
ENGROSSED SUBSTITUTE SENATE BILL 6151

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Long and Hargrove)

READ FIRST TIME 04/06/01.

1 AN ACT Relating to the management of high-risk sex offenders in the
2 civil commitment and criminal justice systems; amending RCW 71.09.020,
3 36.70A.103, 36.70A.200, 9.94A.030, 9.94A.715, 9.94A.060, 9.94A.190,
4 9.94A.390, 9.95.005, 9.95.010, 9.95.011, 9.95.017, 9.95.020, 9.95.032,
5 9.95.052, 9.95.055, 9.95.064, 9.95.070, 9.95.080, 9.95.090, 9.95.100,
6 9.95.110, 9.95.115, 9.95.120, 9.95.121, 9.95.122, 9.95.123, 9.95.124,
7 9.95.125, 9.95.126, 9.95.130, 9.95.140, 9.95.190, 9.95.250, 9.95.280,
8 9.95.290, 9.95.300, 9.95.310, 9.95.320, 9.95.340, 9.95.350, 9.95.360,
9 9.95.370, 9.95.900, 9A.28.020, 9A.36.021, 9A.40.030, 9A.44.100, and
10 72.09.370; reenacting and amending RCW 9.94A.120 and 9.94A.320; adding
11 new sections to chapter 71.09 RCW; adding a new section to chapter
12 36.70A RCW; adding a new section to chapter 36.70 RCW; adding new
13 sections to chapter 9.94A RCW; adding a new section to chapter 72.09
14 RCW; adding new sections to chapter 9.95 RCW; adding a new section to
15 chapter 9A.76 RCW; creating new sections; repealing RCW 9.95.0011 and
16 9.95.145; repealing 2001 c . . . ss 1, 3, and 4 (Substitute Senate Bill
17 No. 5123); prescribing penalties; providing an effective date; and
18 declaring an emergency.

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

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PART I
GENERAL PROVISIONS

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

(a) The effective management of high-risk sex offenders requires a comprehensive approach that includes appropriate sentencing for sex offenses and a plan to address both the immediate and long-term need to establish secure community transition facilities throughout the state.

(b) The individualized treatment required for constitutional civil commitment includes the realistic possibility of release to a less restrictive alternative in appropriate cases. Most persons civilly committed under chapter 71.09 RCW who become eligible for release to a less restrictive alternative do not have housing. Because a lack of housing may unduly restrict a person's ability to obtain an order to a less restrictive alternative, the legislature recognizes that the state must provide some housing facilities. Facilities to house persons conditionally released to a less restrictive alternative under chapter 71.09 RCW are essential public facilities. Public protests and local government moratoriums on zoning and permitting processes have hampered the state's ability to comply with constitutional and statutory requirements and with court orders to create housing for less restrictive alternative placements. The legislature, therefore, intends to provide statewide guidance and assistance in the siting of secure community transition facilities for persons conditionally released to less restrictive alternatives under chapter 71.09 RCW.

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

(2) Therefore, the legislature intends to:

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

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

8 (c) Maximize public safety and enhance the potential for successful
9 treatment of sexually violent predators through the tightly managed use
10 of less restrictive alternatives in secure community transition
11 facilities;

12 (d) Maximize the safety of communities in which secure community
13 transition facilities are located and ensure public input into
14 decisions involving the siting and ongoing operation of these essential
15 public facilities; strengthening the safeguards in placement,
16 oversight, and monitoring of conditionally released persons; and
17 establishing minimum standards for the siting and operation of secure
18 community transition facilities; and

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

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

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

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

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

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

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

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

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

14 (5) "Predatory" means acts directed towards: (a) Strangers ((or));
15 (b) individuals with whom a relationship has been established or
16 promoted for the primary purpose of victimization; or (c) persons of
17 casual acquaintance with whom no substantial personal relationship
18 exists.

19 ~~((+5))~~ (6) "Recent overt act" means any act or threat that has
20 either caused harm of a sexually violent nature or creates a reasonable
21 apprehension of such harm in the mind of an objective person who knows
22 of the history and mental condition of the person engaging in the act.

23 ~~((+6))~~ (7) "Risk potential activity" or "risk potential facility"
24 means an activity or facility that provides a higher incidence of risk
25 to the public from persons conditionally released from the special
26 commitment center. Risk potential activities and facilities include:
27 Public and private schools, school bus stops, licensed day care and
28 licensed preschool facilities, public parks, publicly dedicated trails,
29 sports fields, playgrounds, recreational and community centers,
30 churches, synagogues, temples, mosques, and public libraries.

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

33 (9) "Secure facility" means a residential facility for persons
34 civilly confined under the provisions of this chapter that includes
35 security measures sufficient to protect the community. Such facilities
36 include total confinement facilities, secure community transition
37 facilities, and any residence used as a court-ordered placement under
38 RCW 71.09.096.

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

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

33 ~~((7) "Less restrictive alternative" means court-ordered treatment~~
34 ~~in a setting less restrictive than total confinement.~~

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

37 (12) "Sexually violent predator" means any person who has been
38 convicted of or charged with a crime of sexual violence and who suffers
39 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 (13) "Step-down facility" means any secure community transition
4 facility intended to provide residence for more than five persons.

5 (14) "Total confinement facility" means a facility that provides
6 supervision and sex offender treatment services in a total confinement
7 setting. Total confinement facilities include the special commitment
8 center and any similar facility designated as a secure facility by the
9 secretary.

10 NEW SECTION. Sec. 103. The following acts or parts of acts are
11 each repealed.

12 (1)(a) 2001 c . . . s 1 (Substitute Senate Bill No. 5123, as
13 amended by the house of representatives);

14 (b) 2001 c . . . s 3 (Substitute Senate Bill No. 5123, as amended
15 by the house of representatives); and

16 (c) 2001 c . . . s 4 (Substitute Senate Bill No. 5123, as amended
17 by the house of representatives).

18 (2) This section is null and void if sections 357 and 358 of this
19 act are not enacted into law or if amendment 5123-S AMH . . . H2521.1 is
20 not concurred with by the senate.

21 **PART II**

22 **SITING**

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

25 (1) The secretary is authorized to site and operate a thirty-six
26 bed secure community transition facility as a step-down facility for
27 sexually violent predators on court-ordered conditional release from
28 the special commitment center as provided under RCW 71.09.090 and a
29 special commitment center with up to four hundred beds as a total
30 confinement facility under this chapter, on McNeil Island subject to
31 appropriated funding for those purposes.

32 (2) Notwithstanding RCW 36.70A.103 or any other law, until December
33 31, 2003, to the extent siting a secure community transition facility
34 or a total confinement facility on McNeil Island is inconsistent with
35 local comprehensive plans and/or development regulations, this statute

1 preempts and supersedes those local plans, development regulations, and
2 other laws.

3 (3) The provisions of this act do not limit the state's authority
4 to site any other essential public facility under RCW 36.70A.200 in
5 conformance with local comprehensive plans and development regulations
6 adopted pursuant to chapter 36.70A RCW.

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

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

14 NEW SECTION. **Sec. 202.** Beginning on the effective date of this
15 section, the state shall immediately enter into negotiations for a
16 mitigation agreement with the county in which the secure community
17 transition facility established pursuant to section 201 of this act is
18 located, and with each community in which the persons will reside or
19 regularly spend time in the community pursuant to court orders for
20 regular work or education, or to receive social services, or will
21 regularly be transported through to reach those communities. The
22 negotiations must be toward an agreement that will provide state
23 funding, as appropriated for this purpose, in an amount adequate to
24 mitigate anticipated or realized increased costs in law enforcement
25 resulting from any increased risks to public safety brought about by
26 the presence of sexually violent predators in those communities due to
27 the siting of the step-down facility established pursuant to section
28 201 of this act.

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

31 When a person civilly committed under this chapter is conditionally
32 released to a less restrictive alternative placement at a facility
33 owned or operated under contract with the state, any employer who hires
34 the person for a position or any educational institution that enrolls
35 the person for a program is eligible for an incentive grant from the
36 state up to five thousand dollars per year that the person remains
37 employed or enrolled on at least a half-time basis in a job or program

1 that meets requirements approved by the court. The provisions of this
2 section may not establish employer or educational institution liability
3 for the subsequent criminal acts of a conditionally released person for
4 the decision to hire or enroll that person. An employer or educational
5 institution that accepts an incentive grant under this section shall
6 not be civilly liable for the subsequent criminal acts of a
7 conditionally released person unless the employer's or educational
8 institution's conduct constitutes gross negligence or intentional
9 misconduct. An employer that hires a conditionally released person
10 must notify all other employees of the conditionally released person's
11 status. Notification for conditionally released persons who enroll in
12 an institution of higher education shall be made pursuant to the
13 provisions of RCW 9A.44.130 related to sex offenders enrolled in
14 institutions of higher education and RCW 4.24.550. This provision
15 applies only to conditionally released persons whose court approved
16 treatment plan includes permission or a requirement for the person to
17 obtain education or employment and to employment positions or
18 educational programs that meet the requirements of the court-approved
19 treatment plan.

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

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

31 (2) The anticipated need, if any, for secure community transition
32 facilities smaller than the facility established pursuant to section
33 201 of this act;

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

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

3 The department shall make reasonable efforts to distribute the
4 impact of the employment, education, and social services needs of the
5 residents of a step-down facility among the adjoining counties and not
6 to concentrate the residents' use of resources in any one community.

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

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

19 NEW SECTION. **Sec. 207.** A new section is added to chapter 71.09
20 RCW to read as follows:

21 To the greatest extent possible, persons who were not residents of
22 the county in which both the special commitment center and a step-down
23 facility are located prior to the conviction for which they were
24 incarcerated at the time of the petition for civil commitment was filed
25 may not be released to that county.

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

28 When considering whether a person civilly committed under this
29 chapter and conditionally released to a step-down facility is
30 appropriate for release to a less restrictive alternative placement
31 that is less restrictive than a step-down facility, the court shall
32 consider whether the person has progressed in treatment to the point
33 that a significant change in the person's routine, including but not
34 limited to a change of employment, education, residence, or sex
35 offender treatment provider will not cause the person to regress to the

1 point that the person presents a greater risk to the community than can
2 reasonably be addressed in the proposed placement.

3 **Sec. 209.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended
4 to read as follows:

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

8 NEW SECTION. **Sec. 210.** The secretary of social and health
9 services shall coordinate with the secretary of corrections and the
10 appropriate local or state law enforcement agency or agencies to
11 establish a twenty-four-hour law enforcement presence on McNeil Island
12 before any person is admitted to the step-down facility established
13 under section 201 of this act. Law enforcement shall coordinate with
14 the emergency response team for McNeil Island to provide planning and
15 coordination in the event of an escape from the special commitment
16 center or the step-down facility.

17 In addition, or if no law enforcement agency will provide a law
18 enforcement presence on the island, not more than ten correctional
19 employees, as selected by the secretary of corrections, who are members
20 of the emergency response team for the McNeil Island correctional
21 facility, shall have the powers and duties of a general authority peace
22 officer while acting in a law enforcement capacity. If there is no law
23 enforcement agency to provide the law enforcement presence, those
24 correctional employees selected as peace officers shall provide a
25 twenty-four-hour presence and shall not have correctional duties at the
26 correctional facility in addition to the emergency response team while
27 acting in a law enforcement capacity.

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

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

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

1 A step-down facility shall meet the following minimum staffing
2 requirements:

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

6 (2) By December 1, 2001, the department will provide a staffing
7 plan to the appropriate committees of the legislature that will cover
8 the growth of the step-down facility established pursuant to section
9 201 of this act to its full capacity.

10 (3) At any time any secure community transition facility has six or
11 fewer residents, all staff shall be classified as residential
12 rehabilitation counselor II or have a classification that indicates a
13 higher level of skill, experience, and training. Before being assigned
14 to a secure community transition facility all staff shall have training
15 in sex offender issues, self-defense, and crisis de-escalation skills
16 in addition to departmental orientation and, as appropriate management
17 training. All staff with resident treatment or care duties must
18 participate in ongoing in-service training.

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

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

23 Residents of the step-down facility established in section 201 of
24 this act must be separated from minors and vulnerable adults except
25 minors or vulnerable adults who have been found to be sexually violent
26 predators when being transported between the mainland and McNeil
27 Island.

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

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

36 (1) The secretary shall develop a process with local governments
37 that allows each community in which a secure community transition

1 facility is located to establish operational advisory boards of at
2 least seven persons for the secure community transition facilities.
3 The department may conduct community awareness activities to publicize
4 this opportunity. The operational advisory boards developed under this
5 section shall be implemented following the decision to locate a secure
6 community transition facility in a particular community.

7 (2) The operational advisory boards may review and make
8 recommendations regarding the security and operations of the secure
9 community transition facility and conditions or modifications necessary
10 with relation to any person who the secretary proposes to place in the
11 secure community transition facility.

12 (3) The facility management must consider the recommendations of
13 the community advisory boards. Where the facility management does not
14 implement an operational advisory board recommendation, the management
15 must provide a written response to the operational advisory board
16 stating its reasons for its decision not to implement the
17 recommendation.

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

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

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

26 (1) The secretary shall adopt a violation reporting policy for
27 persons conditionally released to less restrictive alternative
28 placements in secure community transition facilities. The policy shall
29 require written documentation by the department and service providers
30 of all violations of conditions set by the department, the department
31 of corrections, or the court and establish criteria for returning a
32 violator to the special commitment center or a step-down facility. Any
33 conditionally released person who commits a serious violation of
34 conditions shall be returned to the special commitment center, unless
35 arrested by a law enforcement officer, and the court shall be notified
36 immediately and shall initiate proceedings under RCW 71.09.098 to
37 revoke or modify the less restrictive alternative placement. Nothing
38 in this section limits the authority of the department to return a

1 person to the special commitment center based on a violation that is
2 not a serious violation as defined in this section. For the purposes
3 of this section, "serious violation" includes but is not limited to:

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

8 When a person is released to a less restrictive alternative in a
9 secure community transition facility under this chapter and is under
10 the supervision of the department of corrections, notice of any
11 violation of the person's conditions of release must also be made to
12 the department of corrections.

13 (2) Whenever the secretary contracts with a service provider to
14 operate a secure community transition facility, the contract shall
15 include a requirement that the service provider must report to the
16 department of social and health services any known violation of
17 conditions committed by any resident of the secure community transition
18 facility.

19 (3) The secretary shall document in writing all violations,
20 penalties, actions by the department of social and health services to
21 remove persons from a secure community transition facility, and
22 contract terminations. The secretary shall give great weight to a
23 service provider's record of violations, penalties, actions by the
24 department of social and health services or the department of
25 corrections to remove persons from a secure community transition
26 facility, and contract terminations in determining to execute, renew,
27 or renegotiate a contract with a service provider.

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

30 The secretary shall adopt rules that contain a schedule of monetary
31 penalties for contractors operating secure community transition
32 facilities, not to exceed the total compensation set forth in the
33 contract, and include provisions for termination of all contracts with
34 a service provider that has repeated or serious violations of section
35 215 of this act.

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

1 (1) Unless otherwise ordered by the court:

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

4 (b) At least one staff member, or other court-authorized and
5 department-approved person must escort each resident when the resident
6 leaves the secure community transition facility for appointments,
7 employment, or other approved activities. Escorting persons must
8 supervise the resident closely and maintain close proximity to the
9 resident.

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

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

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

22 NEW SECTION. Sec. 218. A new section is added to chapter 71.09
23 RCW to read as follows:

24 (1) Except with respect to the secure community transition facility
25 established pursuant to section 201 of this act, the secretary shall
26 adopt rules that balance the average response time of emergency
27 services to the general area of a proposed secure community transition
28 facility against the proximity of the proposed site to risk potential
29 activities and facilities in existence at the time the site is listed
30 for consideration.

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

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

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

6 (5) The rule shall establish a method to analyze and compare the
7 criteria for each site in terms of public safety and security, site
8 characteristics, and program components. In making a decision
9 regarding a site following the analysis and comparison, the secretary
10 shall give priority to public safety and security considerations. The
11 analysis and comparison of the criteria are to be documented and made
12 available at the public hearings prescribed in section 222 of this act.

13 NEW SECTION. **Sec. 219.** By December 1, 2001, the secretary of the
14 department of social and health services shall determine and report to
15 the legislature whether there is a significant group of potential
16 locations that are outside of a five-minute law enforcement response
17 time zone that are more than two miles from any risk potential
18 activities and whether, in the secretary's judgment, the legislature
19 should require the rule to be revised to permit consideration of these
20 properties.

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

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

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

30 (a) The proximity and response time criteria established under
31 section 218 of this act;

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

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

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

1 (e) Appropriate permitting for a secure community transition
2 facility must be possible under the zoning code of the local
3 jurisdiction.

4 (2) For sites which meet the criteria of subsection (1) of this
5 section, the department shall analyze and compare the criteria in
6 subsections (3) through (5) of this section using the method
7 established in section 218 of this act.

8 (3) Public safety and security criteria shall include at least the
9 following:

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

12 (b) The distance from, and number of, risk potential activities and
13 facilities, as measured using the rules adopted under section 218 of
14 this act;

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

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

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

22 (4) Site characteristics criteria shall include at least the
23 following:

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

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

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

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

31 (5) Program characteristics criteria shall include at least the
32 following:

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

35 (b) Suitability of the location for programming, staffing, and
36 support considerations;

37 (c) Proximity to employment, educational, vocational, and other
38 treatment plan components; and

1 (6) For purposes of this section "available" or "availability" of
2 qualified treatment providers includes provider qualifications and
3 willingness to provide services, average commute time, and cost of
4 services.

5 NEW SECTION. **Sec. 221.** A new section is added to chapter 71.09
6 RCW to read as follows:

7 Security systems for secure community transition facilities
8 designed to house five or fewer residents shall meet the following
9 minimum qualifications:

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

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

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

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

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

21 NEW SECTION. **Sec. 222.** A new section is added to chapter 71.09
22 RCW to read as follows:

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

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

34 (a) If there are more than three sites initially selected as
35 potential locations and the selection process by the secretary or a
36 service provider reduces the number of possible sites for a secure
37 community transition facility to no fewer than three, the secretary or

1 the chief operating officer of the service provider shall notify the
2 public of the possible siting and hold at least two public hearings in
3 each community where a secure community transition facility may be
4 sited.

5 (b) When the secretary or service provider has determined the
6 secure community transition facility's location, the secretary or the
7 chief operating officer of the service provider shall hold at least one
8 additional public hearing in the community where the secure community
9 transition facility will be sited.

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

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

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

34 NEW SECTION. **Sec. 223.** A new section is added to chapter 36.70A
35 RCW to read as follows:

36 (1) The department of social and health services shall prepare a
37 projected list of counties in which secure community transition
38 facilities will need to be sited over the next six years and transmit

1 that to the office of financial management for inclusion on the list of
2 projected essential public facilities kept under RCW 36.70A.200.

3 (2) When a county is notified by the department of social and
4 health services of the projected need to site secure community
5 transition facilities, the county shall review and shall, if necessary,
6 take action to revise the countywide planning policies adopted under
7 RCW 36.70A.210 to address the siting of such facilities. The county
8 must include all cities in such review and must solicit the
9 participation of the department of social and health services regarding
10 policies, statutes, and rules applicable to the siting of secure
11 community transition facilities.

12 (3) Each county and city identified in the countywide planning
13 policies developed under subsection (2) of this section for projected
14 siting of secure community transition facilities within such county or
15 city shall make any necessary revisions to its comprehensive plan and
16 development regulations. The provisions of the comprehensive plan and
17 development regulations shall be consistent with the policies,
18 statutes, and rules applicable to the siting of secure community
19 transition facilities. Any amendments may be combined with the next
20 scheduled adoption of revisions, but in any event not later than the
21 date provided for comprehensive review and revision of plans pursuant
22 to RCW 36.70A.130(1).

23 (4) Nothing in this section precludes a local government from
24 requiring that a special use or a conditional use permit be obtained to
25 site a secure community transition facility that does not comply with
26 its comprehensive plan and development regulations, provided that the
27 comprehensive plan and development regulations are consistent with this
28 section. The local government shall establish timelines for processing
29 any required permits that are no longer than those established for
30 other comparable project permits under RCW 36.70B.080.

31 NEW SECTION. **Sec. 224.** A new section is added to chapter 36.70
32 RCW to read as follows:

33 Counties planning under this chapter must adopt a countywide
34 planning policy for the siting of secure community transition
35 facilities that complies with the timelines and requirements of section
36 223 of this act.

1 agreement authorized by RCW 9.94A.145, is responsible for monitoring
2 and enforcing the offender's sentence with regard to the legal
3 financial obligation, receiving payment thereof from the offender, and,
4 consistent with current law, delivering daily the entire payment to the
5 superior court clerk without depositing it in a departmental account.

6 ~~((+2))~~ (3) "Commission" means the sentencing guidelines
7 commission.

8 ~~((+3))~~ (4) "Community corrections officer" means an employee of
9 the department who is responsible for carrying out specific duties in
10 supervision of sentenced offenders and monitoring of sentence
11 conditions.

12 ~~((+4))~~ (5) "Community custody" means that portion of an offender's
13 sentence of confinement in lieu of earned release time or imposed
14 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
15 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
16 community subject to controls placed on the offender's movement and
17 activities by the department. For offenders placed on community
18 custody for crimes committed on or after July 1, 2000, the department
19 shall assess the offender's risk of reoffense and may establish and
20 modify conditions of community custody, in addition to those imposed by
21 the court, based upon the risk to community safety.

22 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum
23 period of community custody included as part of a sentence under RCW
24 9.94A.715, as established by the commission or the legislature under
25 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

26 ~~((+6))~~ (7) "Community placement" means that period during which
27 the offender is subject to the conditions of community custody and/or
28 postrelease supervision, which begins either upon completion of the
29 term of confinement (postrelease supervision) or at such time as the
30 offender is transferred to community custody in lieu of earned release.
31 Community placement may consist of entirely community custody, entirely
32 postrelease supervision, or a combination of the two.

33 ~~((+7))~~ (8) "Community service" means compulsory service, without
34 compensation, performed for the benefit of the community by the
35 offender.

36 ~~((+8))~~ (9) "Community supervision" means a period of time during
37 which a convicted offender is subject to crime-related prohibitions and
38 other sentence conditions imposed by a court pursuant to this chapter
39 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any

1 offender has a chemical dependency that has contributed to his or her
2 offense, the conditions of supervision may, subject to available
3 resources, include treatment. For purposes of the interstate compact
4 for out-of-state supervision of parolees and probationers, RCW
5 9.95.270, community supervision is the functional equivalent of
6 probation and should be considered the same as probation by other
7 states.

8 ~~((+9))~~ (10) "Confinement" means total or partial confinement.

9 ~~((+10))~~ (11) "Conviction" means an adjudication of guilt pursuant
10 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
11 guilty, and acceptance of a plea of guilty.

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

19 ~~((+12))~~ (13) "Criminal history" means the list of a defendant's
20 prior convictions and juvenile adjudications, whether in this state, in
21 federal court, or elsewhere. The history shall include, where known,
22 for each conviction (a) whether the defendant has been placed on
23 probation and the length and terms thereof; and (b) whether the
24 defendant has been incarcerated and the length of incarceration.

25 ~~((+13))~~ (14) "Day fine" means a fine imposed by the sentencing
26 court that equals the difference between the offender's net daily
27 income and the reasonable obligations that the offender has for the
28 support of the offender and any dependents.

29 ~~((+14))~~ (15) "Day reporting" means a program of enhanced
30 supervision designed to monitor the offender's daily activities and
31 compliance with sentence conditions, and in which the offender is
32 required to report daily to a specific location designated by the
33 department or the sentencing court.

34 ~~((+15))~~ (16) "Department" means the department of corrections.

35 ~~((+16))~~ (17) "Determinate sentence" means a sentence that states
36 with exactitude the number of actual years, months, or days of total
37 confinement, of partial confinement, of community supervision, the
38 number of actual hours or days of community service work, or dollars or
39 terms of a legal financial obligation. The fact that an offender

1 through earned release can reduce the actual period of confinement
2 shall not affect the classification of the sentence as a determinate
3 sentence.

4 ~~((17))~~ (18) "Disposable earnings" means that part of the earnings
5 of an offender remaining after the deduction from those earnings of any
6 amount required by law to be withheld. For the purposes of this
7 definition, "earnings" means compensation paid or payable for personal
8 services, whether denominated as wages, salary, commission, bonuses, or
9 otherwise, and, notwithstanding any other provision of law making the
10 payments exempt from garnishment, attachment, or other process to
11 satisfy a court-ordered legal financial obligation, specifically
12 includes periodic payments pursuant to pension or retirement programs,
13 or insurance policies of any type, but does not include payments made
14 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
15 or Title 74 RCW.

16 ~~((18))~~ (19) "Drug offender sentencing alternative" is a
17 sentencing option available to persons convicted of a felony offense
18 other than a violent offense or a sex offense and who are eligible for
19 the option under RCW 9.94A.660.

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

21 (a) Any felony violation of chapter 69.50 RCW except possession of
22 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
23 controlled substance (RCW 69.50.403);

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

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

30 ~~((20))~~ (21) "Earned release" means earned release from
31 confinement as provided in RCW 9.94A.150.

32 ~~((21))~~ (22) "Escape" means:

33 (a) Sexually violent predator escape (section 357 of this act),
34 escape in the first degree (RCW 9A.76.110), escape in the second degree
35 (RCW 9A.76.120), willful failure to return from furlough (RCW
36 72.66.060), willful failure to return from work release (RCW
37 72.65.070), or willful failure to be available for supervision by the
38 department while in community custody (RCW 72.09.310); or

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

4 (~~((22))~~) (23) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

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

11 (~~((23))~~) (24) "Fine" means a specific sum of money ordered by the
12 sentencing court to be paid by the offender to the court over a
13 specific period of time.

14 (~~((24))~~) (25) "First-time offender" means any person who has no
15 prior convictions for a felony and is eligible for the first-time
16 offender waiver under RCW 9.94A.650.

17 (~~((25))~~) (26) "Home detention" means a program of partial
18 confinement available to offenders wherein the offender is confined in
19 a private residence subject to electronic surveillance.

20 (~~((26))~~) (27) "Legal financial obligation" means a sum of money
21 that is ordered by a superior court of the state of Washington for
22 legal financial obligations which may include restitution to the
23 victim, statutorily imposed crime victims' compensation fees as
24 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
25 drug funds, court-appointed attorneys' fees, and costs of defense,
26 fines, and any other financial obligation that is assessed to the
27 offender as a result of a felony conviction. Upon conviction for
28 vehicular assault while under the influence of intoxicating liquor or
29 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
30 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
31 legal financial obligations may also include payment to a public agency
32 of the expense of an emergency response to the incident resulting in
33 the conviction, subject to RCW 38.52.430.

34 (~~((27))~~) (28) "Most serious offense" means any of the following
35 felonies or a felony attempt to commit any of the following felonies:

36 (a) Any felony defined under any law as a class A felony or
37 criminal solicitation of or criminal conspiracy to commit a class A
38 felony;

39 (b) Assault in the second degree;

1 (c) Assault of a child in the second degree;
2 (d) Child molestation in the second degree;
3 (e) Controlled substance homicide;
4 (f) Extortion in the first degree;
5 (g) Incest when committed against a child under age fourteen;
6 (h) Indecent liberties;
7 (i) Kidnapping in the second degree;
8 (j) Leading organized crime;
9 (k) Manslaughter in the first degree;
10 (l) Manslaughter in the second degree;
11 (m) Promoting prostitution in the first degree;
12 (n) Rape in the third degree;
13 (o) Robbery in the second degree;
14 (p) Sexual exploitation;
15 (q) Vehicular assault;
16 (r) Vehicular homicide, when proximately caused by the driving of
17 any vehicle by any person while under the influence of intoxicating
18 liquor or any drug as defined by RCW 46.61.502, or by the operation of
19 any vehicle in a reckless manner;
20 (s) Any other class B felony offense with a finding of sexual
21 motivation;
22 (t) Any other felony with a deadly weapon verdict under RCW
23 9.94A.125;
24 (u) Any felony offense in effect at any time prior to December 2,
25 1993, that is comparable to a most serious offense under this
26 subsection, or any federal or out-of-state conviction for an offense
27 that under the laws of this state would be a felony classified as a
28 most serious offense under this subsection;
29 (v)(i) A prior conviction for indecent liberties under RCW
30 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
31 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
32 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
33 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
34 (ii) A prior conviction for indecent liberties under RCW
35 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
36 if: (A) The crime was committed against a child under the age of
37 fourteen; or (B) the relationship between the victim and perpetrator is
38 included in the definition of indecent liberties under RCW
39 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,

1 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
2 through July 27, 1997.

3 ~~((+28+))~~ (29) "Nonviolent offense" means an offense which is not a
4 violent offense.

5 ~~((+29+))~~ (30) "Offender" means a person who has committed a felony
6 established by state law and is eighteen years of age or older or is
7 less than eighteen years of age but whose case is under superior court
8 jurisdiction under RCW 13.04.030 or has been transferred by the
9 appropriate juvenile court to a criminal court pursuant to RCW
10 13.40.110. Throughout this chapter, the terms "offender" and
11 "defendant" are used interchangeably.

12 ~~((+30+))~~ (31) "Partial confinement" means confinement for no more
13 than one year in a facility or institution operated or utilized under
14 contract by the state or any other unit of government, or, if home
15 detention or work crew has been ordered by the court, in an approved
16 residence, for a substantial portion of each day with the balance of
17 the day spent in the community. Partial confinement includes work
18 release, home detention, work crew, and a combination of work crew and
19 home detention.

20 ~~((+31+))~~ (32) "Persistent offender" is an offender who:

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

23 (ii) Has, before the commission of the offense under (a) of this
24 subsection, been convicted as an offender on at least two separate
25 occasions, whether in this state or elsewhere, of felonies that under
26 the laws of this state would be considered most serious offenses and
27 would be included in the offender score under RCW 9.94A.360; provided
28 that of the two or more previous convictions, at least one conviction
29 must have occurred before the commission of any of the other most
30 serious offenses for which the offender was previously convicted; or

31 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
32 of a child in the first degree, child molestation in the first degree,
33 rape in the second degree, rape of a child in the second degree, or
34 indecent liberties by forcible compulsion; (B) any of the following
35 offenses with a finding of sexual motivation: Murder in the first
36 degree, murder in the second degree, homicide by abuse, kidnapping in
37 the first degree, kidnapping in the second degree, assault in the first
38 degree, assault in the second degree, assault of a child in the first
39 degree, or burglary in the first degree(~~(, with a finding of sexual~~

1 motivation)); or (C) an attempt to commit any crime listed in this
2 subsection (~~(31)~~) (32)(b)(i); and

3 (ii) Has, before the commission of the offense under (b)(i) of this
4 subsection, been convicted as an offender on at least one occasion,
5 whether in this state or elsewhere, of an offense listed in (b)(i) of
6 this subsection. A conviction for rape of a child in the first degree
7 constitutes a conviction under (b)(i) of this subsection only when the
8 offender was sixteen years of age or older when the offender committed
9 the offense. A conviction for rape of a child in the second degree
10 constitutes a conviction under (b)(i) of this subsection only when the
11 offender was eighteen years of age or older when the offender committed
12 the offense.

13 (~~(32)~~) (33) "Postrelease supervision" is that portion of an
14 offender's community placement that is not community custody.

15 (~~(33)~~) (34) "Predatory" means acts directed towards:

16 (a) Strangers;

17 (b) Individuals with whom a relationship has been established or
18 promoted for the primary purpose of victimization; or

19 (c) Persons of casual acquaintance with whom no substantial
20 relationship exists.

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

25 (~~(34)~~) (36) "Risk assessment" means the application of an
26 objective instrument supported by research and adopted by the
27 department for the purpose of assessing an offender's risk of
28 reoffense, taking into consideration the nature of the harm done by the
29 offender, place and circumstances of the offender related to risk, the
30 offender's relationship to any victim, and any information provided to
31 the department by victims. The results of a risk assessment shall not
32 be based on unconfirmed or unconfirmable allegations.

33 (~~(35)~~) (37) "Serious traffic offense" means:

34 (a) Driving while under the influence of intoxicating liquor or any
35 drug (RCW 46.61.502), actual physical control while under the influence
36 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
37 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
38 or

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

4 (~~(36)~~) (38) "Serious violent offense" is a subcategory of violent
5 offense and means:

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

7 (ii) Homicide by abuse;

8 (iii) Murder in the second degree;

9 (iv) Manslaughter in the first degree;

10 (v) Assault in the first degree;

11 (vi) Kidnapping in the first degree;

12 (vii) Rape in the first degree;

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

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

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

19 (~~(37)~~) (39) "Sex offense" means:

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

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

22 (ii) RCW 9A.64.020;

23 (iii) RCW 9.68A.090; or

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

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

29 (c) A felony with a finding of sexual motivation under RCW
30 9.94A.127 or 13.40.135; or

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

34 (~~(38)~~) (40) "Sexual motivation" means that one of the purposes
35 for which the defendant committed the crime was for the purpose of his
36 or her sexual gratification.

37 (~~(39)~~) (41) "Standard sentence range" means the sentencing
38 court's discretionary range in imposing a nonappealable sentence.

1 (~~(40)~~) (42) "Statutory maximum sentence" means the maximum length
2 of time for which an offender may be confined as punishment for a crime
3 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
4 the crime, or other statute defining the maximum penalty for a crime.

5 (~~(41)~~) (43) "Total confinement" means confinement inside the
6 physical boundaries of a facility or institution operated or utilized
7 under contract by the state or any other unit of government for twenty-
8 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

9 (~~(42)~~) (44) "Transition training" means written and verbal
10 instructions and assistance provided by the department to the offender
11 during the two weeks prior to the offender's successful completion of
12 the work ethic camp program. The transition training shall include
13 instructions in the offender's requirements and obligations during the
14 offender's period of community custody.

15 (~~(43)~~) (45) "Victim" means any person who has sustained
16 emotional, psychological, physical, or financial injury to person or
17 property as a direct result of the crime charged.

18 (~~(44)~~) (46) "Violent offense" means:

19 (a) Any of the following felonies:

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

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

24 (iii) Manslaughter in the first degree;

25 (iv) Manslaughter in the second degree;

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

27 (vi) Kidnapping in the second degree;

28 (vii) Arson in the second degree;

29 (viii) Assault in the second degree;

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

31 (x) Extortion in the first degree;

32 (xi) Robbery in the second degree;

33 (xii) Drive-by shooting;

34 (xiii) Vehicular assault; and

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

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

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

7 (~~(45)~~) (47) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 that complies with RCW 9.94A.135.

10 (~~(46)~~) (48) "Work ethic camp" means an alternative incarceration
11 program as provided in RCW 9.94A.137 designed to reduce recidivism and
12 lower the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (~~(47)~~) (49) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

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

22 (1) When a court sentences a person to the custody of the
23 department for a sex offense not sentenced under section 303 of this
24 act, a violent offense, any crime against persons under RCW
25 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW not
26 sentenced under RCW 9.94A.660, committed on or after July 1, 2000, the
27 court shall in addition to the other terms of the sentence, sentence
28 the offender to community custody for the community custody range
29 established under RCW 9.94A.040 or up to the period of earned release
30 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.
31 The community custody shall begin either upon completion of the term of
32 confinement or at such time as the offender is transferred to community
33 custody in lieu of earned release in accordance with RCW 9.94A.150 (1)
34 and (2).

35 (2)(a) Unless a condition is waived by the court, the conditions of
36 community custody shall include those provided for in RCW 9.94A.700(4).
37 The conditions may also include those provided for in RCW 9.94A.700(5).
38 The court may also order the offender to participate in rehabilitative

1 programs or otherwise perform affirmative conduct reasonably related to
2 the circumstances of the offense, the offender's risk of reoffending,
3 or the safety of the community, and the department shall enforce such
4 conditions pursuant to subsection (6) of this section.

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

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

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

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

30 (5) At any time prior to the completion or termination of a sex
31 offender's term of community custody, if the court finds that public
32 safety would be enhanced, the court may impose and enforce an order
33 extending any or all of the conditions imposed pursuant to this section
34 for a period up to the maximum allowable sentence for the crime as it
35 is classified in chapter 9A.20 RCW, regardless of the expiration of the
36 offender's term of community custody. If a violation of a condition
37 extended under this subsection occurs after the expiration of the
38 offender's term of community custody, it shall be deemed a violation of
39 the sentence for the purposes of RCW 9.94A.195 and may be punishable as

1 contempt of court as provided for in RCW 7.21.040. If the court
2 extends a condition beyond the expiration of the term of community
3 custody, the department is not responsible for supervision of the
4 offender's compliance with the condition.

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

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

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

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

23 (i) Been convicted of:

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

25 (B) Rape of a child in the first degree, child molestation in the
26 first degree, or rape of a child in the second degree, with a finding
27 that the offense was predatory or where the offender used forcible
28 compulsion to commit the crime;

29 (C) Indecent liberties by forcible compulsion;

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

36 (E) An attempt to commit any crime listed in this subsection
37 (1)(a)(i);
38 committed on or after the effective date of this section; or

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

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

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

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

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

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

27 (5)(a) Unless a condition is waived by the court, the conditions of
28 community custody shall include those provided for in RCW 9.94A.700(4).
29 The conditions may also include those provided for in RCW 9.94A.700(5).
30 The court may also order the offender to participate in rehabilitative
31 programs or otherwise perform affirmative conduct reasonably related to
32 the circumstances of the offense, the offender's risk of reoffending,
33 or the safety of the community, and the department and the board shall
34 enforce such conditions pursuant to sections 305, 308, and 309 of this
35 act.

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

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

3 (1) The prosecuting attorney shall file a special allegation that
4 the offense was predatory and may file a special allegation that the
5 offense was committed by forcible compulsion in every criminal case in
6 which the defendant is charged with rape of a child in the first or
7 second degree, child molestation in the first degree, or in any sex
8 offense when the offender has a prior conviction for an offense listed
9 in RCW 9.94A.030(32)(b), when sufficient admissible evidence exists,
10 which, when considered with the most plausible, reasonably foreseeable
11 defense that could be raised under the evidence, would justify a
12 finding that the offense was predatory or was committed by forcible
13 compulsion by a reasonable and objective fact-finder.

14 (2) In a criminal case wherein there has been a special allegation
15 the state shall prove beyond a reasonable doubt that the offense was
16 predatory. The court shall make a finding of fact of whether or not an
17 offense was predatory or was committed by forcible compulsion, or if a
18 jury trial is had, the jury shall, if it finds the defendant guilty,
19 also find a special verdict as to whether or not the offense was
20 predatory or was committed by forcible compulsion.

21 (3) The prosecuting attorney shall not withdraw the special
22 allegation that an offense was predatory or was committed by forcible
23 compulsion without approval of the court through an order of dismissal
24 of the special allegation. The court shall not dismiss this special
25 allegation unless it finds that such an order is necessary to correct
26 an error in the initial charging decision or unless there are
27 evidentiary problems which make proving the special allegation
28 doubtful.

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

31 (1) When an offender is sentenced under section 303 of this act,
32 the department shall assess the offender's risk of recidivism and shall
33 recommend to the board any additional or modified conditions of the
34 offender's community custody based upon the risk to community safety.
35 In addition, the department shall make a recommendation with regard to,
36 and the board may require the offender to participate in,
37 rehabilitative programs, or otherwise perform affirmative conduct, and

1 obey all laws. The board must consider and may impose department-
2 recommended conditions.

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

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

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

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

- 20 (a) The crime of conviction;
- 21 (b) The offender's risk of reoffending; or
- 22 (c) The safety of the community.

23 (6) An offender released by the board under section 307 of this act
24 shall be subject to the supervision of the department until the
25 expiration of the maximum term of the sentence. The department shall
26 monitor the offender's compliance with conditions of community custody
27 imposed by the court, department, or board, and promptly report any
28 violations to the board. Any violation of conditions of community
29 custody established or modified by the board shall be subject to the
30 provisions of sections 308 through 311 of this act.

31 (7) If the department finds that an emergency exists requiring the
32 immediate imposition of conditions of release in addition to those set
33 by the board under section 307 of this act and subsection (1) of this
34 section in order to prevent the offender from committing a crime, the
35 department may impose additional conditions. The department may not
36 impose conditions that are contrary to those set by the board or the
37 court and may not contravene or decrease court-imposed or board-imposed
38 conditions. Conditions imposed under this subsection shall take effect
39 immediately after notice to the offender by personal service, but shall

1 not remain in effect longer than seven working days unless approved by
2 the board under subsection (6) of this section within seven working
3 days.

4 NEW SECTION. **Sec. 306.** A new section is added to chapter 72.09
5 RCW to read as follows:

6 The department shall provide offenders sentenced under section 303
7 of this act with the opportunity for sex offender treatment during
8 incarceration.

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

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

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

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

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

1 If the board does not order the offender released, the board shall
2 establish a new minimum term, not to exceed an additional two years.

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

5 (1) Whenever the board or a community corrections officer of this
6 state has reason to believe an offender released under section 307 of
7 this act has violated a condition of community custody or the laws of
8 this state, any community corrections officer may arrest or cause the
9 arrest and detention of the offender pending a determination by the
10 board whether sanctions should be imposed or the offender's community
11 custody should be revoked. The community corrections officer shall
12 report all facts and circumstances surrounding the alleged violation to
13 the board, with recommendations.

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

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

23 Any offender released under section 307 of this act who is arrested
24 and detained in physical custody by the authority of a community
25 corrections officer, or upon the written order of the board, shall not
26 be released from custody on bail or personal recognizance, except upon
27 approval of the board and the issuance by the board of an order
28 reinstating the offender's release on the same or modified conditions.
29 All chiefs of police, marshals of cities and towns, sheriffs of
30 counties, and all police, prison, and peace officers and constables
31 shall execute any such order in the same manner as any ordinary
32 criminal process.

33 NEW SECTION. **Sec. 310.** A new section is added to chapter 9.95 RCW
34 to read as follows:

35 (1) If an offender released by the board under section 307 of this
36 act violates any condition or requirement of community custody, the

1 board may transfer the offender to a more restrictive confinement
2 status to serve up to the remaining portion of the sentence, less
3 credit for any period actually spent in community custody or in
4 detention awaiting disposition of an alleged violation and subject to
5 the limitations of subsection (2) of this section.

6 (2) Following the hearing specified in subsection (3) of this
7 section, the board may impose sanctions such as work release, home
8 detention with electronic monitoring, work crew, community service,
9 inpatient treatment, daily reporting, curfew, educational or counseling
10 sessions, supervision enhanced through electronic monitoring, or any
11 other sanctions available in the community, or may suspend or revoke
12 the release to community custody whenever an offender released by the
13 board under section 307 of this act violates any condition or
14 requirement of community custody.

15 (3) If an offender released by the board under section 307 of this
16 act is accused of violating any condition or requirement of community
17 custody, he or she is entitled to a hearing before the board prior to
18 the imposition of sanctions. The hearing shall be considered as
19 offender disciplinary proceedings and shall not be subject to chapter
20 34.05 RCW. The board shall develop hearing procedures and a structure
21 of graduated sanctions consistent with the hearing procedures and
22 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
23 suspend the offender's release to community custody and confine the
24 offender in a correctional institution owned, operated by, or operated
25 under contract with the state prior to the hearing unless the offender
26 has been arrested and confined for a new criminal offense.

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

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

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

38 (c) The hearing shall be held unless waived by the offender, and
39 shall be electronically recorded. For offenders not in total

1 confinement, the hearing shall be held within fifteen working days, but
2 not less than twenty-four hours after notice of the violation. For
3 offenders in total confinement, the hearing shall be held within five
4 working days, but not less than twenty-four hours after notice of the
5 violation;

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

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

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

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

27 In the event the board suspends release status of an offender
28 released under section 307 of this act by reason of an alleged
29 violation of a condition of release, or pending disposition of a new
30 criminal charge, the board may nullify the suspension order and
31 reinstate release under previous conditions or any new conditions the
32 board determines advisable. Before the board may nullify a suspension
33 order and reinstate release, it shall determine that the best interests
34 of society and the offender shall be served by such reinstatement
35 rather than return to confinement.

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

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

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

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

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

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

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

16 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

28 In making the appointments, the governor shall endeavor to assure
29 that the commission membership includes adequate representation and
30 expertise relating to both the adult criminal justice system and the
31 juvenile justice system. In making the appointments, the governor
32 shall seek the recommendations of Washington prosecutors in respect to
33 the prosecuting attorney members, of the Washington state bar
34 association in respect to the defense attorney members, of the
35 association of superior court judges in respect to the members who are
36 judges, of the Washington association of sheriffs and police chiefs in
37 respect to the member who is a law enforcement officer, of the
38 Washington state association of counties in respect to the member who
39 is a county official, of the association of Washington cities in

1 respect to the member who is a city official, of the office of crime
2 victims advocacy and other organizations of crime victims in respect to
3 the member who is a victim of crime or a crime victims' advocate, and
4 of the Washington association of juvenile court administrators in
5 respect to the member who is an administrator of juvenile court
6 services.

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

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

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

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

25 **Sec. 313.** RCW 9.94A.120 and 2000 c 226 s 2, 2000 c 43 s 1, and
26 2000 c 28 s 5 are each reenacted and amended to read as follows:

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

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

31 (i) Unless another term of confinement applies, the court shall
32 impose a sentence within the standard sentence range established in RCW
33 9.94A.310;

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

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

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

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

- 1 (vi) RCW 9.94A.590, relating to mandatory minimum terms;
2 (vii) RCW 9.94A.650, relating to the first-time offender waiver;
3 (viii) RCW 9.94A.660, relating to the drug offender sentencing
4 alternative;
5 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
6 alternative;
7 (x) Section 303 of this act, relating to certain sex offenses;
8 (xi) RCW 9.94A.390, relating to exceptional sentences;
9 (~~(xi)~~) (xii) RCW 9.94A.400, relating to consecutive and
10 concurrent sentences.

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

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

27 (4) If a sentence imposed includes payment of a legal financial
28 obligation, it shall be imposed as provided in RCW 9.94A.140,
29 9.94A.142, and 9.94A.145.

30 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
31 court may not impose a sentence providing for a term of confinement or
32 community supervision, community placement, or community custody which
33 exceeds the statutory maximum for the crime as provided in chapter
34 9A.20 RCW.

35 (6) The sentencing court shall give the offender credit for all
36 confinement time served before the sentencing if that confinement was
37 solely in regard to the offense for which the offender is being
38 sentenced.

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

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

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

17 (10) In any sentence of partial confinement, the court may require
18 the offender to serve the partial confinement in work release, in a
19 program of home detention, on work crew, or in a combined program of
20 work crew and home detention.

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

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

30 (1) A sentence that includes a term or terms of confinement
31 totaling more than one year shall be served in a facility or
32 institution operated, or utilized under contract, by the state. Except
33 as provided in subsection (3) or (5) of this section, a sentence of not
34 more than one year of confinement shall be served in a facility
35 operated, licensed, or utilized under contract, by the county, or if
36 home detention or work crew has been ordered by the court, in the
37 residence of either the offender or a member of the offender's
38 immediate family.

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

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

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

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

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

30 The court may impose a sentence outside the standard sentence range
31 for an offense if it finds, considering the purpose of this chapter,
32 that there are substantial and compelling reasons justifying an
33 exceptional sentence. Whenever a sentence outside the standard
34 sentence range is imposed, the court shall set forth the reasons for
35 its decision in written findings of fact and conclusions of law. A
36 sentence outside the standard sentence range shall be a determinate
37 sentence unless it is imposed on an offender sentenced under section
38 303 of this act. An exceptional sentence imposed on an offender

1 sentenced under section 303 of this act shall be to a minimum term set
2 by the court and a maximum term equal to the statutory maximum sentence
3 for the offense of conviction under chapter 9A.20 RCW.

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

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

12 The following are illustrative factors which the court may consider
13 in the exercise of its discretion to impose an exceptional sentence.
14 The following are illustrative only and are not intended to be
15 exclusive reasons for exceptional sentences.

16 (1) Mitigating Circumstances

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

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

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

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

27 (e) The defendant's capacity to appreciate the wrongfulness of his
28 or her conduct, or to conform his or her conduct to the requirements of
29 the law, was significantly impaired. Voluntary use of drugs or alcohol
30 is excluded.

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

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

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

1 (2) Aggravating Circumstances

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

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

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

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

12 (i) The current offense involved multiple victims or multiple
13 incidents per victim;

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

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

18 (iv) The defendant used his or her position of trust, confidence,
19 or fiduciary responsibility to facilitate the commission of the current
20 offense.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (k) The offense resulted in the pregnancy of a child victim of
27 rape.

28 (l) The defendant knew that the victim of the current offense was
29 a youth who was not residing with a legal custodian and the defendant
30 established or promoted the relationship for the primary purpose of
31 victimization.

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

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

35 (2) "Community custody" means that portion of an offender's
36 sentence subject to controls including crime-related prohibitions and
37 affirmative conditions from the court, the board, or the department of
38 corrections based on risk to community safety, that is served under

1 supervision in the community, and which may be modified or revoked for
2 violations of release conditions.

3 (3) "Crime-related prohibition" has the meaning defined in RCW
4 9.94A.030.

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

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

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

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

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

21 The superintendents of the different institutions shall provide
22 suitable quarters for the board and assistants while in the discharge
23 of their duties.

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

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

33 The maximum term to be fixed by the court shall be the maximum
34 provided by law for the crime of which such person was convicted, if
35 the law provides for a maximum term. If the law does not provide a
36 maximum term for the crime of which such person was convicted the court
37 shall fix such maximum term, which may be for any number of years up to

1 and including life imprisonment but in any case where the maximum term
2 is fixed by the court it shall be fixed at not less than twenty years.

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

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

11 The court shall attempt to set the minimum term reasonably
12 consistent with the purposes, standards, and sentencing ranges adopted
13 under RCW 9.94A.040, but the court is subject to the same limitations
14 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
15 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
16 court's minimum term decision is subject to review to the same extent
17 as a minimum term decision by the parole board before July 1, 1986.

18 Thereafter, the expiration of the minimum term set by the court
19 minus any time credits earned under RCW 9.95.070 and 9.95.110
20 constitutes the parole eligibility review date, at which time the board
21 may consider the convicted person for parole under RCW 9.95.100 and
22 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
23 board's authority to reduce or increase the minimum term, once set by
24 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
25 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

26 (2) Not less than ninety days prior to the expiration of the
27 minimum term of a person sentenced under section 303 of this act, for
28 a sex offense committed on or after July 1, 2001, less any time credits
29 permitted by statute, the board shall review the person for conditional
30 release to community custody as provided in section 307 of this act.
31 If the board does not release the person, it shall set a new minimum
32 term not to exceed two years. The board shall review the person again
33 not less than ninety days prior to the expiration of the new minimum
34 term.

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

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

4 The proposed criteria should take into consideration RCW
5 9.95.009(2). Before submission to the governor, the board shall
6 solicit comments and review on their proposed criteria for parole
7 release. These proposed criteria shall be submitted for consideration
8 by the 1987 legislature.

9 (2) Persons committed to the department of corrections and who are
10 under the authority of the board for crimes committed on or after July
11 1, 2001, are subject to the provisions for duration of confinement,
12 release to community custody, and length of community custody
13 established in sections 303 through 311 of this act.

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

16 If the sentence of a person so convicted is not suspended by the
17 court, the superintendent of (~~the penitentiary or the superintendent~~
18 ~~of the reformatory~~) a major state correctional institution shall
19 receive such person, if committed to his or her institution, and
20 imprison (~~him~~) the person until released under the provisions of this
21 chapter, under section 307 of this act, upon the completion of the
22 statutory maximum sentence, or through the action of the governor.

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

25 Such statement shall be signed by the prosecuting attorney and
26 approved by the judge by whom the judgment was rendered and shall be
27 delivered to the sheriff, traveling guard, department of corrections
28 personnel, or other officer executing the sentence, and a copy of such
29 statement shall be furnished to the defendant or his or her attorney.
30 Such officer shall deliver the statement, at the time of the prisoner's
31 commitment, to the superintendent of the institution to which such
32 prisoner has been (~~sentenced and~~) committed. The superintendent
33 shall make such statement available for use by the board (~~of prison~~
34 ~~terms and paroles~~)).

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

1 At any time after the board (or the court after July 1, 1986) has
2 determined the minimum term of confinement of any person subject to
3 confinement in a state correctional institution for a crime committed
4 before July 1, 1984, the board may request the superintendent of such
5 correctional institution to conduct a full review of such person's
6 prospects for rehabilitation and report to the board the facts of such
7 review and the resulting findings. Upon the basis of such report and
8 such other information and investigation that the board deems
9 appropriate, the board may redetermine and refix such convicted
10 person's minimum term of confinement whether the term was set by the
11 board or the court.

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

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

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

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

34 (1) In order to minimize the trauma to the victim, the court may
35 attach conditions on release of (~~a defendant~~) an offender under RCW
36 9.95.062, convicted of a crime committed before July 1, 1984, regarding

1 the whereabouts of the defendant, contact with the victim, or other
2 conditions.

3 (2) Offenders released under section 307 of this act are subject to
4 crime-related prohibitions and affirmative conditions established by
5 the court, the department of corrections, or the board pursuant to RCW
6 9.94A.715 and sections 303 through 311 of this act.

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

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

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

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

26 In case any (~~convicted~~) person convicted of a crime committed
27 before July 1, 1984, and under the jurisdiction of the indeterminate
28 sentence review board undergoing sentence in a state correctional
29 (~~facility~~) institution commits any infractions of the rules and
30 regulations of the institution, the board may revoke any order
31 theretofore made determining the length of time such convicted person
32 shall be imprisoned, including the forfeiture of all or a portion of
33 credits earned or to be earned, pursuant to the provisions of RCW
34 9.95.110, and make a new order determining the length of time the
35 person shall serve, not exceeding the maximum penalty provided by law
36 for the crime for which the person was convicted, or the maximum fixed
37 by the court. Such revocation and redetermination shall not be had

1 except upon a hearing before the indeterminate sentence review board.
2 At such hearing the convicted person shall be present and entitled to
3 be heard and may present evidence and witnesses in his or her behalf.

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

6 (1) The board shall require of every able bodied (~~convicted person~~
7 ~~imprisoned in the penitentiary or the reformatory~~) offender confined
8 in a state correctional institution for a crime committed before July
9 1, 1984, as many hours of faithful labor in each and every day during
10 his or her term of imprisonment as shall be prescribed by the rules and
11 regulations of the institution in which he or she is confined.

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

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

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

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

31 (1) The board may permit (~~a convicted person~~) an offender
32 convicted of a crime committed before July 1, 1984, to leave the
33 buildings and enclosures of (~~the penitentiary or the reformatory~~) a
34 state correctional institution on parole, after such convicted person
35 has served the period of confinement fixed for him or her by the board,
36 less time credits for good behavior and diligence in work: PROVIDED,

1 That in no case shall an inmate be credited with more than one-third of
2 his or her sentence as fixed by the board.

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

8 (2) The board may permit an offender convicted of a crime committed
9 on or after July 1, 2001, and sentenced under section 303 of this act,
10 to leave a state correctional institution on community custody
11 according to the provisions of sections 303 through 311 of this act.
12 The person may be returned to the institution following a violation of
13 his or her conditions of release to community custody pursuant to the
14 hearing provisions of section 310 of this act.

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

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

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

30 Whenever the board or a ((~~probation and parole~~)) community
31 corrections officer of this state has reason to believe a ((~~convicted~~))
32 person convicted of a crime committed before July 1, 1984, has breached
33 a condition of his or her parole or violated the law of any state where
34 he or she may then be or the rules and regulations of the board, any
35 ((~~probation and parole~~)) community corrections officer of this state
36 may arrest or cause the arrest and detention and suspension of parole
37 of such convicted person pending a determination by the board whether

1 the parole of such convicted person shall be revoked. All facts and
2 circumstances surrounding the violation by such convicted person shall
3 be reported to the board by the (~~probation and parole~~) community
4 corrections officer, with recommendations. The board, after
5 consultation with the secretary of corrections, shall make all rules
6 and regulations concerning procedural matters, which shall include the
7 time when state (~~probation and parole~~) community corrections officers
8 shall file with the board reports required by this section, procedures
9 pertaining thereto and the filing of such information as may be
10 necessary to enable the board to perform its functions under this
11 section. On the basis of the report by the (~~probation and parole~~)
12 community corrections officer, or at any time upon its own discretion,
13 the board may revise or modify the conditions of parole or order the
14 suspension of parole by the issuance of a written order bearing its
15 seal, which order shall be sufficient warrant for all peace officers to
16 take into custody any convicted person who may be on parole and retain
17 such person in their custody until arrangements can be made by the
18 board for his or her return to a state correctional institution for
19 convicted felons. Any such revision or modification of the conditions
20 of parole or the order suspending parole shall be personally served
21 upon the parolee.

22 Any parolee arrested and detained in physical custody by the
23 authority of a state (~~probation and parole~~) community corrections
24 officer, or upon the written order of the board, shall not be released
25 from custody on bail or personal recognizance, except upon approval of
26 the board and the issuance by the board of an order of reinstatement on
27 parole on the same or modified conditions of parole.

28 All chiefs of police, marshals of cities and towns, sheriffs of
29 counties, and all police, prison, and peace officers and constables
30 shall execute any such order in the same manner as any ordinary
31 criminal process.

32 Whenever a paroled prisoner is accused of a violation of his or her
33 parole, other than the commission of, and conviction for, a felony or
34 misdemeanor under the laws of this state or the laws of any state where
35 he or she may then be, he or she shall be entitled to a fair and
36 impartial hearing of such charges within thirty days from the time that
37 he or she is served with charges of the violation of conditions of
38 (~~his~~) parole after his or her arrest and detention. The hearing
39 shall be held before one or more members of the board at a place or

1 places, within this state, reasonably near the site of the alleged
2 violation or violations of parole.

3 In the event that the board suspends a parole by reason of an
4 alleged parole violation or in the event that a parole is suspended
5 pending the disposition of a new criminal charge, the board shall have
6 the power to nullify the order of suspension and reinstate the
7 individual to parole under previous conditions or any new conditions
8 that the board may determine advisable. Before the board shall nullify
9 an order of suspension and reinstate a parole they shall have
10 determined that the best interests of society and the individual shall
11 best be served by such reinstatement rather than a return to a penal
12 institution.

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

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

35 If the waiver made by the parolee is rejected by the board it shall
36 hold an on-site parole revocation hearing under the provisions of RCW
37 9.95.120 through 9.95.126.

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

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

6 (1) At any on-site parole revocation hearing for a person convicted
7 of a crime committed before July 1, 1984, the alleged parole violator
8 shall be entitled to be represented by an attorney of his or her own
9 choosing and at his or her own expense, except, upon the presentation
10 of satisfactory evidence of indigency and the request for the
11 appointment of an attorney by the alleged parole violator, the board
12 may cause the appointment of an attorney to represent the alleged
13 parole violator to be paid for at state expense, and, in addition, the
14 board may assume all or such other expenses in the presentation of
15 evidence on behalf of the alleged parole violator as it may have
16 authorized: PROVIDED, That funds are available for the payment of
17 attorneys' fees and expenses. Attorneys for the representation of
18 alleged parole violators in on-site hearings shall be appointed by the
19 superior courts for the counties wherein the on-site parole revocation
20 hearing is to be held and such attorneys shall be compensated in such
21 manner and in such amount as shall be fixed in a schedule of fees
22 adopted by rule of the board.

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

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

27 In conducting on-site parole or community custody revocation
28 hearings or community custody violations hearings, the board shall have
29 the authority to administer oaths and affirmations, examine witnesses,
30 receive evidence, and issue subpoenas for the compulsory attendance of
31 witnesses and the production of evidence for presentation at such
32 hearings. Subpoenas issued by the board shall be effective throughout
33 the state. Witnesses in attendance at any on-site parole or community
34 custody revocation hearing shall be paid the same fees and allowances,
35 in the same manner and under the same conditions as provided for
36 witnesses in the courts of the state in accordance with chapter 2.40
37 RCW (~~as now or hereafter amended~~). If any person fails or refuses to

1 obey a subpoena issued by the board, or obeys the subpoena but refuses
2 to testify concerning any matter under examination at the hearing, the
3 board may petition the superior court of the county where the hearing
4 is being conducted for enforcement of the subpoena: PROVIDED, That an
5 offer to pay statutory fees and mileage has been made to the witness at
6 the time of the service of the subpoena. The petition shall be
7 accompanied by a copy of the subpoena and proof of service, and shall
8 set forth in what specific manner the subpoena has not been complied
9 with, and shall ask an order of the court to compel the witness to
10 appear and testify before the board. The court, upon such petition,
11 shall enter an order directing the witness to appear before the court
12 at a time and place to be fixed in such order and then and there to
13 show cause why he or she has not responded to the subpoena or has
14 refused to testify. A copy of the order shall be served upon the
15 witness. If it appears to the court that the subpoena was properly
16 issued and that the particular questions which the witness refuses to
17 answer are reasonable and relevant, the court shall enter an order that
18 the witness appear at the time and place fixed in the order and testify
19 or produce the required papers, and on failing to obey (~~said~~) the
20 order, the witness shall be dealt with as for contempt of court.

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

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

1 rules of practice before the board in on-site parole revocation
2 hearings, together with forms and instructions.

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

5 After the on-site parole revocation hearing for a person convicted
6 of a crime committed before July 1, 1984, has been concluded, the
7 members of the board having heard the matter shall enter their decision
8 of record within ten days, and make findings and conclusions upon the
9 allegations of the violations of the conditions of parole. If the
10 member, or members having heard the matter, should conclude that the
11 allegations of violation of the conditions of parole have not been
12 proven by a preponderance of the evidence, or, those which have been
13 proven by a preponderance of the evidence are not sufficient cause for
14 the revocation of parole, then the parolee shall be reinstated on
15 parole on the same or modified conditions of parole. For parole
16 violations not resulting in new convictions, modified conditions of
17 parole may include sanctions according to an administrative sanction
18 grid. If the member or members having heard the matter should conclude
19 that the allegations of violation of the conditions of parole have been
20 proven by a preponderance of the evidence and constitute sufficient
21 cause for the revocation of parole, then such member or members shall
22 enter an order of parole revocation and return the parole violator to
23 state custody. Within thirty days of the return of such parole
24 violator to a state correctional institution (~~((for convicted felons))~~)
25 the board shall enter an order determining a new minimum term not
26 exceeding the maximum penalty provided by law for the crime for which
27 the parole violator was originally convicted or the maximum fixed by
28 the court.

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

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

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

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

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

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

28 The superintendents of state correctional facilities and all
29 officers and employees thereof and all other public officials shall at
30 all times cooperate with the board and furnish to the board, its
31 officers, and employees such information as may be necessary to enable
32 it to perform its functions, and such superintendents and other
33 employees shall at all times give the members of the board, its
34 officers, and employees free access to all prisoners confined in the
35 state correctional facilities.

36 (2) Offenders sentenced under section 303 of this act shall be
37 subject to the determinations of the end of sentence review committee

1 regarding risk level and subject to sex offender registration and
2 community notification.

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

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

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

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

16 In order to carry out the provisions of this chapter 9.95 RCW the
17 parole officers working under the supervision of the secretary of
18 corrections shall be known as (~~probation and parole~~) community
19 corrections officers.

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

22 The board may deputize any person (regularly employed by another
23 state) to act as an officer and agent of this state in effecting the
24 return of any person convicted of a crime committed before July 1,
25 1984, who has violated the terms and conditions of parole or probation
26 as granted by this state. In any matter relating to the return of such
27 a person, any agent so deputized shall have all the powers of a police
28 officer of this state.

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

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

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

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

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

10 The purpose of RCW 9.95.310 through 9.95.370 is to provide
11 necessary assistance, other than assistance which is authorized to be
12 provided under the vocational rehabilitation laws, Title 28A RCW, under
13 the public assistance laws, Title 74 RCW or the (~~department of~~)
14 employment security department or other state agency, for parolees,
15 inmates assigned to work/training release facilities, discharged
16 prisoners and persons convicted of a felony committed before July 1,
17 1984, and granted probation in need and whose capacity to earn a living
18 under these circumstances is impaired; and to help such persons attain
19 self-care and/or self-support for rehabilitation and restoration to
20 independence as useful citizens as rapidly as possible thereby reducing
21 the number of returnees to the institutions of this state to the
22 benefit of such person and society as a whole.

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

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

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

3 Any funds in the hands of the department of corrections, or which
4 may come into its hands, which belong to discharged prisoners, inmates
5 assigned to work/training release facilities, parolees or persons
6 convicted of a felony and granted probation who absconded, or whose
7 whereabouts are unknown, shall be deposited in the community services
8 revolving fund. Said funds shall be used to defray the expenses of
9 clothing and other necessities and for transporting discharged
10 prisoners, inmates assigned to work/training release facilities,
11 parolees and persons convicted of a felony and granted probation who
12 are without means to secure the same. All payments disbursed from
13 these funds shall be repaid, whenever possible, by discharged
14 prisoners, inmates assigned to work/training release facilities,
15 parolees and persons convicted of a felony and granted probation for
16 whose benefit they are made. Whenever any money belonging to such
17 persons is so paid into the revolving fund, it shall be repaid to them
18 in accordance with law if a claim therefor is filed with the department
19 of corrections within five years of deposit into said fund and upon a
20 clear showing of a legal right of such claimant to such money. This
21 section applies to persons convicted of a felony committed before July
22 1, 1984.

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

25 All money or other property paid or delivered to a (~~probation or~~
26 ~~parole~~) community corrections officer or employee of the department of
27 corrections by or for the benefit of any discharged prisoner, inmate
28 assigned to a work/training release facility, parolee or persons
29 convicted of a felony and granted probation shall be immediately
30 transmitted to the department of corrections and it shall enter the
31 same upon its books to his or her credit. Such money or other property
32 shall be used only under the direction of the department of
33 corrections.

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

1 If any person, files a claim within five years after the deposit or
2 crediting of such funds, and satisfies the department of corrections
3 that he or she is entitled thereto, the department may make a finding
4 to that effect and may make payment to the claimant in the amount to
5 which he or she is entitled.

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

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

10 The department of corrections shall create, maintain, and
11 administer outside the state treasury a permanent revolving fund to be
12 known as the "community services revolving fund" into which shall be
13 deposited all moneys received by it under RCW 9.95.310 through 9.95.370
14 and any appropriation made for the purposes of RCW 9.95.310 through
15 9.95.370. All expenditures from this revolving fund shall be made by
16 check or voucher signed by the secretary of corrections or his or her
17 designee. The community services revolving fund shall be deposited by
18 the department of corrections in such banks or financial institutions
19 as it may select which shall give to the department a surety bond
20 executed by a surety company authorized to do business in this state,
21 or collateral eligible as security for deposit of state funds in at
22 least the full amount of deposit.

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

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

27 The secretary of corrections or his or her designee shall enter
28 into a written agreement with every person receiving funds under RCW
29 9.95.310 through 9.95.370 that such person will repay such funds under
30 the terms and conditions in said agreement. No person shall receive
31 funds until such an agreement is validly made. This section applies to
32 persons convicted of a felony committed before July 1, 1984.

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

35 (1) Except as provided in subsection (2) of this section, the
36 following sections of law do not apply to any felony offense committed

1 on or after July 1, 1984: RCW (~~9.95.003, 9.95.005, 9.95.007,~~)
2 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, (~~9.95.020, 9.95.030,~~
3 ~~9.95.031, 9.95.032,~~) 9.95.040, 9.95.045, 9.95.047, 9.95.052,
4 (~~9.95.070,~~) 9.95.080, (~~9.95.090,~~) 9.95.100, (~~9.95.110,~~) 9.95.115,
5 9.95.116, 9.95.120, (~~9.95.121, 9.95.122, 9.95.123,~~) 9.95.124,
6 9.95.125, (~~9.95.126,~~) 9.95.130, (~~9.95.140, 9.95.150, 9.95.160,~~
7 ~~9.95.170,~~) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,
8 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,
9 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,
10 (~~and~~) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

11 (2) The following sections apply to any felony offense committed
12 before July 1, 1984, and to any offense committed after July 1, 2001,
13 and sentenced under section 303 of this act: RCW 9.95.003, 9.95.005,
14 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060,
15 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121,
16 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170,
17 9.95.300, and 9.96.050.

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

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

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

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

28 (a) Class A felony when the crime attempted is murder in the first
29 degree, murder in the second degree, (~~or~~) arson in the first degree,
30 child molestation in the first degree, indecent liberties by forcible
31 compulsion, rape in the first degree, rape in the second degree, rape
32 of a child in the first degree, or rape of a child in the second
33 degree;

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

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

- 1 (d) Gross misdemeanor when the crime attempted is a class C felony;
2 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
3 misdemeanor.

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

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

8 (a) Intentionally assaults another and thereby recklessly inflicts
9 substantial bodily harm; or

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

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

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

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

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

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

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

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

28 (2) In any prosecution for kidnapping in the second degree, it is
29 a defense if established by the defendant by a preponderance of the
30 evidence that (a) the abduction does not include the use of or intent
31 to use or threat to use deadly force, and (b) the actor is a relative
32 of the person abducted, and (c) the actor's sole intent is to assume
33 custody of that person. Nothing contained in this paragraph shall
34 constitute a defense to a prosecution for, or preclude a conviction of,
35 any other crime.

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

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

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

9 (a) By forcible compulsion;

10 (b) When the other person is incapable of consent by reason of
11 being mentally defective, mentally incapacitated, or physically
12 helpless;

13 (c) When the victim is developmentally disabled and the perpetrator
14 is a person who is not married to the victim and who has supervisory
15 authority over the victim;

16 (d) When the perpetrator is a health care provider, the victim is
17 a client or patient, and the sexual contact occurs during a treatment
18 session, consultation, interview, or examination. It is an affirmative
19 defense that the defendant must prove by a preponderance of the
20 evidence that the client or patient consented to the sexual contact
21 with the knowledge that the sexual contact was not for the purpose of
22 treatment;

23 (e) When the victim is a resident of a facility for mentally
24 disordered or chemically dependent persons and the perpetrator is a
25 person who is not married to the victim and has supervisory authority
26 over the victim; or

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

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

32 NEW SECTION. **Sec. 357.** A new section is added to chapter 9A.76
33 RCW to read as follows:

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

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

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

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

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

14 **Sec. 358.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and
15 2000 c 66 s 2 are each reenacted and amended to read as follows:

16 TABLE 2

17 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

18 XVI	Aggravated Murder 1 (RCW 10.95.020)
19 XV	Homicide by abuse (RCW 9A.32.055)
20	Malicious explosion 1 (RCW 70.74.280(1))
21	Murder 1 (RCW 9A.32.030)
22 XIV	Murder 2 (RCW 9A.32.050)
23 XIII	Malicious explosion 2 (RCW 70.74.280(2))
24	Malicious placement of an explosive 1 (RCW
25	70.74.270(1))
26 XII	Assault 1 (RCW 9A.36.011)
27	Assault of a Child 1 (RCW 9A.36.120)
28	Malicious placement of an imitation device
29	1 (RCW 70.74.272(1)(a))
30	Rape 1 (RCW 9A.44.040)
31	Rape of a Child 1 (RCW 9A.44.073)
32 XI	Manslaughter 1 (RCW 9A.32.060)
33	Rape 2 (RCW 9A.44.050)
34	Rape of a Child 2 (RCW 9A.44.076)

1 X Child Molestation 1 (RCW 9A.44.083)
2 Indecent Liberties (with forcible
3 compulsion) (RCW 9A.44.100(1)(a))
4 Kidnapping 1 (RCW 9A.40.020)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Malicious explosion 3 (RCW 70.74.280(3))
8 Manufacture of methamphetamine (RCW
9 69.50.401(a)(1)(ii))
10 Over 18 and deliver heroin,
11 methamphetamine, a narcotic from
12 Schedule I or II, or flunitrazepam
13 from Schedule IV to someone under 18
14 (RCW 69.50.406)
15 Sexually Violent Predator Escape (section
16 357 of this act)

17 IX Assault of a Child 2 (RCW 9A.36.130)
18 Controlled Substance Homicide (RCW
19 69.50.415)
20 Explosive devices prohibited (RCW
21 70.74.180)
22 Homicide by Watercraft, by being under the
23 influence of intoxicating liquor or
24 any drug (RCW 79A.60.050)
25 Inciting Criminal Profiteering (RCW
26 9A.82.060(1)(b))
27 Malicious placement of an explosive 2 (RCW
28 70.74.270(2))
29 Over 18 and deliver narcotic from Schedule
30 III, IV, or V or a nonnarcotic, except
31 flunitrazepam or methamphetamine, from
32 Schedule I-V to someone under 18 and 3
33 years junior (RCW 69.50.406)
34 Robbery 1 (RCW 9A.56.200)
35 Sexual Exploitation (RCW 9.68A.040)
36 Vehicular Homicide, by being under the
37 influence of intoxicating liquor or
38 any drug (RCW 46.61.520)

1 VIII Arson 1 (RCW 9A.48.020)
2 Deliver or possess with intent to deliver
3 methamphetamine (RCW
4 69.50.401(a)(1)(ii))
5 Hit and Run--Death (RCW 46.52.020(4)(a))
6 Homicide by Watercraft, by the operation of
7 any vessel in a reckless manner (RCW
8 79A.60.050)
9 Manslaughter 2 (RCW 9A.32.070)
10 Manufacture, deliver, or possess with
11 intent to deliver amphetamine (RCW
12 69.50.401(a)(1)(ii))
13 Manufacture, deliver, or possess with
14 intent to deliver heroin or cocaine
15 (RCW 69.50.401(a)(1)(i))
16 Possession of Ephedrine, Pseudoephedrine,
17 or Anhydrous Ammonia with intent to
18 manufacture methamphetamine (RCW
19 69.50.440)
20 Promoting Prostitution 1 (RCW 9A.88.070)
21 Selling for profit (controlled or
22 counterfeit) any controlled substance
23 (RCW 69.50.410)
24 Theft of Anhydrous Ammonia (RCW 69.55.010)
25 Vehicular Homicide, by the operation of any
26 vehicle in a reckless manner (RCW
27 46.61.520)
28 VII Burglary 1 (RCW 9A.52.020)
29 Child Molestation 2 (RCW 9A.44.086)
30 Dealing in depictions of minor engaged in
31 sexually explicit conduct (RCW
32 9.68A.050)
33 Drive-by Shooting (RCW 9A.36.045)
34 Homicide by Watercraft, by disregard for
35 the safety of others (RCW 79A.60.050)
36 Indecent Liberties (without forcible
37 compulsion) (RCW 9A.44.100(1) (b) and
38 (c))
39 Introducing Contraband 1 (RCW 9A.76.140)

1 Involving a minor in drug dealing (RCW
 2 69.50.401(f))
 3 Malicious placement of an explosive 3 (RCW
 4 70.74.270(3))
 5 Sending, bringing into state depictions of
 6 minor engaged in sexually explicit
 7 conduct (RCW 9.68A.060)
 8 Unlawful Possession of a Firearm in the
 9 first degree (RCW 9.41.040(1)(a))
 10 Use of a Machine Gun in Commission of a
 11 Felony (RCW 9.41.225)
 12 Vehicular Homicide, by disregard for the
 13 safety of others (RCW 46.61.520)

14 VI Bail Jumping with Murder 1 (RCW
 15 9A.76.170(2)(a))
 16 Bribery (RCW 9A.68.010)
 17 Incest 1 (RCW 9A.64.020(1))
 18 Intimidating a Judge (RCW 9A.72.160)
 19 Intimidating a Juror/Witness (RCW
 20 9A.72.110, 9A.72.130)
 21 Malicious placement of an imitation device
 22 2 (RCW 70.74.272(1)(b))
 23 Manufacture, deliver, or possess with
 24 intent to deliver narcotics from
 25 Schedule I or II (except heroin or
 26 cocaine) or flunitrazepam from
 27 Schedule IV (RCW 69.50.401(a)(1)(i))
 28 Rape of a Child 3 (RCW 9A.44.079)
 29 Theft of a Firearm (RCW 9A.56.300)
 30 Unlawful Storage of Anhydrous Ammonia (RCW
 31 69.55.020)

32 V Abandonment of dependent person 1 (RCW
 33 9A.42.060)
 34 Advancing money or property for
 35 extortionate extension of credit (RCW
 36 9A.82.030)
 37 Bail Jumping with class A Felony (RCW
 38 9A.76.170(2)(b))

1 Child Molestation 3 (RCW 9A.44.089)
2 Criminal Mistreatment 1 (RCW 9A.42.020)
3 Custodial Sexual Misconduct 1 (RCW
4 9A.44.160)
5 Delivery of imitation controlled substance
6 by person eighteen or over to person
7 under eighteen (RCW 69.52.030(2))
8 Domestic Violence Court Order Violation
9 (RCW 10.99.040, 10.99.050, 26.09.300,
10 26.10.220, 26.26.138, 26.50.110,
11 26.52.070, or 74.34.145)
12 Extortion 1 (RCW 9A.56.120)
13 Extortionate Extension of Credit (RCW
14 9A.82.020)
15 Extortionate Means to Collect Extensions of
16 Credit (RCW 9A.82.040)
17 Incest 2 (RCW 9A.64.020(2))
18 Kidnapping 2 (RCW 9A.40.030)
19 Perjury 1 (RCW 9A.72.020)
20 Persistent prison misbehavior (RCW
21 9.94.070)
22 Possession of a Stolen Firearm (RCW
23 9A.56.310)
24 Rape 3 (RCW 9A.44.060)
25 Rendering Criminal Assistance 1 (RCW
26 9A.76.070)
27 Sexual Misconduct with a Minor 1 (RCW
28 9A.44.093)
29 Sexually Violating Human Remains (RCW
30 9A.44.105)
31 Stalking (RCW 9A.46.110)
32 IV Arson 2 (RCW 9A.48.030)
33 Assault 2 (RCW 9A.36.021)
34 Assault by Watercraft (RCW 79A.60.060)
35 Bribing a Witness/Bribe Received by Witness
36 (RCW 9A.72.090, 9A.72.100)
37 Commercial Bribery (RCW 9A.68.060)
38 Counterfeiting (RCW 9.16.035(4))
39 Escape 1 (RCW 9A.76.110)

1 Hit and Run--Injury (RCW 46.52.020(4)(b))
2 Hit and Run with Vessel--Injury Accident
3 (RCW 79A.60.200(3))
4 Indecent Exposure to Person Under Age
5 Fourteen (subsequent sex offense) (RCW
6 9A.88.010)
7 Influencing Outcome of Sporting Event (RCW
8 9A.82.070)
9 Knowingly Trafficking in Stolen Property
10 (RCW 9A.82.050(2))
11 Malicious Harassment (RCW 9A.36.080)
12 Manufacture, deliver, or possess with
13 intent to deliver narcotics from
14 Schedule III, IV, or V or nonnarcotics
15 from Schedule I-V (except marijuana,
16 amphetamine, methamphetamines, or
17 flunitrazepam) (RCW 69.50.401(a)(1)
18 (iii) through (v))
19 Residential Burglary (RCW 9A.52.025)
20 Robbery 2 (RCW 9A.56.210)
21 Theft of Livestock 1 (RCW 9A.56.080)
22 Threats to Bomb (RCW 9.61.160)
23 Use of Proceeds of Criminal Profiteering
24 (RCW 9A.82.080 (1) and (2))
25 Vehicular Assault (RCW 46.61.522)
26 Willful Failure to Return from Furlough
27 (RCW 72.66.060)

28 III Abandonment of dependent person 2 (RCW
29 9A.42.070)
30 Assault 3 (RCW 9A.36.031)
31 Assault of a Child 3 (RCW 9A.36.140)
32 Bail Jumping with class B or C Felony (RCW
33 9A.76.170(2)(c))
34 Burglary 2 (RCW 9A.52.030)
35 Communication with a Minor for Immoral
36 Purposes (RCW 9.68A.090)
37 Criminal Gang Intimidation (RCW 9A.46.120)
38 Criminal Mistreatment 2 (RCW 9A.42.030)
39 Custodial Assault (RCW 9A.36.100)

1 Delivery of a material in lieu of a
2 controlled substance (RCW
3 69.50.401(c))
4 Escape 2 (RCW 9A.76.120)
5 Extortion 2 (RCW 9A.56.130)
6 Harassment (RCW 9A.46.020)
7 Intimidating a Public Servant (RCW
8 9A.76.180)
9 Introducing Contraband 2 (RCW 9A.76.150)
10 Maintaining a Dwelling or Place for
11 Controlled Substances (RCW
12 69.50.402(a)(6))
13 Malicious Injury to Railroad Property (RCW
14 81.60.070)
15 Manufacture, deliver, or possess with
16 intent to deliver marijuana (RCW
17 69.50.401(a)(1)(iii))
18 Manufacture, distribute, or possess with
19 intent to distribute an imitation
20 controlled substance (RCW
21 69.52.030(1))
22 Patronizing a Juvenile Prostitute (RCW
23 9.68A.100)
24 Perjury 2 (RCW 9A.72.030)
25 Possession of Incendiary Device (RCW
26 9.40.120)
27 Possession of Machine Gun or Short-Barreled
28 Shotgun or Rifle (RCW 9.41.190)
29 Promoting Prostitution 2 (RCW 9A.88.080)
30 Recklessly Trafficking in Stolen Property
31 (RCW 9A.82.050(1))
32 Securities Act violation (RCW 21.20.400)
33 Tampering with a Witness (RCW 9A.72.120)
34 Telephone Harassment (subsequent conviction
35 or threat of death) (RCW 9.61.230)
36 Theft of Livestock 2 (RCW 9A.56.080)
37 Unlawful Imprisonment (RCW 9A.40.040)
38 Unlawful possession of firearm in the
39 second degree (RCW 9.41.040(1)(b))

1 Unlawful Use of Building for Drug Purposes
2 (RCW 69.53.010)
3 Willful Failure to Return from Work Release
4 (RCW 72.65.070)

5 II Computer Trespass 1 (RCW 9A.52.110)
6 Counterfeiting (RCW 9.16.035(3))
7 Create, deliver, or possess a counterfeit
8 controlled substance (RCW
9 69.50.401(b))

10 Escape from Community Custody (RCW
11 72.09.310)

12 Health Care False Claims (RCW 48.80.030)

13 Malicious Mischief 1 (RCW 9A.48.070)

14 Possession of controlled substance that is
15 either heroin or narcotics from
16 Schedule I or II or flunitrazepam from
17 Schedule IV (RCW 69.50.401(d))

18 Possession of phencyclidine (PCP) (RCW
19 69.50.401(d))

20 Possession of Stolen Property 1 (RCW
21 9A.56.150)

22 Theft 1 (RCW 9A.56.030)

23 Theft of Rental, Leased, or Lease-purchased
24 Property (valued at one thousand five
25 hundred dollars or more) (RCW
26 9A.56.096(4))

27 Trafficking in Insurance Claims (RCW
28 48.30A.015)

29 Unlawful Practice of Law (RCW 2.48.180)

30 Unlicensed Practice of a Profession or
31 Business (RCW 18.130.190(7))

32 I Attempting to Elude a Pursuing Police
33 Vehicle (RCW 46.61.024)

34 False Verification for Welfare (RCW
35 74.08.055)

36 Forged Prescription (RCW 69.41.020)

37 Forged Prescription for a Controlled
38 Substance (RCW 69.50.403)

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

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

26 (1) The secretary shall identify offenders in confinement or
27 partial confinement who: (a) Are reasonably believed to be dangerous
28 to themselves or others; and (b) have a mental disorder. In
29 determining an offender's dangerousness, the secretary shall consider
30 behavior known to the department and factors, based on research, that
31 are linked to an increased risk for dangerousness of mentally ill
32 offenders and shall include consideration of an offender's chemical
33 dependency or abuse.

34 (2) Prior to release of an offender identified under this section,
35 a team consisting of representatives of the department of corrections,
36 the division of mental health, and, as necessary, the indeterminate
37 sentence review board, other divisions or administrations within the
38 department of social and health services, specifically including the

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

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

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

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

37 (6) If the county designated mental health professional determines
38 an emergency detention under chapter 71.05 RCW is necessary, the
39 department shall release the offender only to a state hospital or to a

1 consenting evaluation and treatment facility. The department shall
2 arrange transportation of the offender to the hospital or facility.

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

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

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

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

18 **PART IV**

19 **TECHNICAL PROVISIONS**

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

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

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

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

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

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

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

7 NEW SECTION. **Sec. 405.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 July 1, 2001, except for sections 101 through 226 of this act which
11 take effect immediately.

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