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**SENATE BILL 5038**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senators McCaslin and Kline

Read first time 01/08/2001. Referred to Committee on Judiciary.

1 AN ACT Relating to reorganization of, and technical, clarifying,  
2 nonsubstantive amendments to, community supervision and sentencing  
3 provisions; amending RCW 9.94A.660 and 9.94A.715; reenacting and  
4 amending RCW 9.94A.145; reenacting RCW 9.94A.120; creating new  
5 sections; providing an effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
8 incorporate into the reorganization of chapter 9.94A RCW adopted by  
9 chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the  
10 2000 legislative session that did not take cognizance of the  
11 reorganization. In addition, it is the intent of the legislature to  
12 correct any additional incorrect cross-references and to simplify the  
13 codification of provisions within chapter 9.94A RCW.

14 The legislature does not intend to make, and no provision of this  
15 act may be construed as making, a substantive change in the sentencing  
16 reform act.

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

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

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

5 (i) Unless another term of confinement applies, the court shall  
6 impose a sentence within the standard sentence range established in RCW  
7 9.94A.310;

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

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

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

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

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

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

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

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

19 (x) RCW 9.94A.390, relating to exceptional sentences;

20 (xi) RCW 9.94A.400, relating to consecutive and concurrent  
21 sentences.

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

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

1 (4) If a sentence imposed includes payment of a legal financial  
2 obligation, it shall be imposed as provided in RCW 9.94A.140,  
3 9.94A.142, and 9.94A.145.

4 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a  
5 court may not impose a sentence providing for a term of confinement or  
6 community supervision, community placement, or community custody which  
7 exceeds the statutory maximum for the crime as provided in chapter  
8 9A.20 RCW.

9 (6) The sentencing court shall give the offender credit for all  
10 confinement time served before the sentencing if that confinement was  
11 solely in regard to the offense for which the offender is being  
12 sentenced.

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

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

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

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

33 (11) In sentencing an offender convicted of a crime of domestic  
34 violence, as defined in RCW 10.99.020, if the offender has a minor  
35 child, or if the victim of the offense for which the offender was  
36 convicted has a minor child, the court may, as part of any term of  
37 community supervision, community placement, or community custody, order  
38 the offender to participate in a domestic violence perpetrator program  
39 approved under RCW 26.50.150.

1       **Sec. 3.** RCW 9.94A.145 and 2000 c 226 s 4 and 2000 c 28 s 31 are  
2 each reenacted and amended to read as follows:

3       (1) Whenever a person is convicted of a felony, the court may order  
4 the payment of a legal financial obligation as part of the sentence.  
5 The court must on either the judgment and sentence or on a subsequent  
6 order to pay, designate the total amount of a legal financial  
7 obligation and segregate this amount among the separate assessments  
8 made for restitution, costs, fines, and other assessments required by  
9 law. On the same order, the court is also to set a sum that the  
10 offender is required to pay on a monthly basis towards satisfying the  
11 legal financial obligation. If the court fails to set the offender  
12 monthly payment amount, the department shall set the amount. Upon  
13 receipt of an offender's monthly payment, restitution shall be paid  
14 prior to any payments of other monetary obligations. After restitution  
15 is satisfied, the county clerk shall distribute the payment  
16 proportionally among all other fines, costs, and assessments imposed,  
17 unless otherwise ordered by the court.

18       (2) If the court determines that the offender, at the time of  
19 sentencing, has the means to pay for the cost of incarceration, the  
20 court may require the offender to pay for the cost of incarceration at  
21 a rate of fifty dollars per day of incarceration. Payment of other  
22 court-ordered financial obligations, including all legal financial  
23 obligations and costs of supervision shall take precedence over the  
24 payment of the cost of incarceration ordered by the court. All funds  
25 recovered from offenders for the cost of incarceration in the county  
26 jail shall be remitted to the county and the costs of incarceration in  
27 a prison shall be remitted to the department.

28       (3) The court may add to the judgment and sentence or subsequent  
29 order to pay a statement that a notice of payroll deduction is to be  
30 issued immediately. If the court chooses not to order the immediate  
31 issuance of a notice of payroll deduction at sentencing, the court  
32 shall add to the judgment and sentence or subsequent order to pay a  
33 statement that a notice of payroll deduction may be issued or other  
34 income-withholding action may be taken, without further notice to the  
35 offender if a monthly court-ordered legal financial obligation payment  
36 is not paid when due, and an amount equal to or greater than the amount  
37 payable for one month is owed.

38       If a judgment and sentence or subsequent order to pay does not  
39 include the statement that a notice of payroll deduction may be issued

1 or other income-withholding action may be taken if a monthly legal  
2 financial obligation payment is past due, the department may serve a  
3 notice on the offender stating such requirements and authorizations.  
4 Service shall be by personal service or any form of mail requiring a  
5 return receipt.

6 (4) Independent of the department, the party or entity to whom the  
7 legal financial obligation is owed shall have the authority to use any  
8 other remedies available to the party or entity to collect the legal  
9 financial obligation. These remedies include enforcement in the same  
10 manner as a judgment in a civil action by the party or entity to whom  
11 the legal financial obligation is owed. Restitution collected through  
12 civil enforcement must be paid through the registry of the court and  
13 must be distributed proportionately according to each victim's loss  
14 when there is more than one victim. The judgment and sentence shall  
15 identify the party or entity to whom restitution is owed so that the  
16 state, party, or entity may enforce the judgment. If restitution is  
17 ordered pursuant to RCW 9.94A.140(6) or 9.94A.142(6) to a victim of  
18 rape of a child or a victim's child born from the rape, the Washington  
19 state child support registry shall be identified as the party to whom  
20 payments must be made. Restitution obligations arising from the rape  
21 of a child in the first, second, or third degree that result in the  
22 pregnancy of the victim may be enforced for the time periods provided  
23 under RCW 9.94A.140(6) and 9.94A.142(6). All other legal financial  
24 obligations for an offense committed prior to July 1, 2000, may be  
25 enforced at any time during the ten-year period following the  
26 offender's release from total confinement or within ten years of entry  
27 of the judgment and sentence, whichever period ends later. Prior to  
28 the expiration of the initial ten-year period, the superior court may  
29 extend the criminal judgment an additional ten years for payment of  
30 legal financial obligations including crime victims' assessments. All  
31 other legal financial obligations for an offense committed on or after  
32 July 1, 2000, may be enforced at any time the offender remains under  
33 the court's jurisdiction. For an offense committed on or after July 1,  
34 2000, the court shall retain jurisdiction over the offender, for  
35 purposes of the offender's compliance with payment of the legal  
36 financial obligations, until the obligation is completely satisfied,  
37 regardless of the statutory maximum for the crime. The department of  
38 corrections shall supervise the offender's compliance with payment of  
39 the legal financial obligations for ten years following the entry of

1 the judgment and sentence, or ten years following the offender's  
2 release from total confinement, whichever period ends later. The  
3 department is not responsible for supervision of the offender during  
4 any subsequent period of time the offender remains under the court's  
5 jurisdiction.

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

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

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

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

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

5 (10) The requirement that the offender pay a monthly sum towards a  
6 legal financial obligation constitutes a condition or requirement of a  
7 sentence and the offender is subject to the penalties for noncompliance  
8 as provided in RCW 9.94A.200, 9.94A.205, or 9.94A.207.

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

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

17 (13) Nothing in this chapter makes the department, the state, or  
18 any of its employees, agents, or other persons acting on their behalf  
19 liable under any circumstances for the payment of these legal financial  
20 obligations.

21 **Sec. 4.** RCW 9.94A.660 and 2000 c 28 s 19 are each amended to read  
22 as follows:

23 (1) An offender is eligible for the special drug offender  
24 sentencing alternative if:

25 (a) The offender is convicted of a felony that is not a violent  
26 offense or sex offense and the violation does not involve a sentence  
27 enhancement under RCW 9.94A.310 (3) or (4);

28 (b) The offender has no current or prior convictions for a sex  
29 offense or violent offense in this state, another state, or the United  
30 States;

31 (c) For a violation of the Uniform Controlled Substances Act under  
32 chapter 69.50 RCW or a criminal solicitation to commit such a violation  
33 under chapter 9A.28 RCW, the offense involved only a small quantity of  
34 the particular controlled substance as determined by the judge upon  
35 consideration of such factors as the weight, purity, packaging, sale  
36 price, and street value of the controlled substance; and

37 (d) The offender has not been found by the United States attorney  
38 general to be subject to a deportation detainer or order and does not

1 become subject to a deportation order during the period of the  
2 sentence.

3 (2) If the standard sentence range is greater than one year and the  
4 sentencing court determines that the offender is eligible for this  
5 alternative and that the offender and the community will benefit from  
6 the use of the alternative, the judge may waive imposition of a  
7 sentence within the standard sentence range and impose a sentence that  
8 must include a period of total confinement in a state facility for one-  
9 half of the midpoint of the standard sentence range. During  
10 incarceration in the state facility, offenders sentenced under this  
11 subsection shall undergo a comprehensive substance abuse assessment and  
12 receive, within available resources, treatment services appropriate for  
13 the offender. The treatment services shall be designed by the division  
14 of alcohol and substance abuse of the department of social and health  
15 services, in cooperation with the department of corrections.

16 The court shall also impose:

17 (a) The remainder of the midpoint of the standard range as a term  
18 of community custody which must include appropriate substance abuse  
19 treatment in a program that has been approved by the division of  
20 alcohol and substance abuse of the department of social and health  
21 services;

22 (b) Crime-related prohibitions including a condition not to use  
23 illegal controlled substances; ~~((and))~~

24 (c) A requirement to submit to urinalysis or other testing to  
25 monitor that status; and

26 (d) A term of community custody pursuant to RCW 9.94A.715 to be  
27 imposed upon failure to complete or administrative termination from the  
28 special drug offender sentencing alternative program.

29 The court may prohibit the offender from using alcohol or  
30 controlled substances and may require that the monitoring for  
31 controlled substances be conducted by the department or by a treatment  
32 alternatives to street crime program or a comparable court or agency-  
33 referred program. The offender may be required to pay thirty dollars  
34 per month while on community custody to offset the cost of monitoring.  
35 In addition, the court shall impose three or more of the following  
36 conditions:

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



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

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

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

6 (v) Perform community service work;

7 (vi) Stay out of areas designated by the sentencing court;

8 (vii) Such other conditions as the court may require such as  
9 affirmative conditions.

10 (3) If the offender violates any of the sentence conditions in  
11 subsection (2) of this section or is found by the United States  
12 attorney general to be subject to a deportation order, a violation  
13 hearing shall be held by the department unless waived by the offender.

14 (a) If the department finds that conditions have been willfully  
15 violated, the offender may be reclassified to serve the remaining  
16 balance of the original sentence.

17 (b) If the department finds that the offender is subject to a valid  
18 deportation order, the department may administratively terminate the  
19 offender from the program and reclassify the offender to serve the  
20 remaining balance of the original sentence.

21 (4) The department shall determine the rules for calculating the  
22 value of a day fine based on the offender's income and reasonable  
23 obligations which the offender has for the support of the offender and  
24 any dependents. These rules shall be developed in consultation with  
25 the administrator for the courts, the office of financial management,  
26 and the commission.

27 (5) An offender who fails to complete the special drug offender  
28 sentencing alternative program or who is administratively terminated  
29 from the program shall be reclassified to serve the unexpired term of  
30 his or her sentence as ordered by the sentencing court and shall be  
31 subject to all rules relating to earned release time. An offender who  
32 violates any conditions of supervision as defined by the department  
33 shall be sanctioned. Sanctions may include, but are not limited to,  
34 reclassifying the offender to serve the unexpired term of his or her  
35 sentence as ordered by the sentencing court. If an offender is  
36 reclassified to serve the unexpired term of his or her sentence, the  
37 offender shall be subject to all rules relating to earned release time.

1       **Sec. 5.** RCW 9.94A.715 and 2000 c 28 s 25 are each amended to read  
2 as follows:

3       (1) When a court sentences a person to the custody of the  
4 department for a sex offense, a violent offense, any crime against  
5 persons under RCW 9.94A.440(2), or a felony offense under chapter 69.50  
6 or 69.52 RCW (~~(not sentenced under RCW 9.94A.660)~~), committed on or  
7 after July 1, 2000, the court shall in addition to the other terms of  
8 the sentence, sentence the offender to community custody for the  
9 community custody range established under RCW 9.94A.040 or up to the  
10 period of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),  
11 whichever is longer. The community custody shall begin (~~(either)~~): (a)  
12 Upon completion of the term of confinement (~~(or)~~); (b) at such time as  
13 the offender is transferred to community custody in lieu of earned  
14 release in accordance with RCW 9.94A.150 (1) and (2); or (c) with  
15 regard to offenders sentenced under RCW 9.94A.660, upon failure to  
16 complete or administrative termination from the special drug offender  
17 sentencing alternative program.

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

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

35       (c) The department may not impose conditions that are contrary to  
36 those ordered by the court and may not contravene or decrease court  
37 imposed conditions. The department shall notify the offender in  
38 writing of any such conditions or modifications. In setting,

1 modifying, and enforcing conditions of community custody, the  
2 department shall be deemed to be performing a quasi-judicial function.

3 (3) If an offender violates conditions imposed by the court or the  
4 department pursuant to this section during community custody, the  
5 department may transfer the offender to a more restrictive confinement  
6 status and impose other available sanctions as provided in RCW  
7 9.94A.205 and 9.94A.207.

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

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

27 (6) Within the funds available for community custody, the  
28 department shall determine conditions and duration of community custody  
29 on the basis of risk to community safety, and shall supervise offenders  
30 during community custody on the basis of risk to community safety and  
31 conditions imposed by the court. The secretary shall adopt rules to  
32 implement the provisions of this subsection.

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

1        NEW SECTION.    **Sec. 6.**    The code reviser shall recodify sections  
2 within chapter 9.94A RCW, and correct any cross-references to any such  
3 recodified sections, as necessary to simplify the organization of  
4 chapter 9.94A RCW.

5        NEW SECTION.    **Sec. 7.**    This act is necessary for the immediate  
6 preservation of the public peace, health, or safety, or support of the  
7 state government and its existing public institutions, and takes effect  
8 July 1, 2001.

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