a felony and granted probation shall be immediately
10 transmitted to the department of corrections and it shall enter the
11 same upon its books to his or her credit. Such money or other property
12 shall be used only under the direction of the department of
13 corrections.

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

18 If any person, files a claim within five years after the deposit or
19 crediting of such funds, and satisfies the department of corrections
20 that he or she is entitled thereto, the department may make a finding
21 to that effect and may make payment to the claimant in the amount to
22 which he or she is entitled.

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

25 **Sec. 350.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read
26 as follows:

27 The department of corrections shall create, maintain, and
28 administer outside the state treasury a permanent revolving fund to be
29 known as the "community services revolving fund" into which shall be
30 deposited all moneys received by it under RCW 9.95.310 through 9.95.370
31 and any appropriation made for the purposes of RCW 9.95.310 through
32 9.95.370. All expenditures from this revolving fund shall be made by
33 check or voucher signed by the secretary of corrections or his or her
34 designee. The community services revolving fund shall be deposited by
35 the department of corrections in such banks or financial institutions
36 as it may select which shall give to the department a surety bond
37 executed by a surety company authorized to do business in this state,

1 or collateral eligible as security for deposit of state funds in at
2 least the full amount of deposit.

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

5 **Sec. 351.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to
6 read as follows:

7 The secretary of corrections or his or her designee shall enter
8 into a written agreement with every person receiving funds under RCW
9 9.95.310 through 9.95.370 that such person will repay such funds under
10 the terms and conditions in said agreement. No person shall receive
11 funds until such an agreement is validly made. This section applies to
12 persons convicted of a felony committed before July 1, 1984.

13 **Sec. 352.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to
14 read as follows:

15 (1) Except as provided in subsection (2) of this section, the
16 following sections of law do not apply to any felony offense committed
17 on or after July 1, 1984: RCW ((9.95.003, 9.95.005, 9.95.007,))
18 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020, 9.95.030,
19 9.95.031, 9.95.032,)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,
20 ((9.95.070,)) 9.95.080, ((9.95.090,)) 9.95.100, ((9.95.110,)) 9.95.115,
21 9.95.116, 9.95.120, ((9.95.121, 9.95.122, 9.95.123,)) 9.95.124,
22 9.95.125, ((9.95.126,)) 9.95.130, ((9.95.140, 9.95.150, 9.95.160,
23 9.95.170,)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,
24 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,
25 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,
26 ((and)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

27 (2) The following sections apply to any felony offense committed
28 before July 1, 1984, and to any offense committed after July 1, 2001,
29 and sentenced under section 303 of this act: RCW 9.95.003, 9.95.005,
30 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060,
31 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121,
32 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170,
33 9.95.300, and 9.96.050.

34 **Sec. 353.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
35 read as follows:

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

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

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

9 (a) Class A felony when the crime attempted is murder in the first
10 degree, murder in the second degree, (~~or~~) arson in the first degree,
11 child molestation in the first degree, indecent liberties by forcible
12 compulsion, rape in the first degree, rape in the second degree, rape
13 of a child in the first degree, or rape of a child in the second
14 degree;

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

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

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

21 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
22 misdemeanor.

23 **Sec. 354.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to
24 read as follows:

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

27 (a) Intentionally assaults another and thereby recklessly inflicts
28 substantial bodily harm; or

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

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

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

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

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

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

4 **Sec. 355.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
5 each amended to read as follows:

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

9 (2) In any prosecution for kidnapping in the second degree, it is
10 a defense if established by the defendant by a preponderance of the
11 evidence that (a) the abduction does not include the use of or intent
12 to use or threat to use deadly force, and (b) the actor is a relative
13 of the person abducted, and (c) the actor's sole intent is to assume
14 custody of that person. Nothing contained in this paragraph shall
15 constitute a defense to a prosecution for, or preclude a conviction of,
16 any other crime.

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

20 **Sec. 356.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
21 read as follows:

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

25 (a) By forcible compulsion;

26 (b) When the other person is incapable of consent by reason of
27 being mentally defective, mentally incapacitated, or physically
28 helpless;

29 (c) When the victim is developmentally disabled and the perpetrator
30 is a person who is not married to the victim and who has supervisory
31 authority over the victim;

32 (d) When the perpetrator is a health care provider, the victim is
33 a client or patient, and the sexual contact occurs during a treatment
34 session, consultation, interview, or examination. It is an affirmative
35 defense that the defendant must prove by a preponderance of the
36 evidence that the client or patient consented to the sexual contact

1 with the knowledge that the sexual contact was not for the purpose of
2 treatment;

3 (e) When the victim is a resident of a facility for mentally
4 disordered or chemically dependent persons and the perpetrator is a
5 person who is not married to the victim and has supervisory authority
6 over the victim; or

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

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

12 NEW SECTION. Sec. 357. A new section is added to chapter 9A.76
13 RCW to read as follows:

14 (1) A person is guilty of sexually violent predator escape if:

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

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

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

28 (2) Sexually violent predator escape is a class A felony with a
29 minimum sentence of sixty months, and shall be sentenced under section
30 303 of this act.

31 **Sec. 358.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and
32 2000 c 66 s 2 are each reenacted and amended to read as follows:

33 TABLE 2

34 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

35 XVI Aggravated Murder 1 (RCW 10.95.020)

1 XV Homicide by abuse (RCW 9A.32.055)
2 Malicious explosion 1 (RCW 70.74.280(1))
3 Murder 1 (RCW 9A.32.030)
4 XIV Murder 2 (RCW 9A.32.050)
5 XIII Malicious explosion 2 (RCW 70.74.280(2))
6 Malicious placement of an explosive 1 (RCW
7 70.74.270(1))
8 XII Assault 1 (RCW 9A.36.011)
9 Assault of a Child 1 (RCW 9A.36.120)
10 Malicious placement of an imitation device
11 1 (RCW 70.74.272(1)(a))
12 Rape 1 (RCW 9A.44.040)
13 Rape of a Child 1 (RCW 9A.44.073)
14 XI Manslaughter 1 (RCW 9A.32.060)
15 Rape 2 (RCW 9A.44.050)
16 Rape of a Child 2 (RCW 9A.44.076)
17 X Child Molestation 1 (RCW 9A.44.083)
18 Indecent Liberties (with forcible
19 compulsion) (RCW 9A.44.100(1)(a))
20 Kidnapping 1 (RCW 9A.40.020)
21 Leading Organized Crime (RCW
22 9A.82.060(1)(a))
23 Malicious explosion 3 (RCW 70.74.280(3))
24 Manufacture of methamphetamine (RCW
25 69.50.401(a)(1)(ii))
26 Over 18 and deliver heroin,
27 methamphetamine, a narcotic from
28 Schedule I or II, or flunitrazepam
29 from Schedule IV to someone under 18
30 (RCW 69.50.406)
31 Sexually Violent Predator Escape (section
32 357 of this act)
33 IX Assault of a Child 2 (RCW 9A.36.130)
34 Controlled Substance Homicide (RCW
35 69.50.415)

1 Explosive devices prohibited (RCW
2 70.74.180)
3 Homicide by Watercraft, by being under the
4 influence of intoxicating liquor or
5 any drug (RCW 79A.60.050)
6 Inciting Criminal Profiteering (RCW
7 9A.82.060(1)(b))
8 Malicious placement of an explosive 2 (RCW
9 70.74.270(2))
10 Over 18 and deliver narcotic from Schedule
11 III, IV, or V or a nonnarcotic, except
12 flunitrazepam or methamphetamine, from
13 Schedule I-V to someone under 18 and 3
14 years junior (RCW 69.50.406)
15 Robbery 1 (RCW 9A.56.200)
16 Sexual Exploitation (RCW 9.68A.040)
17 Vehicular Homicide, by being under the
18 influence of intoxicating liquor or
19 any drug (RCW 46.61.520)

20 VIII Arson 1 (RCW 9A.48.020)
21 Deliver or possess with intent to deliver
22 methamphetamine (RCW
23 69.50.401(a)(1)(ii))
24 Hit and Run--Death (RCW 46.52.020(4)(a))
25 Homicide by Watercraft, by the operation of
26 any vessel in a reckless manner (RCW
27 79A.60.050)
28 Manslaughter 2 (RCW 9A.32.070)
29 Manufacture, deliver, or possess with
30 intent to deliver amphetamine (RCW
31 69.50.401(a)(1)(ii))
32 Manufacture, deliver, or possess with
33 intent to deliver heroin or cocaine
34 (RCW 69.50.401(a)(1)(i))
35 Possession of Ephedrine, Pseudoephedrine,
36 or Anhydrous Ammonia with intent to
37 manufacture methamphetamine (RCW
38 69.50.440)
39 Promoting Prostitution 1 (RCW 9A.88.070)

1 Selling for profit (controlled or
2 counterfeit) any controlled substance
3 (RCW 69.50.410)
4 Theft of Anhydrous Ammonia (RCW 69.55.010)
5 Vehicular Homicide, by the operation of any
6 vehicle in a reckless manner (RCW
7 46.61.520)

8 VII Burglary 1 (RCW 9A.52.020)
9 Child Molestation 2 (RCW 9A.44.086)
10 Dealing in depictions of minor engaged in
11 sexually explicit conduct (RCW
12 9.68A.050)
13 Drive-by Shooting (RCW 9A.36.045)
14 Homicide by Watercraft, by disregard for
15 the safety of others (RCW 79A.60.050)
16 Indecent Liberties (without forcible
17 compulsion) (RCW 9A.44.100(1) (b) and
18 (c))
19 Introducing Contraband 1 (RCW 9A.76.140)
20 Involving a minor in drug dealing (RCW
21 69.50.401(f))
22 Malicious placement of an explosive 3 (RCW
23 70.74.270(3))
24 Sending, bringing into state depictions of
25 minor engaged in sexually explicit
26 conduct (RCW 9.68A.060)
27 Unlawful Possession of a Firearm in the
28 first degree (RCW 9.41.040(1)(a))
29 Use of a Machine Gun in Commission of a
30 Felony (RCW 9.41.225)
31 Vehicular Homicide, by disregard for the
32 safety of others (RCW 46.61.520)

33 VI Bail Jumping with Murder 1 (RCW
34 9A.76.170(2)(a))
35 Bribery (RCW 9A.68.010)
36 Incest 1 (RCW 9A.64.020(1))
37 Intimidating a Judge (RCW 9A.72.160)

1 Intimidating a Juror/Witness (RCW
2 9A.72.110, 9A.72.130)
3 Malicious placement of an imitation device
4 2 (RCW 70.74.272(1)(b))
5 Manufacture, deliver, or possess with
6 intent to deliver narcotics from
7 Schedule I or II (except heroin or
8 cocaine) or flunitrazepam from
9 Schedule IV (RCW 69.50.401(a)(1)(i))
10 Rape of a Child 3 (RCW 9A.44.079)
11 Theft of a Firearm (RCW 9A.56.300)
12 Unlawful Storage of Anhydrous Ammonia (RCW
13 69.55.020)

14 V Abandonment of dependent person 1 (RCW
15 9A.42.060)
16 Advancing money or property for
17 extortionate extension of credit (RCW
18 9A.82.030)
19 Bail Jumping with class A Felony (RCW
20 9A.76.170(2)(b))
21 Child Molestation 3 (RCW 9A.44.089)
22 Criminal Mistreatment 1 (RCW 9A.42.020)
23 Custodial Sexual Misconduct 1 (RCW
24 9A.44.160)
25 Delivery of imitation controlled substance
26 by person eighteen or over to person
27 under eighteen (RCW 69.52.030(2))
28 Domestic Violence Court Order Violation
29 (RCW 10.99.040, 10.99.050, 26.09.300,
30 26.10.220, 26.26.138, 26.50.110,
31 26.52.070, or 74.34.145)
32 Extortion 1 (RCW 9A.56.120)
33 Extortionate Extension of Credit (RCW
34 9A.82.020)
35 Extortionate Means to Collect Extensions of
36 Credit (RCW 9A.82.040)
37 Incest 2 (RCW 9A.64.020(2))
38 Kidnapping 2 (RCW 9A.40.030)
39 Perjury 1 (RCW 9A.72.020)

1 Persistent prison misbehavior (RCW
2 9.94.070)
3 Possession of a Stolen Firearm (RCW
4 9A.56.310)
5 Rape 3 (RCW 9A.44.060)
6 Rendering Criminal Assistance 1 (RCW
7 9A.76.070)
8 Sexual Misconduct with a Minor 1 (RCW
9 9A.44.093)
10 Sexually Violating Human Remains (RCW
11 9A.44.105)
12 Stalking (RCW 9A.46.110)
13 IV Arson 2 (RCW 9A.48.030)
14 Assault 2 (RCW 9A.36.021)
15 Assault by Watercraft (RCW 79A.60.060)
16 Bribing a Witness/Bribe Received by Witness
17 (RCW 9A.72.090, 9A.72.100)
18 Commercial Bribery (RCW 9A.68.060)
19 Counterfeiting (RCW 9.16.035(4))
20 Escape 1 (RCW 9A.76.110)
21 Hit and Run--Injury (RCW 46.52.020(4)(b))
22 Hit and Run with Vessel--Injury Accident
23 (RCW 79A.60.200(3))
24 Indecent Exposure to Person Under Age
25 Fourteen (subsequent sex offense) (RCW
26 9A.88.010)
27 Influencing Outcome of Sporting Event (RCW
28 9A.82.070)
29 Knowingly Trafficking in Stolen Property
30 (RCW 9A.82.050(2))
31 Malicious Harassment (RCW 9A.36.080)
32 Manufacture, deliver, or possess with
33 intent to deliver narcotics from
34 Schedule III, IV, or V or nonnarcotics
35 from Schedule I-V (except marijuana,
36 amphetamine, methamphetamines, or
37 flunitrazepam) (RCW 69.50.401(a)(1)
38 (iii) through (v))
39 Residential Burglary (RCW 9A.52.025)

1 Robbery 2 (RCW 9A.56.210)
2 Theft of Livestock 1 (RCW 9A.56.080)
3 Threats to Bomb (RCW 9.61.160)
4 Use of Proceeds of Criminal Profiteering
5 (RCW 9A.82.080 (1) and (2))
6 Vehicular Assault (RCW 46.61.522)
7 Willful Failure to Return from Furlough
8 (RCW 72.66.060)

9 III Abandonment of dependent person 2 (RCW
10 9A.42.070)
11 Assault 3 (RCW 9A.36.031)
12 Assault of a Child 3 (RCW 9A.36.140)
13 Bail Jumping with class B or C Felony (RCW
14 9A.76.170(2)(c))
15 Burglary 2 (RCW 9A.52.030)
16 Communication with a Minor for Immoral
17 Purposes (RCW 9.68A.090)
18 Criminal Gang Intimidation (RCW 9A.46.120)
19 Criminal Mistreatment 2 (RCW 9A.42.030)
20 Custodial Assault (RCW 9A.36.100)
21 Delivery of a material in lieu of a
22 controlled substance (RCW
23 69.50.401(c))
24 Escape 2 (RCW 9A.76.120)
25 Extortion 2 (RCW 9A.56.130)
26 Harassment (RCW 9A.46.020)
27 Intimidating a Public Servant (RCW
28 9A.76.180)
29 Introducing Contraband 2 (RCW 9A.76.150)
30 Maintaining a Dwelling or Place for
31 Controlled Substances (RCW
32 69.50.402(a)(6))
33 Malicious Injury to Railroad Property (RCW
34 81.60.070)
35 Manufacture, deliver, or possess with
36 intent to deliver marijuana (RCW
37 69.50.401(a)(1)(iii))
38 Manufacture, distribute, or possess with
39 intent to distribute an imitation

1 controlled substance (RCW
2 69.52.030(1))
3 Patronizing a Juvenile Prostitute (RCW
4 9.68A.100)
5 Perjury 2 (RCW 9A.72.030)
6 Possession of Incendiary Device (RCW
7 9.40.120)
8 Possession of Machine Gun or Short-Barreled
9 Shotgun or Rifle (RCW 9.41.190)
10 Promoting Prostitution 2 (RCW 9A.88.080)
11 Recklessly Trafficking in Stolen Property
12 (RCW 9A.82.050(1))
13 Securities Act violation (RCW 21.20.400)
14 Tampering with a Witness (RCW 9A.72.120)
15 Telephone Harassment (subsequent conviction
16 or threat of death) (RCW 9.61.230)
17 Theft of Livestock 2 (RCW 9A.56.080)
18 Unlawful Imprisonment (RCW 9A.40.040)
19 Unlawful possession of firearm in the
20 second degree (RCW 9.41.040(1)(b))
21 Unlawful Use of Building for Drug Purposes
22 (RCW 69.53.010)
23 Willful Failure to Return from Work Release
24 (RCW 72.65.070)

25 II Computer Trespass 1 (RCW 9A.52.110)
26 Counterfeiting (RCW 9.16.035(3))
27 Create, deliver, or possess a counterfeit
28 controlled substance (RCW
29 69.50.401(b))
30 Escape from Community Custody (RCW
31 72.09.310)
32 Health Care False Claims (RCW 48.80.030)
33 Malicious Mischief 1 (RCW 9A.48.070)
34 Possession of controlled substance that is
35 either heroin or narcotics from
36 Schedule I or II or flunitrazepam from
37 Schedule IV (RCW 69.50.401(d))
38 Possession of phencyclidine (PCP) (RCW
39 69.50.401(d))

1 Possession of Stolen Property 1 (RCW
2 9A.56.150)
3 Theft 1 (RCW 9A.56.030)
4 Theft of Rental, Leased, or Lease-purchased
5 Property (valued at one thousand five
6 hundred dollars or more) (RCW
7 9A.56.096(4))
8 Trafficking in Insurance Claims (RCW
9 48.30A.015)
10 Unlawful Practice of Law (RCW 2.48.180)
11 Unlicensed Practice of a Profession or
12 Business (RCW 18.130.190(7))
13 I Attempting to Elude a Pursuing Police
14 Vehicle (RCW 46.61.024)
15 False Verification for Welfare (RCW
16 74.08.055)
17 Forged Prescription (RCW 69.41.020)
18 Forged Prescription for a Controlled
19 Substance (RCW 69.50.403)
20 Forgery (RCW 9A.60.020)
21 Malicious Mischief 2 (RCW 9A.48.080)
22 Possess Controlled Substance that is a
23 Narcotic from Schedule III, IV, or V
24 or Non-narcotic from Schedule I-V
25 (except phencyclidine or
26 flunitrazepam) (RCW 69.50.401(d))
27 Possession of Stolen Property 2 (RCW
28 9A.56.160)
29 Reckless Burning 1 (RCW 9A.48.040)
30 Taking Motor Vehicle Without Permission
31 (RCW 9A.56.070)
32 Theft 2 (RCW 9A.56.040)
33 Theft of Rental, Leased, or Lease-purchased
34 Property (valued at two hundred fifty
35 dollars or more but less than one
36 thousand five hundred dollars) (RCW
37 9A.56.096(4))
38 Unlawful Issuance of Checks or Drafts (RCW
39 9A.56.060)

1 Unlawful Use of Food Stamps (RCW 9.91.140
2 (2) and (3))
3 Vehicle Prowl 1 (RCW 9A.52.095)

4 **Sec. 359.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to
5 read as follows:

6 (1) The secretary shall identify offenders in confinement or
7 partial confinement who: (a) Are reasonably believed to be dangerous
8 to themselves or others; and (b) have a mental disorder. In
9 determining an offender's dangerousness, the secretary shall consider
10 behavior known to the department and factors, based on research, that
11 are linked to an increased risk for dangerousness of mentally ill
12 offenders and shall include consideration of an offender's chemical
13 dependency or abuse.

14 (2) Prior to release of an offender identified under this section,
15 a team consisting of representatives of the department of corrections,
16 the division of mental health, and, as necessary, the indeterminate
17 sentence review board, other divisions or administrations within the
18 department of social and health services, specifically including the
19 division of alcohol and substance abuse and the division of
20 developmental disabilities, the appropriate regional support network,
21 and the providers, as appropriate, shall develop a plan, as determined
22 necessary by the team, for delivery of treatment and support services
23 to the offender upon release. The team may include a school district
24 representative for offenders under the age of twenty-one. The team
25 shall consult with the offender's counsel, if any, and, as appropriate,
26 the offender's family and community. The team shall notify the crime
27 victim/witness program, which shall provide notice to all people
28 registered to receive notice under RCW 9.94A.155 of the proposed
29 release plan developed by the team. Victims, witnesses, and other
30 interested people notified by the department may provide information
31 and comments to the department on potential safety risk to specific
32 individuals or classes of individuals posed by the specific offender.
33 The team may recommend: (a) That the offender be evaluated by the
34 county designated mental health professional, as defined in chapter
35 71.05 RCW; (b) department-supervised community treatment; or (c)
36 voluntary community mental health or chemical dependency or abuse
37 treatment.

1 (3) Prior to release of an offender identified under this section,
2 the team shall determine whether or not an evaluation by a county
3 designated mental health professional is needed. If an evaluation is
4 recommended, the supporting documentation shall be immediately
5 forwarded to the appropriate county designated mental health
6 professional. The supporting documentation shall include the
7 offender's criminal history, history of judicially required or
8 administratively ordered involuntary antipsychotic medication while in
9 confinement, and any known history of involuntary civil commitment.

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

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

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

23 (7) If the county designated mental health professional believes
24 that a less restrictive alternative treatment is appropriate, he or she
25 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,
26 to require the offender to appear at an evaluation and treatment
27 facility. If a summons is issued, the offender shall remain within the
28 corrections facility until completion of his or her term of confinement
29 and be transported, by corrections personnel on the day of completion,
30 directly to the identified evaluation and treatment facility.

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

32 NEW SECTION. **Sec. 360.** A new section is added to chapter 9.95 RCW
33 to read as follows:

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

PART IV
TECHNICAL PROVISIONS

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

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

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

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

NEW SECTION. **Sec. 403.** (1) Sections 301 through 360 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after the effective date of this section.

(2) Sections 301 through 360 of this act shall apply to offenses committed on or after the effective date of this section.

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

NEW SECTION. **Sec. 405.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001, except for sections 101 through 224 of this act which take effect immediately."

SSB 6151 - S AMD 301

By Senators Hargrove, Long, Costa, Brown, Stevens and Hewitt

ADOPTED 04/12/01

On page 1, line 2 of the title, after "systems;" strike the remainder of the title and insert "amending RCW 71.09.020, 36.70A.103,

1 36.70A.200, 9.94A.030, 9.94A.715, 9.94A.060, 9.94A.190, 9.94A.390,
2 9.95.005, 9.95.010, 9.95.011, 9.95.017, 9.95.020, 9.95.032, 9.95.052,
3 9.95.055, 9.95.064, 9.95.070, 9.95.080, 9.95.090, 9.95.100, 9.95.110,
4 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124, 9.95.125,
5 9.95.126, 9.95.130, 9.95.140, 9.95.190, 9.95.250, 9.95.280, 9.95.290,
6 9.95.300, 9.95.310, 9.95.320, 9.95.340, 9.95.350, 9.95.360, 9.95.370,
7 9.95.900, 9A.28.020, 9A.36.021, 9A.40.030, 9A.44.100, and 72.09.370;
8 reenacting and amending RCW 9.94A.120 and 9.94A.320; adding new
9 sections to chapter 71.09 RCW; adding a new section to chapter 36.70A
10 RCW; adding a new section to chapter 36.70 RCW; adding new sections to
11 chapter 9.94A RCW; adding a new section to chapter 72.09 RCW; adding
12 new sections to chapter 9.95 RCW; adding a new section to chapter 9A.76
13 RCW; creating new sections; repealing RCW 9.95.0011 and 9.95.145;
14 prescribing penalties; providing an effective date; and declaring an
15 emergency."

EFFECT: Includes the new Special Commitment Center in the authority and exemption. Makes technical corrections, adds an escape provision, and adds a provision limiting the liability of employers or educational institutions who receive a state incentive grant unless the employer or institution exercises gross negligence or willful and wanton misconduct. Provides for notification of other employees and those at the educational institution. Incorporates Senate Bill No. 5845, which passed the senate unanimously, merges double amendments, and harmonizes language among the bills.

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