

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2719

Chapter 231, Laws of 2008

60th Legislature
2008 Regular Session

OFFENDER SENTENCING--ACCURACY

EFFECTIVE DATE: 06/12/08 - Except sections 6 through 60, which become effective 08/01/09.

Passed by the House March 12, 2008
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 12, 2008
Yeas 49 Nays 0

BRAD OWEN

President of the Senate

Approved March 28, 2008, 10:55 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2719** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 28, 2008

**Secretary of State
State of Washington**

HOUSE BILL 2719

AS AMENDED BY THE SENATE

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By Representatives Priest, Hurst, Loomis, and VanDeWege

Read first time 01/16/08. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to ensuring that offenders receive accurate
2 sentences; amending RCW 9.94A.500, 9.94A.530, 9.94A.737, 9.94A.740,
3 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612, 9.94A.625, 9.94A.650,
4 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760, 9.94A.775, 9.94A.780,
5 9.94A.820, 4.24.556, 9.95.017, 9.95.064, 9.95.110, 9.95.123, 9.95.420,
6 9.95.440, 46.61.524, 72.09.015, 72.09.270, 72.09.345, and 72.09.580;
7 reenacting and amending RCW 9.94A.525, 9.94A.030, 9.94A.660, and
8 9.94A.712; adding new sections to chapter 9.94A RCW; adding new
9 sections to chapter 72.09 RCW; adding a new chapter to Title 9 RCW;
10 creating new sections; recodifying RCW 9.94A.628, 9.94A.634, 9.94A.700,
11 9.94A.705, 9.94A.710, 9.94A.610, 9.94A.612, 9.94A.614, 9.94A.616,
12 9.94A.618, and 9.94A.620; repealing RCW 9.94A.545, 9.94A.713,
13 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830, and 79A.60.070; providing
14 an effective date; and providing an expiration date.

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

16 NEW SECTION. **Sec. 1.** It is the legislature's intent to ensure
17 that offenders receive accurate sentences that are based on their
18 actual, complete criminal history. Accurate sentences further the
19 sentencing reform act's goals of:

1 (1) Ensuring that the punishment for a criminal offense is
2 proportionate to the seriousness of the offense and the offender's
3 criminal history;

4 (2) Ensuring punishment that is just; and

5 (3) Ensuring that sentences are commensurate with the punishment
6 imposed on others for committing similar offenses.

7 Given the decisions in *In re Cadwallader*, 155 Wn.2d 867 (2005);
8 *State v. Lopez*, 147 Wn.2d 515 (2002); *State v. Ford*, 137 Wn.2d 472
9 (1999); and *State v. McCorkle*, 137 Wn.2d 490 (1999), the legislature
10 finds it is necessary to amend the provisions in RCW 9.94A.500,
11 9.94A.525, and 9.94A.530 in order to ensure that sentences imposed
12 accurately reflect the offender's actual, complete criminal history,
13 whether imposed at sentencing or upon resentencing. These amendments
14 are consistent with the United States supreme court holding in *Monge v.*
15 *California*, 524 U.S. 721 (1998), that double jeopardy is not implicated
16 at resentencing following an appeal or collateral attack.

17 **Sec. 2.** RCW 9.94A.500 and 2006 c 339 s 303 are each amended to
18 read as follows:

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

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

30 Unless specifically waived by the court, the court shall order the
31 department to complete a chemical dependency screening report before
32 imposing a sentence upon a defendant who has been convicted of a
33 violation of the uniform controlled substances act under chapter 69.50
34 RCW, a criminal solicitation to commit such a violation under chapter
35 9A.28 RCW, or any felony where the court finds that the offender has a
36 chemical dependency that has contributed to his or her offense. In
37 addition, the court shall, at the time of plea or conviction, order the

1 department to complete a presentence report before imposing a sentence
2 upon a defendant who has been convicted of a felony sexual offense.
3 The department of corrections shall give priority to presentence
4 investigations for sexual offenders. If the court determines that the
5 defendant may be a mentally ill person as defined in RCW 71.24.025,
6 although the defendant has not established that at the time of the
7 crime he or she lacked the capacity to commit the crime, was
8 incompetent to commit the crime, or was insane at the time of the
9 crime, the court shall order the department to complete a presentence
10 report before imposing a sentence.

11 The court shall consider the risk assessment report and presentence
12 reports, if any, including any victim impact statement and criminal
13 history, and allow arguments from the prosecutor, the defense counsel,
14 the offender, the victim, the survivor of the victim, or a
15 representative of the victim or survivor, and an investigative law
16 enforcement officer as to the sentence to be imposed.

17 A criminal history summary relating to the defendant from the
18 prosecuting authority or from a state, federal, or foreign governmental
19 agency shall be prima facie evidence of the existence and validity of
20 the convictions listed therein. If the court is satisfied by a
21 preponderance of the evidence that the defendant has a criminal
22 history, the court shall specify the convictions it has found to exist.
23 All of this information shall be part of the record. Copies of all
24 risk assessment reports and presentence reports presented to the
25 sentencing court and all written findings of facts and conclusions of
26 law as to sentencing entered by the court shall be sent to the
27 department by the clerk of the court at the conclusion of the
28 sentencing and shall accompany the offender if the offender is
29 committed to the custody of the department. Court clerks shall
30 provide, without charge, certified copies of documents relating to
31 criminal convictions requested by prosecuting attorneys.

32 (2) To prevent wrongful disclosure of information related to mental
33 health services, as defined in RCW 71.05.445 and 71.34.345, a court may
34 take only those steps necessary during a sentencing hearing or any
35 hearing in which the department presents information related to mental
36 health services to the court. The steps may be taken on motion of the
37 defendant, the prosecuting attorney, or on the court's own motion. The
38 court may seal the portion of the record relating to information

1 relating to mental health services, exclude the public from the hearing
2 during presentation or discussion of information relating to mental
3 health services, or grant other relief to achieve the result intended
4 by this subsection, but nothing in this subsection shall be construed
5 to prevent the subsequent release of information related to mental
6 health services as authorized by RCW 71.05.445, 71.34.345, or
7 72.09.585. Any person who otherwise is permitted to attend any hearing
8 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
9 hearing solely because the department intends to disclose or discloses
10 information related to mental health services.

11 **Sec. 3.** RCW 9.94A.525 and 2007 c 199 s 8 and 2007 c 116 s 1 are
12 each reenacted and amended to read as follows:

13 The offender score is measured on the horizontal axis of the
14 sentencing grid. The offender score rules are as follows:

15 The offender score is the sum of points accrued under this section
16 rounded down to the nearest whole number.

17 (1) A prior conviction is a conviction which exists before the date
18 of sentencing for the offense for which the offender score is being
19 computed. Convictions entered or sentenced on the same date as the
20 conviction for which the offender score is being computed shall be
21 deemed "other current offenses" within the meaning of RCW 9.94A.589.

22 (2)(a) Class A and sex prior felony convictions shall always be
23 included in the offender score.

24 (b) Class B prior felony convictions other than sex offenses shall
25 not be included in the offender score, if since the last date of
26 release from confinement (including full-time residential treatment)
27 pursuant to a felony conviction, if any, or entry of judgment and
28 sentence, the offender had spent ten consecutive years in the community
29 without committing any crime that subsequently results in a conviction.

30 (c) Except as provided in (e) of this subsection, class C prior
31 felony convictions other than sex offenses shall not be included in the
32 offender score if, since the last date of release from confinement
33 (including full-time residential treatment) pursuant to a felony
34 conviction, if any, or entry of judgment and sentence, the offender had
35 spent five consecutive years in the community without committing any
36 crime that subsequently results in a conviction.

1 (d) Except as provided in (e) of this subsection, serious traffic
2 convictions shall not be included in the offender score if, since the
3 last date of release from confinement (including full-time residential
4 treatment) pursuant to a felony conviction, if any, or entry of
5 judgment and sentence, the offender spent five years in the community
6 without committing any crime that subsequently results in a conviction.

7 (e) If the present conviction is felony driving while under the
8 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or
9 felony physical control of a vehicle while under the influence of
10 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions
11 of felony driving while under the influence of intoxicating liquor or
12 any drug, felony physical control of a vehicle while under the
13 influence of intoxicating liquor or any drug, and serious traffic
14 offenses shall be included in the offender score if: (i) The prior
15 convictions were committed within five years since the last date of
16 release from confinement (including full-time residential treatment) or
17 entry of judgment and sentence; or (ii) the prior convictions would be
18 considered "prior offenses within ten years" as defined in RCW
19 46.61.5055.

20 (f) This subsection applies to both adult and juvenile prior
21 convictions.

22 (3) Out-of-state convictions for offenses shall be classified
23 according to the comparable offense definitions and sentences provided
24 by Washington law. Federal convictions for offenses shall be
25 classified according to the comparable offense definitions and
26 sentences provided by Washington law. If there is no clearly
27 comparable offense under Washington law or the offense is one that is
28 usually considered subject to exclusive federal jurisdiction, the
29 offense shall be scored as a class C felony equivalent if it was a
30 felony under the relevant federal statute.

31 (4) Score prior convictions for felony anticipatory offenses
32 (attempts, criminal solicitations, and criminal conspiracies) the same
33 as if they were convictions for completed offenses.

34 (5)(a) In the case of multiple prior convictions, for the purpose
35 of computing the offender score, count all convictions separately,
36 except:

37 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to
38 encompass the same criminal conduct, shall be counted as one offense,

1 the offense that yields the highest offender score. The current
2 sentencing court shall determine with respect to other prior adult
3 offenses for which sentences were served concurrently or prior juvenile
4 offenses for which sentences were served consecutively, whether those
5 offenses shall be counted as one offense or as separate offenses using
6 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and
7 if the court finds that they shall be counted as one offense, then the
8 offense that yields the highest offender score shall be used. The
9 current sentencing court may presume that such other prior offenses
10 were not the same criminal conduct from sentences imposed on separate
11 dates, or in separate counties or jurisdictions, or in separate
12 complaints, indictments, or informations;

13 (ii) In the case of multiple prior convictions for offenses
14 committed before July 1, 1986, for the purpose of computing the
15 offender score, count all adult convictions served concurrently as one
16 offense, and count all juvenile convictions entered on the same date as
17 one offense. Use the conviction for the offense that yields the
18 highest offender score.

19 (b) As used in this subsection (5), "served concurrently" means
20 that: (i) The latter sentence was imposed with specific reference to
21 the former; (ii) the concurrent relationship of the sentences was
22 judicially imposed; and (iii) the concurrent timing of the sentences
23 was not the result of a probation or parole revocation on the former
24 offense.

25 (6) If the present conviction is one of the anticipatory offenses
26 of criminal attempt, solicitation, or conspiracy, count each prior
27 conviction as if the present conviction were for a completed offense.
28 When these convictions are used as criminal history, score them the
29 same as a completed crime.

30 (7) If the present conviction is for a nonviolent offense and not
31 covered by subsection (11), (12), or (13) of this section, count one
32 point for each adult prior felony conviction and one point for each
33 juvenile prior violent felony conviction and 1/2 point for each
34 juvenile prior nonviolent felony conviction.

35 (8) If the present conviction is for a violent offense and not
36 covered in subsection (9), (10), (11), (12), or (13) of this section,
37 count two points for each prior adult and juvenile violent felony

1 conviction, one point for each prior adult nonviolent felony
2 conviction, and 1/2 point for each prior juvenile nonviolent felony
3 conviction.

4 (9) If the present conviction is for a serious violent offense,
5 count three points for prior adult and juvenile convictions for crimes
6 in this category, two points for each prior adult and juvenile violent
7 conviction (not already counted), one point for each prior adult
8 nonviolent felony conviction, and 1/2 point for each prior juvenile
9 nonviolent felony conviction.

10 (10) If the present conviction is for Burglary 1, count prior
11 convictions as in subsection (8) of this section; however count two
12 points for each prior adult Burglary 2 or residential burglary
13 conviction, and one point for each prior juvenile Burglary 2 or
14 residential burglary conviction.

15 (11) If the present conviction is for a felony traffic offense
16 count two points for each adult or juvenile prior conviction for
17 Vehicular Homicide or Vehicular Assault; for each felony offense count
18 one point for each adult and 1/2 point for each juvenile prior
19 conviction; for each serious traffic offense, other than those used for
20 an enhancement pursuant to RCW 46.61.520(2), count one point for each
21 adult and 1/2 point for each juvenile prior conviction; count one point
22 for each adult and 1/2 point for each juvenile prior conviction for
23 operation of a vessel while under the influence of intoxicating liquor
24 or any drug.

25 (12) If the present conviction is for homicide by watercraft or
26 assault by watercraft count two points for each adult or juvenile prior
27 conviction for homicide by watercraft or assault by watercraft; for
28 each felony offense count one point for each adult and 1/2 point for
29 each juvenile prior conviction; count one point for each adult and 1/2
30 point for each juvenile prior conviction for driving under the
31 influence of intoxicating liquor or any drug, actual physical control
32 of a motor vehicle while under the influence of intoxicating liquor or
33 any drug, or operation of a vessel while under the influence of
34 intoxicating liquor or any drug.

35 (13) If the present conviction is for manufacture of
36 methamphetamine count three points for each adult prior manufacture of
37 methamphetamine conviction and two points for each juvenile manufacture
38 of methamphetamine offense. If the present conviction is for a drug

1 offense and the offender has a criminal history that includes a sex
2 offense or serious violent offense, count three points for each adult
3 prior felony drug offense conviction and two points for each juvenile
4 drug offense. All other adult and juvenile felonies are scored as in
5 subsection (8) of this section if the current drug offense is violent,
6 or as in subsection (7) of this section if the current drug offense is
7 nonviolent.

8 (14) If the present conviction is for Escape from Community
9 Custody, RCW 72.09.310, count only prior escape convictions in the
10 offender score. Count adult prior escape convictions as one point and
11 juvenile prior escape convictions as 1/2 point.

12 (15) If the present conviction is for Escape 1, RCW 9A.76.110, or
13 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and
14 juvenile prior convictions as 1/2 point.

15 (16) If the present conviction is for Burglary 2 or residential
16 burglary, count priors as in subsection (7) of this section; however,
17 count two points for each adult and juvenile prior Burglary 1
18 conviction, two points for each adult prior Burglary 2 or residential
19 burglary conviction, and one point for each juvenile prior Burglary 2
20 or residential burglary conviction.

21 (17) If the present conviction is for a sex offense, count priors
22 as in subsections (7) through (11) and (13) through (16) of this
23 section; however count three points for each adult and juvenile prior
24 sex offense conviction.

25 (18) If the present conviction is for failure to register as a sex
26 offender under RCW 9A.44.130(~~((+10+))~~) (11), count priors as in
27 subsections (7) through (11) and (13) through (16) of this section;
28 however count three points for each adult and juvenile prior sex
29 offense conviction, excluding prior convictions for failure to register
30 as a sex offender under RCW 9A.44.130(~~((+10+))~~) (11), which shall count
31 as one point.

32 (19) If the present conviction is for an offense committed while
33 the offender was under community (~~(placement)~~) custody, add one point.
34 For purposes of this subsection, community custody includes community
35 placement or postrelease supervision, as defined in chapter 9.-- RCW
36 (the new chapter created in section 56 of this act).

37 (20) If the present conviction is for Theft of a Motor Vehicle,
38 Possession of a Stolen Vehicle, Taking a Motor Vehicle Without

1 Permission 1, or Taking a Motor Vehicle Without Permission 2, count
2 priors as in subsections (7) through (18) of this section; however
3 count one point for prior convictions of Vehicle Prowling 2, and three
4 points for each adult and juvenile prior Theft 1 (of a motor vehicle),
5 Theft 2 (of a motor vehicle), Possession of Stolen Property 1 (of a
6 motor vehicle), Possession of Stolen Property 2 (of a motor vehicle),
7 Theft of a Motor Vehicle, Possession of a Stolen Vehicle, Taking a
8 Motor Vehicle Without Permission 1, or Taking a Motor Vehicle Without
9 Permission 2 conviction.

10 (21) The fact that a prior conviction was not included in an
11 offender's offender score or criminal history at a previous sentencing
12 shall have no bearing on whether it is included in the criminal history
13 or offender score for the current offense. (~~Accordingly,~~) Prior
14 convictions that were not counted in the offender score or included in
15 criminal history under repealed or previous versions of the sentencing
16 reform act shall be included in criminal history and shall count in the
17 offender score if the current version of the sentencing reform act
18 requires including or counting those convictions. Prior convictions
19 that were not included in criminal history or in the offender score
20 shall be included upon any resentencing to ensure imposition of an
21 accurate sentence.

22 **Sec. 4.** RCW 9.94A.530 and 2005 c 68 s 2 are each amended to read
23 as follows:

24 (1) The intersection of the column defined by the offender score
25 and the row defined by the offense seriousness score determines the
26 standard sentence range (see RCW 9.94A.510, (Table 1) and RCW
27 9.94A.517, (Table 3)). The additional time for deadly weapon findings
28 or for other adjustments as specified in RCW 9.94A.533 shall be added
29 to the entire standard sentence range. The court may impose any
30 sentence within the range that it deems appropriate. All standard
31 sentence ranges are expressed in terms of total confinement.

32 (2) In determining any sentence other than a sentence above the
33 standard range, the trial court may rely on no more information than is
34 admitted by the plea agreement, or admitted, acknowledged, or proved in
35 a trial or at the time of sentencing, or proven pursuant to RCW
36 9.94A.537. Acknowledgment includes not objecting to information stated
37 in the presentence reports and not objecting to criminal history

1 presented at the time of sentencing. Where the defendant disputes
2 material facts, the court must either not consider the fact or grant an
3 evidentiary hearing on the point. The facts shall be deemed proved at
4 the hearing by a preponderance of the evidence, except as otherwise
5 specified in RCW 9.94A.537. On remand for resentencing following
6 appeal or collateral attack, the parties shall have the opportunity to
7 present and the court to consider all relevant evidence regarding
8 criminal history, including criminal history not previously presented.

9 (3) In determining any sentence above the standard sentence range,
10 the court shall follow the procedures set forth in RCW 9.94A.537.
11 Facts that establish the elements of a more serious crime or additional
12 crimes may not be used to go outside the standard sentence range except
13 upon stipulation or when specifically provided for in RCW
14 9.94A.535((+2)) (3) (d), (e), (g), and (h).

15 NEW SECTION. Sec. 5. Sections 2 and 3 of this act apply to all
16 sentencings and resentencings commenced before, on, or after the
17 effective date of sections 1 through 4 of this act.

18 NEW SECTION. Sec. 6. The existing sentencing reform act contains
19 numerous provisions for supervision of different types of offenders.
20 This duplication has caused great confusion for judges, lawyers,
21 offenders, and the department of corrections, and often results in
22 inaccurate sentences. The clarifications in this act are intended to
23 support continued discussions by the sentencing guidelines commission
24 with the courts and the criminal justice community to identify and
25 propose policy changes that will further simplify and improve the
26 sentencing reform act relating to the supervision of offenders. The
27 sentencing guidelines commission shall submit policy change proposals
28 to the legislature on or before December 1, 2008.

29 Sections 7 through 58 of this act are intended to simplify the
30 supervision provisions of the sentencing reform act and increase the
31 uniformity of its application. These sections are not intended to
32 either increase or decrease the authority of sentencing courts or the
33 department relating to supervision, except for those provisions
34 instructing the court to apply the provisions of the current community
35 custody law to offenders sentenced after July 1, 2009, but who

1 committed their crime prior to the effective date of this section to
2 the extent that such application is constitutionally permissible.

3 This will effect a change for offenders who committed their crimes
4 prior to the offender accountability act, chapter 196, Laws of 1999.
5 These offenders will be ordered to a term of community custody rather
6 than community placement or community supervision. To the extent
7 constitutionally permissible, the terms of the offender's supervision
8 will be as provided in current law. With the exception of this change,
9 the legislature does not intend to make, and no provision of sections
10 7 through 58 of this act may be construed as making, a substantive
11 change to the supervision provisions of the sentencing reform act.

12 It is the intent of the legislature to reaffirm that section 3,
13 chapter 379, Laws of 2003, expires July 1, 2010.

14 NEW SECTION. **Sec. 7.** A new section is added to chapter 9.94A RCW
15 to read as follows:

16 (1) If an offender is sentenced to the custody of the department
17 for one of the following crimes, the court shall impose a term of
18 community custody for the community custody range established under RCW
19 9.94A.850 or up to the period of earned release awarded pursuant to RCW
20 9.94A.728 (1) and (2), whichever is longer:

21 (a) A sex offense not sentenced under RCW 9.94A.712;

22 (b) A violent offense;

23 (c) A crime against persons under RCW 9.94A.411(2);

24 (d) A felony offender under chapter 69.50 or 69.52 RCW.

25 (2) If an offender is sentenced to a term of confinement of one
26 year or less for a violation of RCW 9A.44.130(11)(a), the court shall
27 impose a term of community custody for the community custody range
28 established under RCW 9.94A.850 or up to the period of earned release
29 awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

30 (3) If an offender is sentenced under the drug offender sentencing
31 alternative, the court shall impose community custody as provided in
32 RCW 9.94A.660.

33 (4) If an offender is sentenced under the special sexual offender
34 sentencing alternative, the court shall impose community custody as
35 provided in RCW 9.94A.670.

36 (5) If an offender is sentenced to a work ethic camp, the court
37 shall impose community custody as provided in RCW 9.94A.690.

1 (6) If a sex offender is sentenced as a nonpersistent offender
2 pursuant to RCW 9.94A.712, the court shall impose community custody as
3 provided in that section.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 9.94A RCW
5 to read as follows:

6 (1) If an offender is sentenced to a term of confinement for one
7 year or less for one of the following offenses, the court may impose up
8 to one year of community custody:

9 (a) A sex offense, other than failure to register under RCW
10 9A.44.130(1);

11 (b) A violent offense;

12 (c) A crime against a person under RCW 9.94A.411; or

13 (d) A felony violation of chapter 69.50 or 69.52 RCW, or an
14 attempt, conspiracy, or solicitation to commit such a crime.

15 (2) If an offender is sentenced to a first-time offender waiver,
16 the court may impose community custody as provided in RCW 9.94A.650.

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

19 When a court sentences a person to a term of community custody, the
20 court shall impose conditions of community custody as provided in this
21 section.

22 (1) **Mandatory conditions.** As part of any term of community
23 custody, the court shall:

24 (a) Require the offender to inform the department of court-ordered
25 treatment upon request by the department;

26 (b) Require the offender to comply with any conditions imposed by
27 the department under section 10 of this act;

28 (c) If the offender was sentenced under RCW 9.94A.712 for an
29 offense listed in RCW 9.94A.712(1)(a), and the victim of the offense
30 was under eighteen years of age at the time of the offense, prohibit
31 the offender from residing in a community protection zone.

32 (2) **Waivable conditions.** Unless waived by the court, as part of
33 any term of community custody, the court shall order an offender to:

34 (a) Report to and be available for contact with the assigned
35 community corrections officer as directed;

1 (b) Work at department-approved education, employment, or community
2 restitution, or any combination thereof;

3 (c) Refrain from possessing or consuming controlled substances
4 except pursuant to lawfully issued prescriptions;

5 (d) Pay supervision fees as determined by the department; and

6 (e) Obtain prior approval of the department for the offender's
7 residence location and living arrangements.

8 (3) **Discretionary conditions.** As part of any term of community
9 custody, the court may order an offender to:

10 (a) Remain within, or outside of, a specified geographical
11 boundary;

12 (b) Refrain from direct or indirect contact with the victim of the
13 crime or a specified class of individuals;

14 (c) Participate in crime-related treatment or counseling services;

15 (d) Participate in rehabilitative programs or otherwise perform
16 affirmative conduct reasonably related to the circumstances of the
17 offense, the offender's risk of reoffending, or the safety of the
18 community;

19 (e) Refrain from consuming alcohol; or

20 (f) Comply with any crime-related prohibitions.

21 (4) **Special conditions.**

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

28 (b)(i) In sentencing an offender convicted of an alcohol or drug
29 related traffic offense, the court shall require the offender to
30 complete a diagnostic evaluation by an alcohol or drug dependency
31 agency approved by the department of social and health services or a
32 qualified probation department, defined under RCW 46.61.516, that has
33 been approved by the department of social and health services. If the
34 offense was pursuant to chapter 46.61 RCW, the report shall be
35 forwarded to the department of licensing. If the offender is found to
36 have an alcohol or drug problem that requires treatment, the offender
37 shall complete treatment in a program approved by the department of
38 social and health services under chapter 70.96A RCW. If the offender

1 is found not to have an alcohol or drug problem that requires
2 treatment, the offender shall complete a course in an information
3 school approved by the department of social and health services under
4 chapter 70.96A RCW. The offender shall pay all costs for any
5 evaluation, education, or treatment required by this section, unless
6 the offender is eligible for an existing program offered or approved by
7 the department of social and health services.

8 (ii) For purposes of this section, "alcohol or drug related traffic
9 offense" means the following: Driving while under the influence as
10 defined by RCW 46.61.502, actual physical control while under the
11 influence as defined by RCW 46.61.504, vehicular homicide as defined by
12 RCW 46.61.520(1)(a), vehicular assault as defined by RCW
13 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050,
14 or assault by watercraft as defined by RCW 79A.60.060.

15 (iii) This subsection (4)(b) does not require the department of
16 social and health services to add new treatment or assessment
17 facilities nor affect its use of existing programs and facilities
18 authorized by law.

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

21 (1) Every person who is sentenced to a period of community custody
22 shall report to and be placed under the supervision of the department,
23 subject to RCW 9.94A.501.

24 (2)(a) The department shall assess the offender's risk of reoffense
25 and may establish and modify additional conditions of community custody
26 based upon the risk to community safety.

27 (b) Within the funds available for community custody, the
28 department shall determine conditions and duration of community custody
29 on the basis of risk to community safety, and shall supervise offenders
30 during community custody on the basis of risk to community safety and
31 conditions imposed by the court. The secretary shall adopt rules to
32 implement the provisions of this subsection (2)(b).

33 (3) If the offender is supervised by the department, the department
34 shall at a minimum instruct the offender to:

35 (a) Report as directed to a community corrections officer;

36 (b) Remain within prescribed geographical boundaries;

1 (c) Notify the community corrections officer of any change in the
2 offender's address or employment;

3 (d) Pay the supervision fee assessment; and

4 (e) Disclose the fact of supervision to any mental health or
5 chemical dependency treatment provider, as required by RCW 9.94A.722.

6 (4) The department may require the offender to participate in
7 rehabilitative programs, or otherwise perform affirmative conduct, and
8 to obey all laws.

9 (5) If the offender was sentenced pursuant to a conviction for a
10 sex offense, the department may impose electronic monitoring. Within
11 the resources made available by the department for this purpose, the
12 department shall carry out any electronic monitoring using the most
13 appropriate technology given the individual circumstances of the
14 offender. As used in this section, "electronic monitoring" means the
15 monitoring of an offender using an electronic offender tracking system
16 including, but not limited to, a system using radio frequency or active
17 or passive global positioning system technology.

18 (6) The department may not impose conditions that are contrary to
19 those ordered by the court and may not contravene or decrease court
20 imposed conditions.

21 (7)(a) The department shall notify the offender in writing of any
22 additional conditions or modifications.

23 (b) By the close of the next business day after receiving notice of
24 a condition imposed or modified by the department, an offender may
25 request an administrative review under rules adopted by the department.
26 The condition shall remain in effect unless the reviewing officer finds
27 that it is not reasonably related to the crime of conviction, the
28 offender's risk of reoffending, or the safety of the community.

29 (8) The department may require offenders to pay for special
30 services rendered including electronic monitoring, day reporting, and
31 telephone reporting, dependent on the offender's ability to pay. The
32 department may pay for these services for offenders who are not able to
33 pay.

34 (9)(a) When a sex offender has been sentenced pursuant to RCW
35 9.94A.712, the board shall exercise the authority prescribed in RCW
36 9.95.420 through 9.95.435.

37 (b) The department shall assess the offender's risk of recidivism

1 and shall recommend to the board any additional or modified conditions
2 based upon the risk to community safety. The board must consider and
3 may impose department-recommended conditions.

4 (c) If the department finds that an emergency exists requiring the
5 immediate imposition of additional conditions in order to prevent the
6 offender from committing a crime, the department may impose such
7 conditions. The department may not impose conditions that are contrary
8 to those set by the board or the court and may not contravene or
9 decrease court-imposed or board-imposed conditions. Conditions imposed
10 under this subsection shall take effect immediately after notice to the
11 offender by personal service, but shall not remain in effect longer
12 than seven working days unless approved by the board.

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

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW
17 to read as follows:

18 No offender sentenced to a term of community custody under the
19 supervision of the department may own, use, or possess firearms or
20 ammunition. Offenders who own, use, or are found to be in actual or
21 constructive possession of firearms or ammunition shall be subject to
22 the violation process and sanctions under sections 15 and 21 of this
23 act and RCW 9.94A.737.

24 "Constructive possession" as used in this section means the power
25 and intent to control the firearm or ammunition. "Firearm" as used in
26 this section has the same definition as in RCW 9.41.010.

27 NEW SECTION. **Sec. 12.** A new section is added to chapter 9.94A RCW
28 to read as follows:

29 (1) Community custody shall begin: (a) Upon completion of the term
30 of confinement; (b) at such time as the offender is transferred to
31 community custody in lieu of earned release in accordance with RCW
32 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of
33 confinement is ordered.

34 (2) When an offender is sentenced to community custody, the
35 offender is subject to the conditions of community custody as of the
36 date of sentencing, unless otherwise ordered by the court.

1 (3) When an offender is sentenced to a community custody range
2 pursuant to section 7 (1) or (2) of this act, the department shall
3 discharge the offender from community custody on a date determined by
4 the department, which the department may modify, based on risk and
5 performance of the offender, within the range or at the end of the
6 period of earned release, whichever is later.

7 NEW SECTION. **Sec. 13.** A new section is added to chapter 9.94A RCW
8 to read as follows:

9 (1) When an offender is under community custody, the community
10 corrections officer may obtain information from the offender's mental
11 health treatment provider on the offender's status with respect to
12 evaluation, application for services, registration for services, and
13 compliance with the supervision plan, without the offender's consent,
14 as described under RCW 71.05.630.

15 (2) An offender under community custody who is civilly detained
16 under chapter 71.05 RCW, and subsequently discharged or conditionally
17 released to the community, shall be under the supervision of the
18 department for the duration of his or her period of community custody.
19 During any period of inpatient mental health treatment that falls
20 within the period of community custody, the inpatient treatment
21 provider and the supervising community corrections officer shall notify
22 each other about the offender's discharge, release, and legal status,
23 and shall share other relevant information.

24 NEW SECTION. **Sec. 14.** A new section is added to chapter 9.94A RCW
25 to read as follows:

26 (1) At any time prior to the completion or termination of a sex
27 offender's term of community custody, if the court finds that public
28 safety would be enhanced, the court may impose and enforce an order
29 extending any or all of the conditions of community custody for a
30 period up to the maximum allowable sentence for the crime as it is
31 classified in chapter 9A.20 RCW, regardless of the expiration of the
32 offender's term of community custody.

33 (2) If a violation of a condition extended under this section
34 occurs after the expiration of the offender's term of community
35 custody, it shall be deemed a violation of the sentence for the

1 purposes of RCW 9.94A.631 and may be punishable as contempt of court as
2 provided for in RCW 7.21.040.

3 (3) If the court extends a condition beyond the expiration of the
4 term of community custody, the department is not responsible for
5 supervision of the offender's compliance with the condition.

6 NEW SECTION. **Sec. 15.** A new section is added to chapter 9.94A RCW
7 to read as follows:

8 (1)(a) An offender who violates any condition or requirement of a
9 sentence may be sanctioned with up to sixty days' confinement for each
10 violation.

11 (b) In lieu of confinement, an offender may be sanctioned with work
12 release, home detention with electronic monitoring, work crew,
13 community restitution, inpatient treatment, daily reporting, curfew,
14 educational or counseling sessions, supervision enhanced through
15 electronic monitoring, or any other sanctions available in the
16 community.

17 (2) If an offender was under community custody pursuant to one of
18 the following statutes, the offender may be sanctioned as follows:

19 (a) If the offender was transferred to community custody in lieu of
20 earned early release in accordance with RCW 9.94A.728(2), the offender
21 may be transferred to a more restrictive confinement status to serve up
22 to the remaining portion of the sentence, less credit for any period
23 actually spent in community custody or in detention awaiting
24 disposition of an alleged violation.

25 (b) If the offender was sentenced under the drug offender
26 sentencing alternative set out in RCW 9.94A.660, the offender may be
27 sanctioned in accordance with that section.

28 (c) If the offender was sentenced under the special sexual offender
29 sentencing alternative set out in RCW 9.94A.670, the suspended sentence
30 may be revoked and the offender committed to serve the original
31 sentence of confinement.

32 (d) If the offender was sentenced to a work ethic camp pursuant to
33 RCW 9.94A.690, the offender may be reclassified to serve the unexpired
34 term of his or her sentence in total confinement.

35 (e) If a sex offender was sentenced pursuant to RCW 9.94A.712, the
36 offender may be transferred to a more restrictive confinement status to

1 serve up to the remaining portion of the sentence, less credit for any
2 period actually spent in community custody or in detention awaiting
3 disposition of an alleged violation.

4 NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW
5 to read as follows:

6 (1) If an offender has not completed his or her maximum term of
7 total confinement and is subject to a third violation hearing pursuant
8 to RCW 9.94A.737 for any violation of community custody and is found to
9 have committed the violation, the department shall return the offender
10 to total confinement in a state correctional facility to serve up to
11 the remaining portion of his or her sentence, unless it is determined
12 that returning the offender to a state correctional facility would
13 substantially interfere with the offender's ability to maintain
14 necessary community supports or to participate in necessary treatment
15 or programming and would substantially increase the offender's
16 likelihood of reoffending.

17 (2) The department may work with the Washington association of
18 sheriffs and police chiefs to establish and operate an electronic
19 monitoring program for low-risk offenders who violate the terms of
20 their community custody.

21 (3) Local governments, their subdivisions and employees, the
22 department and its employees, and the Washington association of
23 sheriffs and police chiefs and its employees are immune from civil
24 liability for damages arising from incidents involving low-risk
25 offenders who are placed on electronic monitoring unless it is shown
26 that an employee acted with gross negligence or bad faith.

27 NEW SECTION. **Sec. 17.** A new section is added to chapter 9.94A RCW
28 to read as follows:

29 (1) If a sanction of confinement is imposed by the court, the
30 following applies:

31 (a) If the sanction was imposed pursuant to section 15(1) of this
32 act, the sanction shall be served in a county facility.

33 (b) If the sanction was imposed pursuant to section 15(2) of this
34 act, the sanction shall be served in a state facility.

35 (2) If a sanction of confinement is imposed by the department, and
36 if the offender is an inmate as defined by RCW 72.09.015, no more than

1 eight days of the sanction, including any credit for time served, may
2 be served in a county facility. The balance of the sanction shall be
3 served in a state facility. In computing the eight-day period,
4 weekends and holidays shall be excluded. The department may negotiate
5 with local correctional authorities for an additional period of
6 detention.

7 (3) If a sanction of confinement is imposed by the board, it shall
8 be served in a state facility.

9 (4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served
10 in a county facility.

11 (5) As used in this section, "county facility" means a facility
12 operated, licensed, or utilized under contract by the county, and
13 "state facility" means a facility operated, licensed, or utilized under
14 contract by the state.

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

17 The procedure for imposing sanctions for violations of sentence
18 conditions or requirements is as follows:

19 (1) If the offender was sentenced under the drug offender
20 sentencing alternative, any sanctions shall be imposed by the
21 department or the court pursuant to RCW 9.94A.660.

22 (2) If the offender was sentenced under the special sexual offender
23 sentencing alternative, any sanctions shall be imposed by the
24 department or the court pursuant to RCW 9.94A.670.

25 (3) If a sex offender was sentenced pursuant to RCW 9.94A.712, any
26 sanctions shall be imposed by the board pursuant to RCW 9.95.435.

27 (4) In any other case, if the offender is being supervised by the
28 department, any sanctions shall be imposed by the department pursuant
29 to RCW 9.94A.737.

30 (5) If the offender is not being supervised by the department, any
31 sanctions shall be imposed by the court pursuant to section 19 of this
32 act.

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

35 (1) If an offender violates any condition or requirement of a

1 sentence, and the offender is not being supervised by the department,
2 the court may modify its order of judgment and sentence and impose
3 further punishment in accordance with this section.

4 (2) If an offender fails to comply with any of the conditions or
5 requirements of a sentence the following provisions apply:

6 (a) The court, upon the motion of the state, or upon its own
7 motion, shall require the offender to show cause why the offender
8 should not be punished for the noncompliance. The court may issue a
9 summons or a warrant of arrest for the offender's appearance;

10 (b) The state has the burden of showing noncompliance by a
11 preponderance of the evidence;

12 (c) If the court finds that a violation has been proved, it may
13 impose the sanctions specified in section 15(1) of this act.
14 Alternatively, the court may:

15 (i) Convert a term of partial confinement to total confinement;

16 (ii) Convert community restitution obligation to total or partial
17 confinement; or

18 (iii) Convert monetary obligations, except restitution and the
19 crime victim penalty assessment, to community restitution hours at the
20 rate of the state minimum wage as established in RCW 49.46.020 for each
21 hour of community restitution;

22 (d) If the court finds that the violation was not willful, the
23 court may modify its previous order regarding payment of legal
24 financial obligations and regarding community restitution obligations;
25 and

26 (e) If the violation involves a failure to undergo or comply with
27 a mental health status evaluation and/or outpatient mental health
28 treatment, the court shall seek a recommendation from the treatment
29 provider or proposed treatment provider. Enforcement of orders
30 concerning outpatient mental health treatment must reflect the
31 availability of treatment and must pursue the least restrictive means
32 of promoting participation in treatment. If the offender's failure to
33 receive care essential for health and safety presents a risk of serious
34 physical harm or probable harmful consequences, the civil detention and
35 commitment procedures of chapter 71.05 RCW shall be considered in
36 preference to incarceration in a local or state correctional facility.

37 (3) Any time served in confinement awaiting a hearing on

1 noncompliance shall be credited against any confinement ordered by the
2 court.

3 (4) Nothing in this section prohibits the filing of escape charges
4 if appropriate.

5 **Sec. 20.** RCW 9.94A.737 and 2007 c 483 s 305 are each amended to
6 read as follows:

7 ~~(1) ((If an offender violates any condition or requirement of
8 community custody, the department may transfer the offender to a more
9 restrictive confinement status to serve up to the remaining portion of
10 the sentence, less credit for any period actually spent in community
11 custody or in detention awaiting disposition of an alleged violation
12 and subject to the limitations of subsection (3) of this section.~~

13 ~~(2) If an offender has not completed his or her maximum term of
14 total confinement and is subject to a third violation hearing for any
15 violation of community custody and is found to have committed the
16 violation, the department shall return the offender to total
17 confinement in a state correctional facility to serve up to the
18 remaining portion of his or her sentence, unless it is determined that
19 returning the offender to a state correctional facility would
20 substantially interfere with the offender's ability to maintain
21 necessary community supports or to participate in necessary treatment
22 or programming and would substantially increase the offender's
23 likelihood of reoffending.~~

24 ~~(3)(a) For a sex offender sentenced to a term of community custody
25 under RCW 9.94A.670 who violates any condition of community custody,
26 the department may impose a sanction of up to sixty days' confinement
27 in a local correctional facility for each violation. If the department
28 imposes a sanction, the department shall submit within seventy two
29 hours a report to the court and the prosecuting attorney outlining the
30 violation or violations and the sanctions imposed.~~

31 ~~(b) For a sex offender sentenced to a term of community custody
32 under RCW 9.94A.710 who violates any condition of community custody
33 after having completed his or her maximum term of total confinement,
34 including time served on community custody in lieu of earned release,
35 the department may impose a sanction of up to sixty days in a local
36 correctional facility for each violation.~~

1 ~~(c) For an offender sentenced to a term of community custody under~~
2 ~~RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,~~
3 ~~for a crime committed on or after July 1, 2000, who violates any~~
4 ~~condition of community custody after having completed his or her~~
5 ~~maximum term of total confinement, including time served on community~~
6 ~~custody in lieu of earned release, the department may impose a sanction~~
7 ~~of up to sixty days in total confinement for each violation. The~~
8 ~~department may impose sanctions such as work release, home detention~~
9 ~~with electronic monitoring, work crew, community restitution, inpatient~~
10 ~~treatment, daily reporting, curfew, educational or counseling sessions,~~
11 ~~supervision enhanced through electronic monitoring, or any other~~
12 ~~sanctions available in the community.~~

13 ~~(d) For an offender sentenced to a term of community placement~~
14 ~~under RCW 9.94A.705 who violates any condition of community placement~~
15 ~~after having completed his or her maximum term of total confinement,~~
16 ~~including time served on community custody in lieu of earned release,~~
17 ~~the department may impose a sanction of up to sixty days in total~~
18 ~~confinement for each violation. The department may impose sanctions~~
19 ~~such as work release, home detention with electronic monitoring, work~~
20 ~~crew, community restitution, inpatient treatment, daily reporting,~~
21 ~~curfew, educational or counseling sessions, supervision enhanced~~
22 ~~through electronic monitoring, or any other sanctions available in the~~
23 ~~community.~~

24 ~~(4) If an offender has been arrested for a new felony offense while~~
25 ~~under community supervision, community custody, or community placement,~~
26 ~~the department shall hold the offender in total confinement until a~~
27 ~~hearing before the department as provided in this section or until the~~
28 ~~offender has been formally charged for the new felony offense,~~
29 ~~whichever is earlier. Nothing in this subsection shall be construed as~~
30 ~~to permit the department to hold an offender past his or her maximum~~
31 ~~term of total confinement if the offender has not completed the maximum~~
32 ~~term of total confinement or to permit the department to hold an~~
33 ~~offender past the offender's term of community supervision, community~~
34 ~~custody, or community placement.~~

35 ~~(5) The department shall be financially responsible for any portion~~
36 ~~of the sanctions authorized by this section that are served in a local~~
37 ~~correctional facility as the result of action by the department.~~

1 ~~(6)~~) If an offender is accused of violating any condition or
2 requirement of community custody, he or she is entitled to a hearing
3 before the department prior to the imposition of sanctions. The
4 hearing shall be considered as offender disciplinary proceedings and
5 shall not be subject to chapter 34.05 RCW. The department shall
6 develop hearing procedures and a structure of graduated sanctions.

7 ~~((7))~~ (2) The hearing procedures required under subsection
8 ~~((6))~~ (1) of this section shall be developed by rule and include the
9 following:

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

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

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

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

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

1 ~~((8))~~ (3) For purposes of this section, no finding of a violation
2 of conditions may be based on unconfirmed or unconfirmable allegations.

3 ~~((9) The department shall work with the Washington association of
4 sheriffs and police chiefs to establish and operate an electronic
5 monitoring program for low risk offenders who violate the terms of
6 their community custody. Between January 1, 2006, and December 31,
7 2006, the department shall endeavor to place at least one hundred low-
8 risk community custody violators on the electronic monitoring program
9 per day if there are at least that many low risk offenders who qualify
10 for the electronic monitoring program.~~

11 ~~(10) Local governments, their subdivisions and employees, the
12 department and its employees, and the Washington association of
13 sheriffs and police chiefs and its employees shall be immune from civil
14 liability for damages arising from incidents involving low risk
15 offenders who are placed on electronic monitoring unless it is shown
16 that an employee acted with gross negligence or bad faith.)~~

17 NEW SECTION. **Sec. 21.** (1) The secretary may issue warrants for
18 the arrest of any offender who violates a condition of community
19 custody. The arrest warrants shall authorize any law enforcement or
20 peace officer or community corrections officer of this state or any
21 other state where such offender may be located, to arrest the offender
22 and place him or her in total confinement pending disposition of the
23 alleged violation.

24 (2) A community corrections officer, if he or she has reasonable
25 cause to believe an offender has violated a condition of community
26 custody, may suspend the person's community custody status and arrest
27 or cause the arrest and detention in total confinement of the offender,
28 pending the determination of the secretary as to whether the violation
29 has occurred. The community corrections officer shall report to the
30 secretary all facts and circumstances and the reasons for the action of
31 suspending community custody status.

32 (3) If an offender has been arrested for a new felony offense while
33 under community custody the department shall hold the offender in total
34 confinement until a hearing before the department as provided in this
35 section or until the offender has been formally charged for the new
36 felony offense, whichever is earlier. Nothing in this subsection shall
37 be construed as to permit the department to hold an offender past his

1 or her maximum term of total confinement if the offender has not
2 completed the maximum term of total confinement or to permit the
3 department to hold an offender past the offender's term of community
4 custody.

5 (4) A violation of a condition of community custody shall be deemed
6 a violation of the sentence for purposes of RCW 9.94A.631. The
7 authority granted to community corrections officers under this section
8 shall be in addition to that set forth in RCW 9.94A.631.

9 **Sec. 22.** RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read
10 as follows:

11 ~~(1) ((The secretary may issue warrants for the arrest of any
12 offender who violates a condition of community placement or community
13 custody. The arrest warrants shall authorize any law enforcement or
14 peace officer or community corrections officer of this state or any
15 other state where such offender may be located, to arrest the offender
16 and place him or her in total confinement pending disposition of the
17 alleged violation.)) When an offender is arrested pursuant to section
18 21 of this act, the department shall compensate the local jurisdiction
19 at the office of financial management's adjudicated rate, in accordance
20 with RCW 70.48.440. ((A community corrections officer, if he or she
21 has reasonable cause to believe an offender in community placement or
22 community custody has violated a condition of community placement or
23 community custody, may suspend the person's community placement or
24 community custody status and arrest or cause the arrest and detention
25 in total confinement of the offender, pending the determination of the
26 secretary as to whether the violation has occurred. The community
27 corrections officer shall report to the secretary all facts and
28 circumstances and the reasons for the action of suspending community
29 placement or community custody status. A violation of a condition of
30 community placement or community custody shall be deemed a violation of
31 the sentence for purposes of RCW 9.94A.631. The authority granted to
32 community corrections officers under this section shall be in addition
33 to that set forth in RCW 9.94A.631.))~~

34 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
35 to community custody and who are detained in a local correctional
36 facility are the financial responsibility of the department of
37 corrections, except as provided in subsection (3) of this section.

1 (~~The community custody inmate shall be removed from the local~~
2 ~~correctional facility, except as provided in subsection (3) of this~~
3 ~~section, not later than eight days, excluding weekends and holidays,~~
4 ~~following admittance to the local correctional facility and~~
5 ~~notification that the inmate is available for movement to a state~~
6 ~~correctional institution.))~~

7 (3) (~~The department may negotiate with local correctional~~
8 ~~authorities for an additional period of detention; however, sex~~
9 ~~offenders sanctioned for community custody violations under RCW~~
10 ~~9.94A.737(2) to a term of confinement shall remain in the local~~
11 ~~correctional facility for the complete term of the sanction.)) For
12 confinement sanctions imposed by the department under RCW
13 ~~((9.94A.737(2)(a)))~~ 9.94A.670, the local correctional facility shall be
14 financially responsible. (~~For confinement sanctions imposed under RCW~~
15 ~~9.94A.737(2)(b), the department of corrections shall be financially~~
16 ~~responsible for that portion of the sanction served during the time in~~
17 ~~which the sex offender is on community custody in lieu of earned~~
18 ~~release, and the local correctional facility shall be financially~~
19 ~~responsible for that portion of the sanction served by the sex offender~~
20 ~~after the time in which the sex offender is on community custody in~~
21 ~~lieu of earned release.))~~~~

22 (4) The department, in consultation with the Washington association
23 of sheriffs and police chiefs and those counties in which the sheriff
24 does not operate a correctional facility, shall establish a methodology
25 for determining the department's local correctional facilities bed
26 utilization rate, for each county in calendar year 1998, for offenders
27 being held for violations of conditions of community custody(~~(~~
28 ~~community placement, or community supervision))~~. (~~For confinement~~
29 ~~sanctions imposed under RCW 9.94A.737(2) (c) or (d))~~)

30 (5) Except as provided in subsections (1) and (2) of this section,
31 the local correctional facility shall continue to be financially
32 responsible to the extent of the calendar year 1998 bed utilization
33 rate for confinement sanctions imposed by the department pursuant to
34 RCW 9.94A.737. If the department's use of bed space in local
35 correctional facilities of any county for such confinement sanctions
36 (~~imposed on offenders sentenced to a term of community custody under~~
37 ~~RCW 9.94A.737(2) (c) or (d))~~) exceeds the 1998 bed utilization rate for
38 the county, the department shall compensate the county for the excess

1 use at the per diem rate equal to the lowest rate charged by the county
2 under its contract with a municipal government during the year in which
3 the use occurs.

4 **Sec. 23.** RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c
5 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and
6 amended to read as follows:

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

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

11 (2) "Collect," or any derivative thereof, "collect and remit," or
12 "collect and deliver," when used with reference to the department,
13 means that the department, either directly or through a collection
14 agreement authorized by RCW 9.94A.760, is responsible for monitoring
15 and enforcing the offender's sentence with regard to the legal
16 financial obligation, receiving payment thereof from the offender, and,
17 consistent with current law, delivering daily the entire payment to the
18 superior court clerk without depositing it in a departmental account.

19 (3) "Commission" means the sentencing guidelines commission.

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

24 (5) "Community custody" means that portion of an offender's
25 sentence of confinement in lieu of earned release time or imposed
26 (~~pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,~~
27 ~~9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,)) as part of a
28 sentence and served in the community subject to controls placed on the
29 offender's movement and activities by the department. ((For offenders
30 placed on community custody for crimes committed on or after July 1,
31 2000, the department shall assess the offender's risk of reoffense and
32 may establish and modify conditions of community custody, in addition
33 to those imposed by the court, based upon the risk to community
34 safety.))~~

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

1 9.94A.715, as established by the commission or the legislature under
2 RCW 9.94A.850 (~~(for crimes committed on or after July 1, 2000)~~).

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

10 ~~(8))~~ "Community protection zone" means the area within eight
11 hundred eighty feet of the facilities and grounds of a public or
12 private school.

13 ~~((9))~~ (8) "Community restitution" means compulsory service,
14 without compensation, performed for the benefit of the community by the
15 offender.

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

26 ~~(11))~~ (9) "Confinement" means total or partial confinement.

27 ~~((12))~~ (10) "Conviction" means an adjudication of guilt pursuant
28 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
29 guilty, and acceptance of a plea of guilty.

30 ~~((13))~~ (11) "Crime-related prohibition" means an order of a court
31 prohibiting conduct that directly relates to the circumstances of the
32 crime for which the offender has been convicted, and shall not be
33 construed to mean orders directing an offender affirmatively to
34 participate in rehabilitative programs or to otherwise perform
35 affirmative conduct. However, affirmative acts necessary to monitor
36 compliance with the order of a court may be required by the department.

37 ~~((14))~~ (12) "Criminal history" means the list of a defendant's

1 prior convictions and juvenile adjudications, whether in this state, in
2 federal court, or elsewhere.

3 (a) The history shall include, where known, for each conviction (i)
4 whether the defendant has been placed on probation and the length and
5 terms thereof; and (ii) whether the defendant has been incarcerated and
6 the length of incarceration.

7 (b) A conviction may be removed from a defendant's criminal history
8 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
9 a similar out-of-state statute, or if the conviction has been vacated
10 pursuant to a governor's pardon.

11 (c) The determination of a defendant's criminal history is distinct
12 from the determination of an offender score. A prior conviction that
13 was not included in an offender score calculated pursuant to a former
14 version of the sentencing reform act remains part of the defendant's
15 criminal history.

16 ~~((+15))~~ (13) "Day fine" means a fine imposed by the sentencing
17 court that equals the difference between the offender's net daily
18 income and the reasonable obligations that the offender has for the
19 support of the offender and any dependents.

20 ~~((+16))~~ (14) "Day reporting" means a program of enhanced
21 supervision designed to monitor the offender's daily activities and
22 compliance with sentence conditions, and in which the offender is
23 required to report daily to a specific location designated by the
24 department or the sentencing court.

25 ~~((+17))~~ (15) "Department" means the department of corrections.

26 ~~((+18))~~ (16) "Determinate sentence" means a sentence that states
27 with exactitude the number of actual years, months, or days of total
28 confinement, of partial confinement, of community ~~((supervision))~~
29 custody, the number of actual hours or days of community restitution
30 work, or dollars or terms of a legal financial obligation. The fact
31 that an offender through earned release can reduce the actual period of
32 confinement shall not affect the classification of the sentence as a
33 determinate sentence.

34 ~~((+19))~~ (17) "Disposable earnings" means that part of the earnings
35 of an offender remaining after the deduction from those earnings of any
36 amount required by law to be withheld. For the purposes of this
37 definition, "earnings" means compensation paid or payable for personal
38 services, whether denominated as wages, salary, commission, bonuses, or

1 otherwise, and, notwithstanding any other provision of law making the
2 payments exempt from garnishment, attachment, or other process to
3 satisfy a court-ordered legal financial obligation, specifically
4 includes periodic payments pursuant to pension or retirement programs,
5 or insurance policies of any type, but does not include payments made
6 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
7 or Title 74 RCW.

8 ~~((+20+))~~ (18) "Drug offender sentencing alternative" is a
9 sentencing option available to persons convicted of a felony offense
10 other than a violent offense or a sex offense and who are eligible for
11 the option under RCW 9.94A.660.

12 ~~((+21+))~~ (19) "Drug offense" means:

13 (a) Any felony violation of chapter 69.50 RCW except possession of
14 a controlled substance (RCW 69.50.4013) or forged prescription for a
15 controlled substance (RCW 69.50.403);

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

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

22 ~~((+22+))~~ (20) "Earned release" means earned release from
23 confinement as provided in RCW 9.94A.728.

24 ~~((+23+))~~ (21) "Escape" means:

25 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
26 first degree (RCW 9A.76.110), escape in the second degree (RCW
27 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
28 willful failure to return from work release (RCW 72.65.070), or willful
29 failure to be available for supervision by the department while in
30 community custody (RCW 72.09.310); or

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

34 ~~((+24+))~~ (22) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-
37 run injury-accident (RCW 46.52.020(4)), felony driving while under the

1 influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or
2 felony physical control of a vehicle while under the influence of
3 intoxicating liquor or any drug (RCW 46.61.504(6)); or

4 (b) 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 felony
6 traffic offense under (a) of this subsection.

7 ~~((+25+))~~ (23) "Fine" means a specific sum of money ordered by the
8 sentencing court to be paid by the offender to the court over a
9 specific period of time.

10 ~~((+26+))~~ (24) "First-time offender" means any person who has no
11 prior convictions for a felony and is eligible for the first-time
12 offender waiver under RCW 9.94A.650.

13 ~~((+27+))~~ (25) "Home detention" means a program of partial
14 confinement available to offenders wherein the offender is confined in
15 a private residence subject to electronic surveillance.

16 ~~((+28+))~~ (26) "Legal financial obligation" means a sum of money
17 that is ordered by a superior court of the state of Washington for
18 legal financial obligations which may include restitution to the
19 victim, statutorily imposed crime victims' compensation fees as
20 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
21 drug funds, court-appointed attorneys' fees, and costs of defense,
22 fines, and any other financial obligation that is assessed to the
23 offender as a result of a felony conviction. Upon conviction for
24 vehicular assault while under the influence of intoxicating liquor or
25 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
26 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
27 legal financial obligations may also include payment to a public agency
28 of the expense of an emergency response to the incident resulting in
29 the conviction, subject to RCW 38.52.430.

30 ~~((+29+))~~ (27) "Most serious offense" means any of the following
31 felonies or a felony attempt to commit any of the following felonies:

32 (a) Any felony defined under any law as a class A felony or
33 criminal solicitation of or criminal conspiracy to commit a class A
34 felony;

35 (b) Assault in the second degree;

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

37 (d) Child molestation in the second degree;

38 (e) Controlled substance homicide;

- 1 (f) Extortion in the first degree;
- 2 (g) Incest when committed against a child under age fourteen;
- 3 (h) Indecent liberties;
- 4 (i) Kidnapping in the second degree;
- 5 (j) Leading organized crime;
- 6 (k) Manslaughter in the first degree;
- 7 (l) Manslaughter in the second degree;
- 8 (m) Promoting prostitution in the first degree;
- 9 (n) Rape in the third degree;
- 10 (o) Robbery in the second degree;
- 11 (p) Sexual exploitation;
- 12 (q) Vehicular assault, when caused by the operation or driving of
13 a vehicle by a person while under the influence of intoxicating liquor
14 or any drug or by the operation or driving of a vehicle in a reckless
15 manner;
- 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.602;
- 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

1 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
2 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
3 through July 27, 1997.

4 ~~((+30+))~~ (28) "Nonviolent offense" means an offense which is not a
5 violent offense.

6 ~~((+31+))~~ (29) "Offender" means a person who has committed a felony
7 established by state law and is eighteen years of age or older or is
8 less than eighteen years of age but whose case is under superior court
9 jurisdiction under RCW 13.04.030 or has been transferred by the
10 appropriate juvenile court to a criminal court pursuant to RCW
11 13.40.110. Throughout this chapter, the terms "offender" and
12 "defendant" are used interchangeably.

13 ~~((+32+))~~ (30) "Partial confinement" means confinement for no more
14 than one year in a facility or institution operated or utilized under
15 contract by the state or any other unit of government, or, if home
16 detention or work crew has been ordered by the court, in an approved
17 residence, for a substantial portion of each day with the balance of
18 the day spent in the community. Partial confinement includes work
19 release, home detention, work crew, and a combination of work crew and
20 home detention.

21 ~~((+33+))~~ (31) "Persistent offender" is an offender who:

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

24 (ii) Has, before the commission of the offense under (a) of this
25 subsection, been convicted as an offender on at least two separate
26 occasions, whether in this state or elsewhere, of felonies that under
27 the laws of this state would be considered most serious offenses and
28 would be included in the offender score under RCW 9.94A.525; provided
29 that of the two or more previous convictions, at least one conviction
30 must have occurred before the commission of any of the other most
31 serious offenses for which the offender was previously convicted; or

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

1 degree, assault in the second degree, assault of a child in the first
2 degree, assault of a child in the second degree, or burglary in the
3 first degree; or (C) an attempt to commit any crime listed in this
4 subsection (~~(33)~~) (31)(b)(i); and

5 (ii) Has, before the commission of the offense under (b)(i) of this
6 subsection, been convicted as an offender on at least one occasion,
7 whether in this state or elsewhere, of an offense listed in (b)(i) of
8 this subsection or any federal or out-of-state offense or offense under
9 prior Washington law that is comparable to the offenses listed in
10 (b)(i) of this subsection. A conviction for rape of a child in the
11 first degree constitutes a conviction under (b)(i) of this subsection
12 only when the offender was sixteen years of age or older when the
13 offender committed the offense. A conviction for rape of a child in
14 the second degree constitutes a conviction under (b)(i) of this
15 subsection only when the offender was eighteen years of age or older
16 when the offender committed the offense.

17 (~~(34)~~) "~~Postrelease supervision~~" is that portion of an offender's
18 ~~community placement that is not community custody.~~

19 ~~(35)~~) (32) "Predatory" means: (a) The perpetrator of the crime
20 was a stranger to the victim, as defined in this section; (b) the
21 perpetrator established or promoted a relationship with the victim
22 prior to the offense and the victimization of the victim was a
23 significant reason the perpetrator established or promoted the
24 relationship; or (c) the perpetrator was: (i) A teacher, counselor,
25 volunteer, or other person in authority in any public or private school
26 and the victim was a student of the school under his or her authority
27 or supervision. For purposes of this subsection, "school" does not
28 include home-based instruction as defined in RCW 28A.225.010; (ii) a
29 coach, trainer, volunteer, or other person in authority in any
30 recreational activity and the victim was a participant in the activity
31 under his or her authority or supervision; or (iii) a pastor, elder,
32 volunteer, or other person in authority in any church or religious
33 organization, and the victim was a member or participant of the
34 organization under his or her authority.

35 (~~(36)~~) (33) "Private school" means a school regulated under
36 chapter 28A.195 or 28A.205 RCW.

37 (~~(37)~~) (34) "Public school" has the same meaning as in RCW
38 28A.150.010.

1 (~~(38)~~) (35) "Restitution" means a specific sum of money ordered
2 by the sentencing court to be paid by the offender to the court over a
3 specified period of time as payment of damages. The sum may include
4 both public and private costs.

5 (~~(39)~~) (36) "Risk assessment" means the application of an
6 objective instrument supported by research and adopted by the
7 department for the purpose of assessing an offender's risk of
8 reoffense, taking into consideration the nature of the harm done by the
9 offender, place and circumstances of the offender related to risk, the
10 offender's relationship to any victim, and any information provided to
11 the department by victims. The results of a risk assessment shall not
12 be based on unconfirmed or unconfirmable allegations.

13 (~~(40)~~) (37) "Serious traffic offense" means:

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

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

22 (~~(41)~~) (38) "Serious violent offense" is a subcategory of violent
23 offense and means:

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

25 (ii) Homicide by abuse;

26 (iii) Murder in the second degree;

27 (iv) Manslaughter in the first degree;

28 (v) Assault in the first degree;

29 (vi) Kidnapping in the first degree;

30 (vii) Rape in the first degree;

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

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

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

37 (~~(42)~~) (39) "Sex offense" means:

1 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
2 RCW 9A.44.130(~~(11)~~) (12);

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

4 (iii) A felony that is a violation of chapter 9.68A RCW other than
5 RCW 9.68A.080; or

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

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

11 (c) A felony with a finding of sexual motivation under RCW
12 9.94A.835 or 13.40.135; or

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

16 (~~(43)~~) (40) "Sexual motivation" means that one of the purposes
17 for which the defendant committed the crime was for the purpose of his
18 or her sexual gratification.

19 (~~(44)~~) (41) "Standard sentence range" means the sentencing
20 court's discretionary range in imposing a nonappealable sentence.

21 (~~(45)~~) (42) "Statutory maximum sentence" means the maximum length
22 of time for which an offender may be confined as punishment for a crime
23 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
24 the crime, or other statute defining the maximum penalty for a crime.

25 (~~(46)~~) (43) "Stranger" means that the victim did not know the
26 offender twenty-four hours before the offense.

27 (~~(47)~~) (44) "Total confinement" means confinement inside the
28 physical boundaries of a facility or institution operated or utilized
29 under contract by the state or any other unit of government for twenty-
30 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

31 (~~(48)~~) (45) "Transition training" means written and verbal
32 instructions and assistance provided by the department to the offender
33 during the two weeks prior to the offender's successful completion of
34 the work ethic camp program. The transition training shall include
35 instructions in the offender's requirements and obligations during the
36 offender's period of community custody.

37 (~~(49)~~) (46) "Victim" means any person who has sustained

1 emotional, psychological, physical, or financial injury to person or
2 property as a direct result of the crime charged.

3 ~~((+50+))~~ (47) "Violent offense" means:

4 (a) Any of the following felonies:

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

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

9 (iii) Manslaughter in the first degree;

10 (iv) Manslaughter in the second degree;

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

12 (vi) Kidnapping in the second degree;

13 (vii) Arson in the second degree;

14 (viii) Assault in the second degree;

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

16 (x) Extortion in the first degree;

17 (xi) Robbery in the second degree;

18 (xii) Drive-by shooting;

19 (xiii) Vehicular assault, when caused by the operation or driving
20 of a vehicle by a person while under the influence of intoxicating
21 liquor or any drug or by the operation or driving of a vehicle in a
22 reckless manner; and

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

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

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

33 ~~((+51+))~~ (48) "Work crew" means a program of partial confinement
34 consisting of civic improvement tasks for the benefit of the community
35 that complies with RCW 9.94A.725.

36 ~~((+52+))~~ (49) "Work ethic camp" means an alternative incarceration
37 program as provided in RCW 9.94A.690 designed to reduce recidivism and
38 lower the cost of corrections by requiring offenders to complete a

1 comprehensive array of real-world job and vocational experiences,
2 character-building work ethics training, life management skills
3 development, substance abuse rehabilitation, counseling, literacy
4 training, and basic adult education.

5 ((+53+)) (50) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **Sec. 24.** RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read
9 as follows:

10 (1) When the department performs a risk assessment pursuant to RCW
11 9.94A.500, or to determine a person's conditions of supervision, the
12 risk assessment shall classify the offender or a probationer sentenced
13 in superior court into one of at least four risk categories.

14 (2) The department shall supervise every offender sentenced to a
15 term of community custody(~~(, community placement, or community~~
16 ~~supervision)) and every misdemeanor and gross misdemeanor probationer
17 ordered by a superior court to probation under the supervision of the
18 department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:~~

19 (a) Whose risk assessment places that offender or probationer in
20 one of the two highest risk categories; or

21 (b) Regardless of the offender's or probationer's risk category if:

22 (i) The offender's or probationer's current conviction is for:

23 (A) A sex offense;

24 (B) A violent offense;

25 (C) A crime against persons as defined in RCW 9.94A.411;

26 (D) A felony that is domestic violence as defined in RCW 10.99.020;

27 (E) A violation of RCW 9A.52.025 (residential burglary);

28 (F) A violation of, or an attempt, solicitation, or conspiracy to
29 violate, RCW 69.50.401 by manufacture or delivery or possession with
30 intent to deliver methamphetamine; or

31 (G) A violation of, or an attempt, solicitation, or conspiracy to
32 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

33 (ii) The offender or probationer has a prior conviction for:

34 (A) A sex offense;

35 (B) A violent offense;

36 (C) A crime against persons as defined in RCW 9.94A.411;

37 (D) A felony that is domestic violence as defined in RCW 10.99.020;

- 1 (E) A violation of RCW 9A.52.025 (residential burglary);
- 2 (F) A violation of, or an attempt, solicitation, or conspiracy to
3 violate, RCW 69.50.401 by manufacture or delivery or possession with
4 intent to deliver methamphetamine; or
- 5 (G) A violation of, or an attempt, solicitation, or conspiracy to
6 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);
- 7 (iii) The conditions of the offender's community custody(~~(, community placement, or community supervision)~~) or the probationer's
8 supervision include chemical dependency treatment;
- 9 (iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670;
- 10 or
- 11 (v) The offender is subject to supervision pursuant to RCW
12 9.94A.745.
- 13 (3) The department is not authorized to, and may not, supervise any
14 offender sentenced to a term of community custody(~~(, community placement, or community supervision)~~) or any probationer unless the
15 offender or probationer is one for whom supervision is required under
16 subsection (2) of this section.
- 17 (4) This section expires July 1, 2010.

20 **Sec. 25.** RCW 9.94A.505 and 2006 c 73 s 6 are each amended to read
21 as follows:

- 22 (1) When a person is convicted of a felony, the court shall impose
23 punishment as provided in this chapter.
- 24 (2)(a) The court shall impose a sentence as provided in the
25 following sections and as applicable in the case:
- 26 (i) Unless another term of confinement applies, (~~the court shall~~
27 ~~impose~~) a sentence within the standard sentence range established in
28 RCW 9.94A.510 or 9.94A.517;
- 29 (ii) (~~RCW 9.94A.700 and 9.94A.705, relating to community~~
30 ~~placement~~) Sections 7 and 8 of this act, relating to community
31 custody;
- 32 (iii) (~~RCW 9.94A.710 and 9.94A.715, relating to community custody~~;
- 33 ~~(iv) RCW 9.94A.545, relating to community custody for offenders~~
34 ~~whose term of confinement is one year or less~~;
- 35 ~~(v))~~ RCW 9.94A.570, relating to persistent offenders;
- 36 ~~((vi))~~ (iv) RCW 9.94A.540, relating to mandatory minimum terms;

1 (~~(vii)~~) (v) RCW 9.94A.650, relating to the first-time offender
2 waiver;

3 (~~(viii)~~) (vi) RCW 9.94A.660, relating to the drug offender
4 sentencing alternative;

5 (~~(ix)~~) (vii) RCW 9.94A.670, relating to the special sex offender
6 sentencing alternative;

7 (~~(x)~~) (viii) RCW 9.94A.712, relating to certain sex offenses;

8 (~~(xi)~~) (ix) RCW 9.94A.535, relating to exceptional sentences;

9 (~~(xii)~~) (x) RCW 9.94A.589, relating to consecutive and concurrent
10 sentences;

11 (~~(xiii)~~) (xi) RCW 9.94A.603, relating to felony driving while
12 under the influence of intoxicating liquor or any drug and felony
13 physical control of a vehicle while under the influence of intoxicating
14 liquor or any drug.

15 (b) If a standard sentence range has not been established for the
16 offender's crime, the court shall impose a determinate sentence which
17 may include not more than one year of confinement; community
18 restitution work; (~~until July 1, 2000,~~) a term of community
19 (~~supervision~~) custody not to exceed one year (~~and on and after July~~
20 ~~1, 2000, a term of community custody not to exceed one year, subject to~~
21 ~~conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3)~~);
22 and/or other legal financial obligations. The court may impose a
23 sentence which provides more than one year of confinement if the court
24 finds reasons justifying an exceptional sentence as provided in RCW
25 9.94A.535.

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

32 (4) If a sentence imposed includes payment of a legal financial
33 obligation, it shall be imposed as provided in RCW 9.94A.750,
34 9.94A.753, 9.94A.760, and 43.43.7541.

35 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a
36 court may not impose a sentence providing for a term of confinement or
37 (~~community supervision, community placement, or~~) community custody

1 ((which)) that exceeds the statutory maximum for the crime as provided
2 in chapter 9A.20 RCW.

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

7 (7) The court shall order restitution as provided in RCW 9.94A.750
8 and 9.94A.753.

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

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

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

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

34 **Sec. 26.** RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read
35 as follows:

36 (1) At the earliest possible date, and in no event later than ten
37 days before release except in the event of escape or emergency

1 furloughs as defined in RCW 72.66.010, the department of corrections
2 shall send written notice of parole, community (~~(placement)~~) custody,
3 work release placement, furlough, or escape about a specific inmate
4 convicted of a serious drug offense to the following if such notice has
5 been requested in writing about a specific inmate convicted of a
6 serious drug offense:

7 (a) Any witnesses who testified against the inmate in any court
8 proceedings involving the serious drug offense; and

9 (b) Any person specified in writing by the prosecuting attorney.
10 Information regarding witnesses requesting the notice, information
11 regarding any other person specified in writing by the prosecuting
12 attorney to receive the notice, and the notice are confidential and
13 shall not be available to the inmate.

14 (2) If an inmate convicted of a serious drug offense escapes from
15 a correctional facility, the department of corrections shall
16 immediately notify, by the most reasonable and expedient means
17 available, the chief of police of the city and the sheriff of the
18 county in which the inmate resided immediately before the inmate's
19 arrest and conviction. If previously requested, the department shall
20 also notify the witnesses who are entitled to notice under this
21 section. If the inmate is recaptured, the department shall send notice
22 to the persons designated in this subsection as soon as possible but in
23 no event later than two working days after the department learns of
24 such recapture.

25 (3) If any witness is under the age of sixteen, the notice required
26 by this section shall be sent to the parents or legal guardian of the
27 child.

28 (4) The department of corrections shall send the notices required
29 by this section to the last address provided to the department by the
30 requesting party. The requesting party shall furnish the department
31 with a current address.

32 (5) For purposes of this section, "serious drug offense" means an
33 offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b).

34 **Sec. 27.** RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read
35 as follows:

36 (1) At the earliest possible date, and in no event later than
37 thirty days before release except in the event of escape or emergency

1 furloughs as defined in RCW 72.66.010, the department of corrections
2 shall send written notice of parole, release, community ((placement))
3 custody, work release placement, furlough, or escape about a specific
4 inmate convicted of a violent offense, a sex offense as defined by RCW
5 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060
6 or 9A.46.110, to the following:

7 (a) The chief of police of the city, if any, in which the inmate
8 will reside or in which placement will be made in a work release
9 program; and

10 (b) The sheriff of the county in which the inmate will reside or in
11 which placement will be made in a work release program.

12 The sheriff of the county where the offender was convicted shall be
13 notified if the department does not know where the offender will
14 reside. The department shall notify the state patrol of the release of
15 all sex offenders, and that information shall be placed in the
16 Washington crime information center for dissemination to all law
17 enforcement.

18 (2) The same notice as required by subsection (1) of this section
19 shall be sent to the following if such notice has been requested in
20 writing about a specific inmate convicted of a violent offense, a sex
21 offense as defined by RCW 9.94A.030, or a felony harassment offense as
22 defined by RCW 9A.46.060 or 9A.46.110:

23 (a) The victim of the crime for which the inmate was convicted or
24 the victim's next of kin if the crime was a homicide;

25 (b) Any witnesses who testified against the inmate in any court
26 proceedings involving the violent offense;

27 (c) Any person specified in writing by the prosecuting attorney;
28 and

29 (d) Any person who requests such notice about a specific inmate
30 convicted of a sex offense as defined by RCW 9.94A.030 from the
31 department of corrections at least sixty days prior to the expected
32 release date of the offender.

33 Information regarding victims, next of kin, or witnesses requesting
34 the notice, information regarding any other person specified in writing
35 by the prosecuting attorney to receive the notice, and the notice are
36 confidential and shall not be available to the inmate. Whenever the
37 department of corrections mails notice pursuant to this subsection and

1 the notice is returned as undeliverable, the department shall attempt
2 alternative methods of notification, including a telephone call to the
3 person's last known telephone number.

4 (3) The existence of the notice requirements contained in
5 subsections (1) and (2) of this section shall not require an extension
6 of the release date in the event that the release plan changes after
7 notification.

8 (4) If an inmate convicted of a violent offense, a sex offense as
9 defined by RCW 9.94A.030, or a felony harassment offense as defined by
10 RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the
11 department of corrections shall immediately notify, by the most
12 reasonable and expedient means available, the chief of police of the
13 city and the sheriff of the county in which the inmate resided
14 immediately before the inmate's arrest and conviction. If previously
15 requested, the department shall also notify the witnesses and the
16 victim of the crime for which the inmate was convicted or the victim's
17 next of kin if the crime was a homicide. If the inmate is recaptured,
18 the department shall send notice to the persons designated in this
19 subsection as soon as possible but in no event later than two working
20 days after the department learns of such recapture.

21 (5) If the victim, the victim's next of kin, or any witness is
22 under the age of sixteen, the notice required by this section shall be
23 sent to the parents or legal guardian of the child.

24 (6) The department of corrections shall send the notices required
25 by this chapter to the last address provided to the department by the
26 requesting party. The requesting party shall furnish the department
27 with a current address.

28 (7) The department of corrections shall keep, for a minimum of two
29 years following the release of an inmate, the following:

30 (a) A document signed by an individual as proof that that person is
31 registered in the victim or witness notification program; and

32 (b) A receipt showing that an individual registered in the victim
33 or witness notification program was mailed a notice, at the
34 individual's last known address, upon the release or movement of an
35 inmate.

36 (8) For purposes of this section the following terms have the
37 following meanings:

38 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

1 (b) "Next of kin" means a person's spouse, parents, siblings and
2 children.

3 (9) Nothing in this section shall impose any liability upon a chief
4 of police of a city or sheriff of a county for failing to request in
5 writing a notice as provided in subsection (1) of this section.

6 **Sec. 28.** RCW 9.94A.625 and 2000 c 226 s 5 are each amended to read
7 as follows:

8 (1) A term of confinement ordered in a sentence pursuant to this
9 chapter shall be tolled by any period of time during which the offender
10 has absented himself or herself from confinement without the prior
11 approval of the entity in whose custody the offender has been placed.
12 A term of partial confinement shall be tolled during any period of time
13 spent in total confinement pursuant to a new conviction or pursuant to
14 sanctions for violation of sentence conditions on a separate felony
15 conviction.

16 (2) Any term of community custody(~~(, community placement, or~~
17 ~~community supervision)~~) shall be tolled by any period of time during
18 which the offender has absented himself or herself from supervision
19 without prior approval of the entity under whose supervision the
20 offender has been placed.

21 (3) Any period of community custody(~~(, community placement, or~~
22 ~~community supervision)~~) shall be tolled during any period of time the
23 offender is in confinement for any reason. However, if an offender is
24 detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not
25 to have violated a condition or requirement of community custody(~~(,~~
26 ~~community placement, or community supervision)~~), time spent in
27 confinement due to such detention shall not toll the period of
28 community custody(~~(, community placement, or community supervision)~~).

29 (4) For terms of confinement or community custody(~~(, community~~
30 ~~placement, or community supervision)~~), the date for the tolling of the
31 sentence shall be established by the entity responsible for the
32 confinement or supervision.

33 **Sec. 29.** RCW 9.94A.650 and 2006 c 73 s 9 are each amended to read
34 as follows:

35 (1) This section applies to offenders who have never been
36 previously convicted of a felony in this state, federal court, or

1 another state, and who have never participated in a program of deferred
2 prosecution for a felony, and who are convicted of a felony that is
3 not:

4 (a) Classified as a violent offense or a sex offense under this
5 chapter;

6 (b) Manufacture, delivery, or possession with intent to manufacture
7 or deliver a controlled substance classified in Schedule I or II that
8 is a narcotic drug or flunitrazepam classified in Schedule IV;

9 (c) Manufacture, delivery, or possession with intent to deliver a
10 methamphetamine, its salts, isomers, and salts of its isomers as
11 defined in RCW 69.50.206(d)(2);

12 (d) The selling for profit of any controlled substance or
13 counterfeit substance classified in Schedule I, RCW 69.50.204, except
14 leaves and flowering tops of marihuana; or

15 (e) Felony driving while under the influence of intoxicating liquor
16 or any drug or felony physical control of a vehicle while under the
17 influence of intoxicating liquor or any drug.

18 (2) In sentencing a first-time offender the court may waive the
19 imposition of a sentence within the standard sentence range and impose
20 a sentence which may include up to ninety days of confinement in a
21 facility operated or utilized under contract by the county and a
22 requirement that the offender refrain from committing new offenses.
23 ~~((The sentence may also include a term of community supervision or~~
24 ~~community custody as specified in subsection (3) of this section,~~
25 ~~which, in addition to crime related prohibitions, may include~~
26 ~~requirements that the offender perform any one or more of the~~
27 ~~following:~~

28 ~~(a) Devote time to a specific employment or occupation;~~

29 ~~(b) Undergo available outpatient treatment for up to the period~~
30 ~~specified in subsection (3) of this section, or inpatient treatment not~~
31 ~~to exceed the standard range of confinement for that offense;~~

32 ~~(c) Pursue a prescribed, secular course of study or vocational~~
33 ~~training;~~

34 ~~(d) Remain within prescribed geographical boundaries and notify the~~
35 ~~community corrections officer prior to any change in the offender's~~
36 ~~address or employment;~~

37 ~~(e) Report as directed to a community corrections officer; or~~

1 ~~(f) Pay all court-ordered legal financial obligations as provided~~
2 ~~in RCW 9.94A.030 and/or perform community restitution work.)~~

3 ~~(3) ((The terms and statuses applicable to sentences under~~
4 ~~subsection (2) of this section are:~~

5 ~~(a) For sentences imposed on or after July 25, 1999, for crimes~~
6 ~~committed before July 1, 2000, up to one year of community supervision.~~
7 ~~If treatment is ordered, the period of community supervision may~~
8 ~~include up to the period of treatment, but shall not exceed two years;~~
9 ~~and~~

10 ~~(b) For crimes committed on or after July 1, 2000,))~~ The court may
11 impose up to one year of community custody unless treatment is ordered,
12 in which case the period of community custody may include up to the
13 period of treatment, but shall not exceed two years. ~~((Any term of~~
14 ~~community custody imposed under this section is subject to conditions~~
15 ~~and sanctions as authorized in this section and in RCW 9.94A.715 (2)~~
16 ~~and (3).))~~

17 ~~(4) ((The department shall discharge from community supervision any~~
18 ~~offender sentenced under this section before July 25, 1999, who has~~
19 ~~served at least one year of community supervision and has completed any~~
20 ~~treatment ordered by the court.))~~ As a condition of community custody,
21 in addition to any conditions authorized in section 9 of this act, the
22 court may order the offender to pay all court-ordered legal financial
23 obligations and/or perform community restitution work.

24 **Sec. 30.** RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are
25 each reenacted and amended to read as follows:

26 (1) An offender is eligible for the special drug offender
27 sentencing alternative if:

28 (a) The offender is convicted of a felony that is not a violent
29 offense or sex offense and the violation does not involve a sentence
30 enhancement under RCW 9.94A.533 (3) or (4);

31 (b) The offender is convicted of a felony that is not a felony
32 driving while under the influence of intoxicating liquor or any drug
33 under RCW 46.61.502(6) or felony physical control of a vehicle while
34 under the influence of intoxicating liquor or any drug under RCW
35 46.61.504(6);

36 (c) The offender has no current or prior convictions for a sex

1 offense at any time or violent offense within ten years before
2 conviction of the current offense, in this state, another state, or the
3 United States;

4 (d) For a violation of the Uniform Controlled Substances Act under
5 chapter 69.50 RCW or a criminal solicitation to commit such a violation
6 under chapter 9A.28 RCW, the offense involved only a small quantity of
7 the particular controlled substance as determined by the judge upon
8 consideration of such factors as the weight, purity, packaging, sale
9 price, and street value of the controlled substance;

10 (e) The offender has not been found by the United States attorney
11 general to be subject to a deportation detainer or order and does not
12 become subject to a deportation order during the period of the
13 sentence;

14 (f) The standard sentence range for the current offense is greater
15 than one year; and

16 (g) The offender has not received a drug offender sentencing
17 alternative more than once in the prior ten years before the current
18 offense.

19 (2) A motion for a sentence under this section may be made by the
20 court, the offender, or the state. If the sentencing court determines
21 that the offender is eligible for this alternative, the court may order
22 an examination of the offender. The examination shall, at a minimum,
23 address the following issues:

24 (a) Whether the offender suffers from drug addiction;

25 (b) Whether the addiction is such that there is a probability that
26 criminal behavior will occur in the future;

27 (c) Whether effective treatment for the offender's addiction is
28 available from a provider that has been licensed or certified by the
29 division of alcohol and substance abuse of the department of social and
30 health services; and

31 (d) Whether the offender and the community will benefit from the
32 use of the alternative.

33 (3) The examination report must contain:

34 (a) Information on the issues required to be addressed in
35 subsection (2) of this section; and

36 (b) A proposed treatment plan that must, at a minimum, contain:

37 (i) A proposed treatment provider that has been licensed or

1 certified by the division of alcohol and substance abuse of the
2 department of social and health services;

3 (ii) The recommended frequency and length of treatment, including
4 both residential chemical dependency treatment and treatment in the
5 community;

6 (iii) A proposed monitoring plan, including any requirements
7 regarding living conditions, lifestyle requirements, and monitoring by
8 family members and others; and

9 (iv) Recommended crime-related prohibitions and affirmative
10 conditions.

11 (4) After receipt of the examination report, if the court
12 determines that a sentence under this section is appropriate, the court
13 shall waive imposition of a sentence within the standard sentence range
14 and impose a sentence consisting of either a prison-based alternative
15 under subsection (5) of this section or a residential chemical
16 dependency treatment-based alternative under subsection (6) of this
17 section. The residential chemical dependency treatment-based
18 alternative is only available if the midpoint of the standard range is
19 twenty-four months or less.

20 (5) The prison-based alternative shall include:

21 (a) A period of total confinement in a state facility for one-half
22 of the midpoint of the standard sentence range or twelve months,
23 whichever is greater. During incarceration in the state facility,
24 offenders sentenced under this subsection shall undergo a comprehensive
25 substance abuse assessment and receive, within available resources,
26 treatment services appropriate for the offender. The treatment
27 services shall be designed by the division of alcohol and substance
28 abuse of the department of social and health services, in cooperation
29 with the department of corrections;

30 (b) The remainder of the midpoint of the standard range as a term
31 of community custody which must include appropriate substance abuse
32 treatment in a program that has been approved by the division of
33 alcohol and substance abuse of the department of social and health
34 services. If the department finds that conditions of community custody
35 have been willfully violated, the offender may be reclassified to serve
36 the remaining balance of the original sentence. An offender who fails
37 to complete the program or who is administratively terminated from the

1 program shall be reclassified to serve the unexpired term of his or her
2 sentence as ordered by the sentencing court;

3 (c) Crime-related prohibitions including a condition not to use
4 illegal controlled substances;

5 (d) A requirement to submit to urinalysis or other testing to
6 monitor that status; and

7 (e) A term of community custody pursuant to ~~((RCW 9.94A.715))~~
8 section 7 of this act to be imposed upon failure to complete or
9 administrative termination from the special drug offender sentencing
10 alternative program.

11 (6) The residential chemical dependency treatment-based alternative
12 shall include:

13 (a) A term of community custody equal to one-half of the midpoint
14 of the standard sentence range or two years, whichever is greater,
15 conditioned on the offender entering and remaining in residential
16 chemical dependency treatment certified under chapter 70.96A RCW for a
17 period set by the court between three and six months. If the court
18 imposes a term of community custody, the department shall, within
19 available resources, make chemical dependency assessment and treatment
20 services available to the offender during the term of community
21 custody. The court shall impose, as conditions of community custody,
22 treatment and other conditions as proposed in the plan under subsection
23 (3)(b) of this section. ~~((The department may impose conditions and
24 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),
25 9.94A.737, and 9.94A.740.))~~ The court shall schedule a progress
26 hearing during the period of residential chemical dependency treatment,
27 and schedule a treatment termination hearing for three months before
28 the expiration of the term of community custody;

29 (b) Before the progress hearing and treatment termination hearing,
30 the treatment provider and the department shall submit written reports
31 to the court and parties regarding the offender's compliance with
32 treatment and monitoring requirements, and recommendations regarding
33 termination from treatment. At the hearing, the court may:

34 (i) Authorize the department to terminate the offender's community
35 custody status on the expiration date determined under (a) of this
36 subsection; or

37 (ii) Continue the hearing to a date before the expiration date of

1 community custody, with or without modifying the conditions of
2 community custody; or

3 (iii) Impose a term of total confinement equal to one-half the
4 midpoint of the standard sentence range, followed by a term of
5 community custody under ~~((RCW 9.94A.715))~~ section 7 of this act;

6 (c) If the court imposes a term of total confinement under (b)(iii)
7 of this subsection, the department shall, within available resources,
8 make chemical dependency assessment and treatment services available to
9 the offender during the terms of total confinement and community
10 custody.

11 ~~((If the court imposes a sentence under this section, the court
12 may prohibit the offender from using alcohol or controlled substances
13 and may require that the monitoring for controlled substances be
14 conducted by the department or by a treatment alternatives to street
15 crime program or a comparable court or agency referred program.))~~ The
16 offender may be required to pay thirty dollars per month while on
17 community custody to offset the cost of monitoring for alcohol or
18 controlled substances. ~~((In addition,))~~

19 (8) The court may impose any of the following conditions:

- 20 ~~((Devote time to a specific employment or training;~~
- 21 ~~(b) Remain within prescribed geographical boundaries and notify the~~
22 ~~court or the community corrections officer before any change in the~~
23 ~~offender's address or employment;~~
- 24 ~~(c) Report as directed to a community corrections officer;~~
- 25 ~~(d))~~ Pay all court-ordered legal financial obligations; or
- 26 ~~((e))~~ (b) Perform community restitution work(~~(;~~
- 27 ~~(f) Stay out of areas designated by the sentencing court;~~
- 28 ~~(g) Such other conditions as the court may require such as~~
29 ~~affirmative conditions)).~~

30 ~~((8))~~ (9)(a) The court may bring any offender sentenced under
31 this section back into court at any time on its own initiative to
32 evaluate the offender's progress in treatment or to determine if any
33 violations of the conditions of the sentence have occurred.

34 (b) If the offender is brought back to court, the court may modify
35 the ~~((terms))~~ conditions of the community custody or impose sanctions
36 under (c) of this subsection.

37 (c) The court may order the offender to serve a term of total
38 confinement within the standard range of the offender's current offense

1 at any time during the period of community custody if the offender
2 violates the conditions or requirements of the sentence or if the
3 offender is failing to make satisfactory progress in treatment.

4 (d) An offender ordered to serve a term of total confinement under
5 (c) of this subsection shall receive credit for any time previously
6 served under this section.

7 ~~((9))~~ (10) In serving a term of community custody imposed upon
8 failure to complete, or administrative termination from, the special
9 drug offender sentencing alternative program, the offender shall
10 receive no credit for time served in community custody prior to
11 termination of the offender's participation in the program.

12 (11) If an offender sentenced to the prison-based alternative under
13 subsection (5) of this section is found by the United States attorney
14 general to be subject to a deportation order, a hearing shall be held
15 by the department unless waived by the offender, and, if the department
16 finds that the offender is subject to a valid deportation order, the
17 department may administratively terminate the offender from the program
18 and reclassify the offender to serve the remaining balance of the
19 original sentence.

20 ~~((10))~~ (12) An offender sentenced under this section shall be
21 subject to all rules relating to earned release time with respect to
22 any period served in total confinement.

23 ~~((11))~~ (13) Costs of examinations and preparing treatment plans
24 under subsections (2) and (3) of this section may be paid, at the
25 option of the county, from funds provided to the county from the
26 criminal justice treatment account under RCW 70.96A.350.

27 **Sec. 31.** RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read
28 as follows:

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

31 (a) "Sex offender treatment provider" or "treatment provider" means
32 a certified sex offender treatment provider or a certified affiliate
33 sex offender treatment provider as defined in RCW 18.155.020.

34 (b) "Substantial bodily harm" means bodily injury that involves a
35 temporary but substantial disfigurement, or that causes a temporary but
36 substantial loss or impairment of the function of any body part or
37 organ, or that causes a fracture of any body part or organ.

1 (c) "Victim" means any person who has sustained emotional,
2 psychological, physical, or financial injury to person or property as
3 a result of the crime charged. "Victim" also means a parent or
4 guardian of a victim who is a minor child unless the parent or guardian
5 is the perpetrator of the offense.

6 (2) An offender is eligible for the special sex offender sentencing
7 alternative if:

8 (a) The offender has been convicted of a sex offense other than a
9 violation of RCW 9A.44.050 or a sex offense that is also a serious
10 violent offense. If the conviction results from a guilty plea, the
11 offender must, as part of his or her plea of guilty, voluntarily and
12 affirmatively admit he or she committed all of the elements of the
13 crime to which the offender is pleading guilty. This alternative is
14 not available to offenders who plead guilty to the offense charged
15 under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d
16 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

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

20 (c) The offender has no prior adult convictions for a violent
21 offense that was committed within five years of the date the current
22 offense was committed;

23 (d) The offense did not result in substantial bodily harm to the
24 victim;

25 (e) The offender had an established relationship with, or
26 connection to, the victim such that the sole connection with the victim
27 was not the commission of the crime; and

28 (f) The offender's standard sentence range for the offense includes
29 the possibility of confinement for less than eleven years.

30 (3) If the court finds the offender is eligible for this
31 alternative, the court, on its own motion or the motion of the state or
32 the offender, may order an examination to determine whether the
33 offender is amenable to treatment.

34 (a) The report of the examination shall include at a minimum the
35 following:

36 (i) The offender's version of the facts and the official version of
37 the facts;

38 (ii) The offender's offense history;

1 (iii) An assessment of problems in addition to alleged deviant
2 behaviors;

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

4 (v) Other evaluation measures used.

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

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

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

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

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

17 (iv) Anticipated length of treatment; and

18 (v) Recommended crime-related prohibitions and affirmative
19 conditions, which must include, to the extent known, an identification
20 of specific activities or behaviors that are precursors to the
21 offender's offense cycle, including, but not limited to, activities or
22 behaviors such as viewing or listening to pornography or use of alcohol
23 or controlled substances.

24 (c) The court on its own motion may order, or on a motion by the
25 state shall order, a second examination regarding the offender's
26 amenability to treatment. The examiner shall be selected by the party
27 making the motion. The offender shall pay the cost of any second
28 examination ordered unless the court finds the defendant to be indigent
29 in which case the state shall pay the cost.

30 (4) After receipt of the reports, the court shall consider whether
31 the offender and the community will benefit from use of this
32 alternative, consider whether the alternative is too lenient in light
33 of the extent and circumstances of the offense, consider whether the
34 offender has victims in addition to the victim of the offense, consider
35 whether the offender is amenable to treatment, consider the risk the
36 offender would present to the community, to the victim, or to persons
37 of similar age and circumstances as the victim, and consider the
38 victim's opinion whether the offender should receive a treatment

1 disposition under this section. The court shall give great weight to
2 the victim's opinion whether the offender should receive a treatment
3 disposition under this section. If the sentence imposed is contrary to
4 the victim's opinion, the court shall enter written findings stating
5 its reasons for imposing the treatment disposition. The fact that the
6 offender admits to his or her offense does not, by itself, constitute
7 amenability to treatment. If the court determines that this
8 alternative is appropriate, the court shall then impose a sentence or,
9 pursuant to RCW 9.94A.712, a minimum term of sentence, within the
10 standard sentence range. If the sentence imposed is less than eleven
11 years of confinement, the court may suspend the execution of the
12 sentence (~~((and impose the following conditions of suspension:))~~) as
13 provided in this section.

14 (5) As conditions of the suspended sentence, the court must impose
15 the following:

16 (a) (~~((The court shall order the offender to serve))~~) A term of
17 confinement of up to twelve months or the maximum term within the
18 standard range, whichever is less. The court may order the offender to
19 serve a term of confinement greater than twelve months or the maximum
20 term within the standard range based on the presence of an aggravating
21 circumstance listed in RCW 9.94A.535(3). In no case shall the term of
22 confinement exceed the statutory maximum sentence for the offense. The
23 court may order the offender to serve all or part of his or her term of
24 confinement in partial confinement. An offender sentenced to a term of
25 confinement under this subsection is not eligible for earned release
26 under RCW 9.92.151 or 9.94A.728.

27 (b) (~~((The court shall place the offender on))~~) A term of community
28 custody (~~((for))~~) equal to the length of the suspended sentence, the
29 length of the maximum term imposed pursuant to RCW 9.94A.712, or three
30 years, whichever is greater, and require the offender to comply with
31 any conditions imposed by the department under (~~((RCW 9.94A.720))~~)
32 section 9 of this act.

33 (c) (~~((The court shall order))~~) Treatment for any period up to five
34 years in duration. The court, in its discretion, shall order
35 outpatient sex offender treatment or inpatient sex offender treatment,
36 if available. A community mental health center may not be used for
37 such treatment unless it has an appropriate program designed for sex
38 offender treatment. The offender shall not change sex offender

1 treatment providers or treatment conditions without first notifying the
2 prosecutor, the community corrections officer, and the court. If any
3 party or the court objects to a proposed change, the offender shall not
4 change providers or conditions without court approval after a hearing.

5 ~~(d) ((As conditions of the suspended sentence, the court shall~~
6 ~~impose))~~ Specific prohibitions and affirmative conditions relating to
7 the known precursor activities or behaviors identified in the proposed
8 treatment plan under subsection (3)(b)(v) of this section or identified
9 in an annual review under subsection ((+7+)) (8)(b) of this section.

10 ~~((+5+))~~ (6) As conditions of the suspended sentence, the court may
11 impose one or more of the following:

12 (a) Crime-related prohibitions;

13 (b) Require the offender to devote time to a specific employment or
14 occupation;

15 (c) Require the offender to remain within prescribed geographical
16 boundaries and notify the court or the community corrections officer
17 prior to any change in the offender's address or employment;

18 (d) Require the offender to report as directed to the court and a
19 community corrections officer;

20 (e) Require the offender to pay all court-ordered legal financial
21 obligations as provided in RCW 9.94A.030;

22 (f) Require the offender to perform community restitution work; or

23 (g) Require the offender to reimburse the victim for the cost of
24 any counseling required as a result of the offender's crime.

25 ~~((+6+))~~ (7) At the time of sentencing, the court shall set a
26 treatment termination hearing for three months prior to the anticipated
27 date for completion of treatment.

28 ~~((+7+))~~ (8)(a) The sex offender treatment provider shall submit
29 quarterly reports on the offender's progress in treatment to the court
30 and the parties. The report shall reference the treatment plan and
31 include at a minimum the following: Dates of attendance, offender's
32 compliance with requirements, treatment activities, the offender's
33 relative progress in treatment, and any other material specified by the
34 court at sentencing.

35 (b) The court shall conduct a hearing on the offender's progress in
36 treatment at least once a year. At least fourteen days prior to the
37 hearing, notice of the hearing shall be given to the victim. The
38 victim shall be given the opportunity to make statements to the court

1 regarding the offender's supervision and treatment. At the hearing,
2 the court may modify conditions of community custody including, but not
3 limited to, crime-related prohibitions and affirmative conditions
4 relating to activities and behaviors identified as part of, or relating
5 to precursor activities and behaviors in, the offender's offense cycle
6 or revoke the suspended sentence.

7 ((+8)) (9) At least fourteen days prior to the treatment
8 termination hearing, notice of the hearing shall be given to the
9 victim. The victim shall be given the opportunity to make statements
10 to the court regarding the offender's supervision and treatment. Prior
11 to the treatment termination hearing, the treatment provider and
12 community corrections officer shall submit written reports to the court
13 and parties regarding the offender's compliance with treatment and
14 monitoring requirements, and recommendations regarding termination from
15 treatment, including proposed community custody conditions. The court
16 may order an evaluation regarding the advisability of termination from
17 treatment by a sex offender treatment provider who may not be the same
18 person who treated the offender under subsection ((+4)) (5) of this
19 section or any person who employs, is employed by, or shares profits
20 with the person who treated the offender under subsection ((+4)) (5)
21 of this section unless the court has entered written findings that such
22 evaluation is in the best interest of the victim and that a successful
23 evaluation of the offender would otherwise be impractical. The
24 offender shall pay the cost of the evaluation. At the treatment
25 termination hearing the court may: (a) Modify conditions of community
26 custody, and either (b) terminate treatment, or (c) extend treatment in
27 two-year increments for up to the remaining period of community
28 custody.

29 ((+9)) (10)(a) If a violation of conditions other than a second
30 violation of the prohibitions or affirmative conditions relating to
31 precursor behaviors or activities imposed under subsection ((+4))
32 (5)(d) or ((+7)) (8)(b) of this section occurs during community
33 custody, the department shall either impose sanctions as provided for
34 in ((~~RCW 9.94A.737(2)(a)~~) section 15(1) of this act or refer the
35 violation to the court and recommend revocation of the suspended
36 sentence as provided for in subsections ((+6)) (7) and ((+8)) (9) of
37 this section.

1 (b) If a second violation of the prohibitions or affirmative
2 conditions relating to precursor behaviors or activities imposed under
3 subsection ~~((4))~~ (5)(d) or ~~((7))~~ (8)(b) of this section occurs
4 during community custody, the department shall refer the violation to
5 the court and recommend revocation of the suspended sentence as
6 provided in subsection ~~((10))~~ (11) of this section.

7 ~~((10))~~ (11) The court may revoke the suspended sentence at any
8 time during the period of community custody and order execution of the
9 sentence if: (a) The offender violates the conditions of the suspended
10 sentence, or (b) the court finds that the offender is failing to make
11 satisfactory progress in treatment. All confinement time served during
12 the period of community custody shall be credited to the offender if
13 the suspended sentence is revoked.

14 ~~((11))~~ (12) If the offender violates a requirement of the
15 sentence that is not a condition of the suspended sentence pursuant to
16 subsection (5) or (6) of this section, the department may impose
17 sanctions pursuant to section 15(1) of this act.

18 (13) The offender's sex offender treatment provider may not be the
19 same person who examined the offender under subsection (3) of this
20 section or any person who employs, is employed by, or shares profits
21 with the person who examined the offender under subsection (3) of this
22 section, unless the court has entered written findings that such
23 treatment is in the best interests of the victim and that successful
24 treatment of the offender would otherwise be impractical. Examinations
25 and treatment ordered pursuant to this subsection shall only be
26 conducted by certified sex offender treatment providers or certified
27 affiliate sex offender treatment providers under chapter 18.155 RCW
28 unless the court finds that:

29 (a) The offender has already moved to another state or plans to
30 move to another state for reasons other than circumventing the
31 certification requirements; or

32 (b)(i) No certified sex offender treatment providers or certified
33 affiliate sex offender treatment providers are available for treatment
34 within a reasonable geographical distance of the offender's home; and

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

37 ~~((12))~~ (14) If the offender is less than eighteen years of age

1 when the charge is filed, the state shall pay for the cost of initial
2 evaluation and treatment.

3 **Sec. 32.** RCW 9.94A.690 and 2006 c 73 s 11 are each amended to read
4 as follows:

5 (1)(a) An offender is eligible to be sentenced to a work ethic camp
6 if the offender:

7 (i) Is sentenced to a term of total confinement of not less than
8 twelve months and one day or more than thirty-six months;

9 (ii) Has no current or prior convictions for any sex offenses or
10 for violent offenses; and

11 (iii) Is not currently subject to a sentence for, or being
12 prosecuted for, a violation of felony driving while under the influence
13 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of
14 physical control of a vehicle while under the influence of intoxicating
15 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform
16 controlled substances act, or a criminal solicitation to commit such a
17 violation under chapter 9A.28 or 69.50 RCW.

18 (b) The length of the work ethic camp shall be at least one hundred
19 twenty days and not more than one hundred eighty days.

20 (2) If the sentencing court determines that the offender is
21 eligible for the work ethic camp and is likely to qualify under
22 subsection (3) of this section, the judge shall impose a sentence
23 within the standard sentence range and may recommend that the offender
24 serve the sentence at a work ethic camp. In sentencing an offender to
25 the work ethic camp, the court shall specify: (a) That upon completion
26 of the work ethic camp the offender shall be released on community
27 custody for any remaining time of total confinement; (b) the applicable
28 conditions of ~~((supervision—on))~~ community custody ~~((status))~~ as
29 ~~((required by RCW 9.94A.700(4) and))~~ authorized by ~~((RCW 9.94A.700(5))~~
30 section 9 of this act; and (c) that violation of the conditions may
31 result in a return to total confinement for the balance of the
32 offender's remaining time of confinement.

33 (3) The department shall place the offender in the work ethic camp
34 program, subject to capacity, unless: (a) The department determines
35 that the offender has physical or mental impairments that would prevent
36 participation and completion of the program; (b) the department
37 determines that the offender's custody level prevents placement in the

1 program; (c) the offender refuses to agree to the terms and conditions
2 of the program; (d) the offender has been found by the United States
3 attorney general to be subject to a deportation detainer or order; or
4 (e) the offender has participated in the work ethic camp program in the
5 past.

6 (4) An offender who fails to complete the work ethic camp program,
7 who is administratively terminated from the program, or who otherwise
8 violates any conditions of supervision, as defined by the department,
9 shall be reclassified to serve the unexpired term of his or her
10 sentence as ordered by the sentencing court and shall be subject to all
11 rules relating to earned release time.

12 (5) During the last two weeks prior to release from the work ethic
13 camp program the department shall provide the offender with
14 comprehensive transition training.

15 **Sec. 33.** RCW 9.94A.712 and 2006 c 124 s 3, 2006 c 122 s 5, and
16 2005 c 436 s 2 are each reenacted and amended to read as follows:

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

19 (a) Is convicted of:
20 (i) Rape in the first degree, rape in the second degree, rape of a
21 child in the first degree, child molestation in the first degree, rape
22 of a child in the second degree, or indecent liberties by forcible
23 compulsion;

24 (ii) Any of the following offenses with a finding of sexual
25 motivation: Murder in the first degree, murder in the second degree,
26 homicide by abuse, kidnapping in the first degree, kidnapping in the
27 second degree, assault in the first degree, assault in the second
28 degree, assault of a child in the first degree, assault of a child in
29 the second degree, or burglary in the first degree; or

30 (iii) An attempt to commit any crime listed in this subsection
31 (1)(a);
32 (~~committed on or after September 1, 2001;~~) or

33 (b) Has a prior conviction for an offense listed in RCW
34 9.94A.030(~~(+33+)~~) (31)(b), and is convicted of any sex offense (~~which~~
35 ~~was committed after September 1, 2001.~~

36 ~~For purposes of this subsection (1)(b),)~~ other than failure to
37 register (~~is not a sex offense~~)).

1 (2) An offender convicted of rape of a child in the first or second
2 degree or child molestation in the first degree who was seventeen years
3 of age or younger at the time of the offense shall not be sentenced
4 under this section.

5 (3)(a) Upon a finding that the offender is subject to sentencing
6 under this section, the court shall impose a sentence to a maximum term
7 and a minimum term.

8 (b) The maximum term shall consist of the statutory maximum
9 sentence for the offense.

10 (c)(i) Except as provided in (c)(ii) of this subsection, the
11 minimum term shall be either within the standard sentence range for the
12 offense, or outside the standard sentence range pursuant to RCW
13 9.94A.535, if the offender is otherwise eligible for such a sentence.

14 (ii) If the offense that caused the offender to be sentenced under
15 this section was rape of a child in the first degree, rape of a child
16 in the second degree, or child molestation in the first degree, and
17 there has been a finding that the offense was predatory under RCW
18 9.94A.836, the minimum term shall be either the maximum of the standard
19 sentence range for the offense or twenty-five years, whichever is
20 greater. If the offense that caused the offender to be sentenced under
21 this section was rape in the first degree, rape in the second degree,
22 indecent liberties by forcible compulsion, or kidnapping in the first
23 degree with sexual motivation, and there has been a finding that the
24 victim was under the age of fifteen at the time of the offense under
25 RCW 9.94A.837, the minimum term shall be either the maximum of the
26 standard sentence range for the offense or twenty-five years, whichever
27 is greater. If the offense that caused the offender to be sentenced
28 under this section is rape in the first degree, rape in the second
29 degree with forcible compulsion, indecent liberties with forcible
30 compulsion, or kidnapping in the first degree with sexual motivation,
31 and there has been a finding under RCW 9.94A.838 that the victim was,
32 at the time of the offense, developmentally disabled, mentally
33 disordered, or a frail elder or vulnerable adult, the minimum sentence
34 shall be either the maximum of the standard sentence range for the
35 offense or twenty-five years, whichever is greater.

36 (d) The minimum terms in (c)(ii) of this subsection do not apply to
37 a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or

1 (v). The minimum term for such a juvenile shall be imposed under
2 (c)(i) of this subsection.

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

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

12 ~~(6)(a)((i) Unless a condition is waived by the court, the~~
13 ~~conditions of community custody shall include those provided for in RCW~~
14 ~~9.94A.700(4). The conditions may also include those provided for in~~
15 ~~RCW 9.94A.700(5). The court may also order the offender to participate~~
16 ~~in rehabilitative programs or otherwise perform affirmative conduct~~
17 ~~reasonably related to the circumstances of the offense, the offender's~~
18 ~~risk of reoffending, or the safety of the community, and the department~~
19 ~~and the board shall enforce such conditions pursuant to RCW 9.94A.713,~~
20 ~~9.95.425, and 9.95.430.~~

21 ~~(ii) If the offense that caused the offender to be sentenced under~~
22 ~~this section was an offense listed in subsection (1)(a) of this section~~
23 ~~and the victim of the offense was under eighteen years of age at the~~
24 ~~time of the offense, the court shall, as a condition of community~~
25 ~~custody, prohibit the offender from residing in a community protection~~
26 ~~zone.~~

27 ~~(b))~~ As part of any sentence under this section, the court shall
28 also require the offender to comply with any conditions imposed by the
29 board under RCW ~~((9.94A.713 and))~~ 9.95.420 through 9.95.435.

30 (b) An offender released by the board under RCW 9.95.420 is subject
31 to the supervision of the department until the expiration of the
32 maximum term of the sentence. The department shall monitor the
33 offender's compliance with conditions of community custody imposed by
34 the court, department, or board, and promptly report any violations to
35 the board. Any violation of conditions of community custody
36 established or modified by the board are subject to the provisions of
37 RCW 9.95.425 through 9.95.440.

1 **Sec. 34.** RCW 9.94A.728 and 2007 c 483 s 304 are each amended to
2 read as follows:

3 No person serving a sentence imposed pursuant to this chapter and
4 committed to the custody of the department shall leave the confines of
5 the correctional facility or be released prior to the expiration of the
6 sentence except as follows:

7 (1) Except as otherwise provided for in subsection (2) of this
8 section, the term of the sentence of an offender committed to a
9 correctional facility operated by the department may be reduced by
10 earned release time in accordance with procedures that shall be
11 developed and promulgated by the correctional agency having
12 jurisdiction in which the offender is confined. The earned release
13 time shall be for good behavior and good performance, as determined by
14 the correctional agency having jurisdiction. The correctional agency
15 shall not credit the offender with earned release credits in advance of
16 the offender actually earning the credits. Any program established
17 pursuant to this section shall allow an offender to earn early release
18 credits for presentence incarceration. If an offender is transferred
19 from a county jail to the department, the administrator of a county
20 jail facility shall certify to the department the amount of time spent
21 in custody at the facility and the amount of earned release time. An
22 offender who has been convicted of a felony committed after July 23,
23 1995, that involves any applicable deadly weapon enhancements under RCW
24 9.94A.533 (3) or (4), or both, shall not receive any good time credits
25 or earned release time for that portion of his or her sentence that
26 results from any deadly weapon enhancements.

27 (a) In the case of an offender convicted of a serious violent
28 offense, or a sex offense that is a class A felony, committed on or
29 after July 1, 1990, and before July 1, 2003, the aggregate earned
30 release time may not exceed fifteen percent of the sentence. In the
31 case of an offender convicted of a serious violent offense, or a sex
32 offense that is a class A felony, committed on or after July 1, 2003,
33 the aggregate earned release time may not exceed ten percent of the
34 sentence.

35 (b)(i) In the case of an offender who qualifies under (b)(ii) of
36 this subsection, the aggregate earned release time may not exceed fifty
37 percent of the sentence.

1 (ii) An offender is qualified to earn up to fifty percent of
2 aggregate earned release time under this subsection (1)(b) if he or
3 she:

4 (A) Is classified in one of the two lowest risk categories under
5 (b)(iii) of this subsection;

6 (B) Is not confined pursuant to a sentence for:

7 (I) A sex offense;

8 (II) A violent offense;

9 (III) A crime against persons as defined in RCW 9.94A.411;

10 (IV) A felony that is domestic violence as defined in RCW
11 10.99.020;

12 (V) A violation of RCW 9A.52.025 (residential burglary);

13 (VI) A violation of, or an attempt, solicitation, or conspiracy to
14 violate, RCW 69.50.401 by manufacture or delivery or possession with
15 intent to deliver methamphetamine; or

16 (VII) A violation of, or an attempt, solicitation, or conspiracy to
17 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

18 (C) Has no prior conviction for:

19 (I) A sex offense;

20 (II) A violent offense;

21 (III) A crime against persons as defined in RCW 9.94A.411;

22 (IV) A felony that is domestic violence as defined in RCW
23 10.99.020;

24 (V) A violation of RCW 9A.52.025 (residential burglary);

25 (VI) A violation of, or an attempt, solicitation, or conspiracy to
26 violate, RCW 69.50.401 by manufacture or delivery or possession with
27 intent to deliver methamphetamine; or

28 (VII) A violation of, or an attempt, solicitation, or conspiracy to
29 violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

30 (D) Participates in programming or activities as directed by the
31 offender's individual reentry plan as provided under RCW 72.09.270 to
32 the extent that such programming or activities are made available by
33 the department; and

34 (E) Has not committed a new felony after July 22, 2007, while under
35 (~~community supervision, community placement, or~~) community custody.

36 (iii) For purposes of determining an offender's eligibility under
37 this subsection (1)(b), the department shall perform a risk assessment
38 of every offender committed to a correctional facility operated by the

1 department who has no current or prior conviction for a sex offense, a
2 violent offense, a crime against persons as defined in RCW 9.94A.411,
3 a felony that is domestic violence as defined in RCW 10.99.020, a
4 violation of RCW 9A.52.025 (residential burglary), a violation of, or
5 an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by
6 manufacture or delivery or possession with intent to deliver
7 methamphetamine, or a violation of, or an attempt, solicitation, or
8 conspiracy to violate, RCW 69.50.406 (delivery of a controlled
9 substance to a minor). The department must classify each assessed
10 offender in one of four risk categories between highest and lowest
11 risk.

12 (iv) The department shall recalculate the earned release time and
13 reschedule the expected release dates for each qualified offender under
14 this subsection (1)(b).

15 (v) This subsection (1)(b) applies retroactively to eligible
16 offenders serving terms of total confinement in a state correctional
17 facility as of July 1, 2003.

18 (vi) This subsection (1)(b) does not apply to offenders convicted
19 after July 1, 2010.

20 (c) In no other case shall the aggregate earned release time exceed
21 one-third of the total sentence;

22 ~~(2)(a) ((A person convicted of a sex offense or an offense
23 categorized as a serious violent offense, assault in the second degree,
24 vehicular homicide, vehicular assault, assault of a child in the second
25 degree, any crime against persons where it is determined in accordance
26 with RCW 9.94A.602 that the offender or an accomplice was armed with a
27 deadly weapon at the time of commission, or any felony offense under
28 chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become
29 eligible, in accordance with a program developed by the department, for
30 transfer to community custody status in lieu of earned release time
31 pursuant to subsection (1) of this section;~~

32 ~~(b))~~) A person convicted of a sex offense, a violent offense, any
33 crime against persons under RCW 9.94A.411(2), or a felony offense under
34 chapter 69.50 or 69.52 RCW, ~~((committed on or after July 1, 2000,))~~ may
35 become eligible, in accordance with a program developed by the
36 department, for transfer to community custody ~~((status))~~ in lieu of
37 earned release time pursuant to subsection (1) of this section;

1 ~~((e))~~ (b) The department shall, as a part of its program for
2 release to the community in lieu of earned release, require the
3 offender to propose a release plan that includes an approved residence
4 and living arrangement. All offenders with ~~((community placement or))~~
5 community custody terms eligible for release to community custody
6 ~~((status))~~ in lieu of earned release shall provide an approved
7 residence and living arrangement prior to release to the community;

8 ~~((d))~~ (c) The department may deny transfer to community custody
9 ~~((status))~~ in lieu of earned release time pursuant to subsection (1) of
10 this section if the department determines an offender's release plan,
11 including proposed residence location and living arrangements, may
12 violate the conditions of the sentence or conditions of supervision,
13 place the offender at risk to violate the conditions of the sentence,
14 place the offender at risk to reoffend, or present a risk to victim
15 safety or community safety. The department's authority under this
16 section is independent of any court-ordered condition of sentence or
17 statutory provision regarding conditions for community custody ~~((or~~
18 ~~community placement))~~;

19 ~~((e))~~ (d) If the department denies transfer to community custody
20 ~~((status))~~ in lieu of earned early release pursuant to ~~((d))~~ (c) of
21 this subsection, the department may transfer an offender to partial
22 confinement in lieu of earned early release up to three months. The
23 three months in partial confinement is in addition to that portion of
24 the offender's term of confinement that may be served in partial
25 confinement as provided in this section;

26 ~~((f))~~ (e) An offender serving a term of confinement imposed under
27 RCW 9.94A.670~~((4))~~ (5)(a) is not eligible for earned release credits
28 under this section;

29 (3) An offender may leave a correctional facility pursuant to an
30 authorized furlough or leave of absence. In addition, offenders may
31 leave a correctional facility when in the custody of a corrections
32 officer or officers;

33 (4)(a) The secretary may authorize an extraordinary medical
34 placement for an offender when all of the following conditions exist:

35 (i) The offender has a medical condition that is serious enough to
36 require costly care or treatment;

37 (ii) The offender poses a low risk to the community because he or

1 she is physically incapacitated due to age or the medical condition;
2 and

3 (iii) Granting the extraordinary medical placement will result in
4 a cost savings to the state.

5 (b) An offender sentenced to death or to life imprisonment without
6 the possibility of release or parole is not eligible for an
7 extraordinary medical placement.

8 (c) The secretary shall require electronic monitoring for all
9 offenders in extraordinary medical placement unless the electronic
10 monitoring equipment interferes with the function of the offender's
11 medical equipment or results in the loss of funding for the offender's
12 medical care. The secretary shall specify who shall provide the
13 monitoring services and the terms under which the monitoring shall be
14 performed.

15 (d) The secretary may revoke an extraordinary medical placement
16 under this subsection at any time;

17 (5) The governor, upon recommendation from the clemency and pardons
18 board, may grant an extraordinary release for reasons of serious health
19 problems, senility, advanced age, extraordinary meritorious acts, or
20 other extraordinary circumstances;

21 (6) No more than the final six months of the offender's term of
22 confinement may be served in partial confinement designed to aid the
23 offender in finding work and reestablishing himself or herself in the
24 community. This is in addition to that period of earned early release
25 time that may be exchanged for partial confinement pursuant to
26 subsection (2)(~~(e)~~) (d) of this section;

27 (7) The governor may pardon any offender;

28 (8) The department may release an offender from confinement any
29 time within ten days before a release date calculated under this
30 section; (~~and~~)

31 (9) An offender may leave a correctional facility prior to
32 completion of his or her sentence if the sentence has been reduced as
33 provided in RCW 9.94A.870(~~(-)~~); and

34 (10) Notwithstanding any other provisions of this section, an
35 offender sentenced for a felony crime listed in RCW 9.94A.540 as
36 subject to a mandatory minimum sentence of total confinement shall not
37 be released from total confinement before the completion of the listed

1 mandatory minimum sentence for that felony crime of conviction unless
2 allowed under RCW 9.94A.540, however persistent offenders are not
3 eligible for extraordinary medical placement.

4 **Sec. 35.** RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read
5 as follows:

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

23 (2) If the court determines that the offender, at the time of
24 sentencing, has the means to pay for the cost of incarceration, the
25 court may require the offender to pay for the cost of incarceration at
26 a rate of fifty dollars per day of incarceration, if incarcerated in a
27 prison, or the court may require the offender to pay the actual cost of
28 incarceration per day of incarceration, if incarcerated in a county
29 jail. In no case may the court require the offender to pay more than
30 one hundred dollars per day for the cost of incarceration. Payment of
31 other court-ordered financial obligations, including all legal
32 financial obligations and costs of supervision shall take precedence
33 over the payment of the cost of incarceration ordered by the court.
34 All funds recovered from offenders for the cost of incarceration in the
35 county jail shall be remitted to the county and the costs of
36 incarceration in a prison shall be remitted to the department.

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

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

18 (4) Independent of the department or the county clerk, the party or
19 entity to whom the legal financial obligation is owed shall have the
20 authority to use any other remedies available to the party or entity to
21 collect the legal financial obligation. These remedies include
22 enforcement in the same manner as a judgment in a civil action by the
23 party or entity to whom the legal financial obligation is owed.
24 Restitution collected through civil enforcement must be paid through
25 the registry of the court and must be distributed proportionately
26 according to each victim's loss when there is more than one victim.
27 The judgment and sentence shall identify the party or entity to whom
28 restitution is owed so that the state, party, or entity may enforce the
29 judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or
30 9.94A.753(6) to a victim of rape of a child or a victim's child born
31 from the rape, the Washington state child support registry shall be
32 identified as the party to whom payments must be made. Restitution
33 obligations arising from the rape of a child in the first, second, or
34 third degree that result in the pregnancy of the victim may be enforced
35 for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).
36 All other legal financial obligations for an offense committed prior to
37 July 1, 2000, may be enforced at any time during the ten-year period
38 following the offender's release from total confinement or within ten

1 years of entry of the judgment and sentence, whichever period ends
2 later. Prior to the expiration of the initial ten-year period, the
3 superior court may extend the criminal judgment an additional ten years
4 for payment of legal financial obligations including crime victims'
5 assessments. All other legal financial obligations for an offense
6 committed on or after July 1, 2000, may be enforced at any time the
7 offender remains under the court's jurisdiction. For an offense
8 committed on or after July 1, 2000, the court shall retain jurisdiction
9 over the offender, for purposes of the offender's compliance with
10 payment of the legal financial obligations, until the obligation is
11 completely satisfied, regardless of the statutory maximum for the
12 crime. The department may only supervise the offender's compliance
13 with payment of the legal financial obligations during any period in
14 which the department is authorized to supervise the offender in the
15 community under RCW 9.94A.728, 9.94A.501, or in which the offender is
16 confined in a state correctional institution or a correctional facility
17 pursuant to a transfer agreement with the department, and the
18 department shall supervise the offender's compliance during any such
19 period. The department is not responsible for supervision of the
20 offender during any subsequent period of time the offender remains
21 under the court's jurisdiction. The county clerk is authorized to
22 collect unpaid legal financial obligations at any time the offender
23 remains under the jurisdiction of the court for purposes of his or her
24 legal financial obligations.

25 (5) In order to assist the court in setting a monthly sum that the
26 offender must pay during the period of supervision, the offender is
27 required to report to the department for purposes of preparing a
28 recommendation to the court. When reporting, the offender is required,
29 under oath, to respond truthfully and honestly to all questions
30 concerning present, past, and future earning capabilities and the
31 location and nature of all property or financial assets. The offender
32 is further required to bring all documents requested by the department.

33 (6) After completing the investigation, the department shall make
34 a report to the court on the amount of the monthly payment that the
35 offender should be required to make towards a satisfied legal financial
36 obligation.

37 (7)(a) During the period of supervision, the department may make a
38 recommendation to the court that the offender's monthly payment

1 schedule be modified so as to reflect a change in financial
2 circumstances. If the department sets the monthly payment amount, the
3 department may modify the monthly payment amount without the matter
4 being returned to the court. During the period of supervision, the
5 department may require the offender to report to the department for the
6 purposes of reviewing the appropriateness of the collection schedule
7 for the legal financial obligation. During this reporting, the
8 offender is required under oath to respond truthfully and honestly to
9 all questions concerning earning capabilities and the location and
10 nature of all property or financial assets. The offender shall bring
11 all documents requested by the department in order to prepare the
12 collection schedule.

13 (b) Subsequent to any period of supervision, or if the department
14 is not authorized to supervise the offender in the community, the
15 county clerk may make a recommendation to the court that the offender's
16 monthly payment schedule be modified so as to reflect a change in
17 financial circumstances. If the county clerk sets the monthly payment
18 amount, or if the department set the monthly payment amount and the
19 department has subsequently turned the collection of the legal
20 financial obligation over to the county clerk, the clerk may modify the
21 monthly payment amount without the matter being returned to the court.
22 During the period of repayment, the county clerk may require the
23 offender to report to the clerk for the purpose of reviewing the
24 appropriateness of the collection schedule for the legal financial
25 obligation. During this reporting, the offender is required under oath
26 to respond truthfully and honestly to all questions concerning earning
27 capabilities and the location and nature of all property or financial
28 assets. The offender shall bring all documents requested by the county
29 clerk in order to prepare the collection schedule.

30 (8) After the judgment and sentence or payment order is entered,
31 the department is authorized, for any period of supervision, to collect
32 the legal financial obligation from the offender. Subsequent to any
33 period of supervision or, if the department is not authorized to
34 supervise the offender in the community, the county clerk is authorized
35 to collect unpaid legal financial obligations from the offender. Any
36 amount collected by the department shall be remitted daily to the
37 county clerk for the purpose of disbursements. The department and the
38 county clerks are authorized, but not required, to accept credit cards

1 as payment for a legal financial obligation, and any costs incurred
2 related to accepting credit card payments shall be the responsibility
3 of the offender.

4 (9) The department or any obligee of the legal financial obligation
5 may seek a mandatory wage assignment for the purposes of obtaining
6 satisfaction for the legal financial obligation pursuant to RCW
7 9.94A.7701. Any party obtaining a wage assignment shall notify the
8 county clerk. The county clerks shall notify the department, or the
9 administrative office of the courts, whichever is providing the monthly
10 billing for the offender.

11 (10) The requirement that the offender pay a monthly sum towards a
12 legal financial obligation constitutes a condition or requirement of a
13 sentence and the offender is subject to the penalties for noncompliance
14 as provided in RCW 9.94A.634 (as recodified by this act), 9.94A.737, or
15 9.94A.740.

16 (11)(a) Until January 1, 2004, the department shall mail
17 individualized monthly billings to the address known by the department
18 for each offender with an unsatisfied legal financial obligation.

19 (b) Beginning January 1, 2004, the administrative office of the
20 courts shall mail individualized monthly billings to the address known
21 by the office for each offender with an unsatisfied legal financial
22 obligation.

23 (c) The billing shall direct payments, other than outstanding cost
24 of supervision assessments under RCW 9.94A.780, parole assessments
25 under RCW 72.04A.120, and cost of probation assessments under RCW
26 9.95.214, to the county clerk, and cost of supervision, parole, or
27 probation assessments to the department.

28 (d) The county clerk shall provide the administrative office of the
29 courts with notice of payments by such offenders no less frequently
30 than weekly.

31 (e) The county clerks, the administrative office of the courts, and
32 the department shall maintain agreements to implement this subsection.

33 (12) The department shall arrange for the collection of unpaid
34 legal financial obligations during any period of supervision in the
35 community through the county clerk. The department shall either
36 collect unpaid legal financial obligations or arrange for collections
37 through another entity if the clerk does not assume responsibility or

1 is unable to continue to assume responsibility for collection pursuant
2 to subsection (4) of this section. The costs for collection services
3 shall be paid by the offender.

4 (13) The county clerk may access the records of the employment
5 security department for the purposes of verifying employment or income,
6 seeking any assignment of wages, or performing other duties necessary
7 to the collection of an offender's legal financial obligations.

8 (14) Nothing in this chapter makes the department, the state, the
9 counties, or any state or county employees, agents, or other persons
10 acting on their behalf liable under any circumstances for the payment
11 of these legal financial obligations or for the acts of any offender
12 who is no longer, or was not, subject to supervision by the department
13 for a term of community custody, (~~community placement, or community~~
14 ~~supervision,~~) and who remains under the jurisdiction of the court for
15 payment of legal financial obligations.

16 **Sec. 36.** RCW 9.94A.775 and 2003 c 379 s 17 are each amended to
17 read as follows:

18 If an offender with an unsatisfied legal financial obligation is
19 not subject to supervision by the department for a term of (~~community~~
20 ~~placement,~~) community custody, (~~or community supervision,~~) or has
21 not completed payment of all legal financial obligations included in
22 the sentence at the expiration of his or her term of (~~community~~
23 ~~placement,~~) community custody, (~~or community supervision,~~) the
24 department shall notify the administrative office of the courts of the
25 termination of the offender's supervision and provide information to
26 the administrative office of the courts to enable the county clerk to
27 monitor payment of the remaining obligations. The county clerk is
28 authorized to monitor payment after such notification. The secretary
29 of corrections and the administrator for the courts shall enter into an
30 interagency agreement to facilitate the electronic transfer of
31 information about offenders, unpaid obligations, and payees to carry
32 out the purposes of this section.

33 **Sec. 37.** RCW 9.94A.780 and 2003 c 379 s 18 are each amended to
34 read as follows:

35 (1) Whenever a punishment imposed under this chapter requires
36 supervision services to be provided, the offender shall pay to the

1 department of corrections the monthly assessment, prescribed under
2 subsection (2) of this section, which shall be for the duration of the
3 terms of supervision and which shall be considered as payment or part
4 payment of the cost of providing supervision to the offender. The
5 department may exempt or defer a person from the payment of all or any
6 part of the assessment based upon any of the following factors:

7 (a) The offender has diligently attempted but has been unable to
8 obtain employment that provides the offender sufficient income to make
9 such payments.

10 (b) The offender is a student in a school, college, university, or
11 a course of vocational or technical training designed to fit the
12 student for gainful employment.

13 (c) The offender has an employment handicap, as determined by an
14 examination acceptable to or ordered by the department.

15 (d) The offender's age prevents him or her from obtaining
16 employment.

17 (e) The offender is responsible for the support of dependents and
18 the payment of the assessment constitutes an undue hardship on the
19 offender.

20 (f) Other extenuating circumstances as determined by the
21 department.

22 (2) The department of corrections shall adopt a rule prescribing
23 the amount of the assessment. The department may, if it finds it
24 appropriate, prescribe a schedule of assessments that shall vary in
25 accordance with the intensity or cost of the supervision. The
26 department may not prescribe any assessment that is less than ten
27 dollars nor more than fifty dollars.

28 (3) All amounts required to be paid under this section shall be
29 collected by the department of corrections and deposited by the
30 department in the dedicated fund established pursuant to RCW 72.11.040.

31 (4) This section shall not apply to probation services provided
32 under an interstate compact pursuant to chapter 9.95 RCW or to
33 probation services provided for persons placed on probation prior to
34 June 10, 1982.

35 (5) If a county clerk assumes responsibility for collection of
36 unpaid legal financial obligations under RCW 9.94A.760, or under any
37 agreement with the department under that section, whether before or
38 after the completion of any period of (~~community placement,~~)

1 community custody, (~~or community supervision,~~) the clerk may impose
2 a monthly or annual assessment for the cost of collections. The amount
3 of the assessment shall not exceed the actual cost of collections. The
4 county clerk may exempt or defer payment of all or part of the
5 assessment based upon any of the factors listed in subsection (1) of
6 this section. The offender shall pay the assessment under this
7 subsection to the county clerk who shall apply it to the cost of
8 collecting legal financial obligations under RCW 9.94A.760.

9 **Sec. 38.** RCW 9.94A.820 and 2004 c 38 s 10 are each amended to read
10 as follows:

11 (1) Sex offender examinations and treatment ordered as a special
12 condition of (~~community placement or~~) community custody under this
13 chapter shall be conducted only by certified sex offender treatment
14 providers or certified affiliate sex offender treatment providers under
15 chapter 18.155 RCW unless the court or the department finds that: (a)
16 The offender has already moved to another state or plans to move to
17 another state for reasons other than circumventing the certification
18 requirements; (b) the treatment provider is employed by the department;
19 or (c)(i) no certified sex offender treatment providers or certified
20 affiliate sex offender treatment providers are available to provide
21 treatment within a reasonable geographic distance of the offender's
22 home, as determined in rules adopted by the secretary; and (ii) the
23 evaluation and treatment plan comply with the rules adopted by the
24 department of health. A treatment provider selected by an offender
25 under (c) of this subsection, who is not certified by the department of
26 health shall consult with a certified sex offender treatment provider
27 during the offender's period of treatment to ensure compliance with the
28 rules adopted by the department of health. The frequency and content
29 of the consultation shall be based on the recommendation of the
30 certified sex offender treatment provider.

31 (2) A sex offender's failure to participate in treatment required
32 as a condition of (~~community placement or~~) community custody is a
33 violation that will not be excused on the basis that no treatment
34 provider was located within a reasonable geographic distance of the
35 offender's home.

1 **Sec. 39.** RCW 4.24.556 and 2004 c 38 s 1 are each amended to read
2 as follows:

3 (1) A certified sex offender treatment provider, or a certified
4 affiliate sex offender treatment provider who has completed at least
5 fifty percent of the required hours under the supervision of a
6 certified sex offender treatment provider, acting in the course of his
7 or her duties, providing treatment to a person who has been released to
8 a less restrictive alternative under chapter 71.09 RCW or to a level
9 III sex offender on community custody as a court ~~((or))~~, department, or
10 board ordered condition of sentence is not negligent because he or she
11 treats a high risk offender; sex offenders are known to have a risk of
12 reoffense. The treatment provider is not liable for civil damages
13 resulting from the reoffense of a client unless the treatment
14 provider's acts or omissions constituted gross negligence or willful or
15 wanton misconduct. This limited liability provision does not eliminate
16 the treatment provider's duty to warn of and protect from a client's
17 threatened violent behavior if the client communicates a serious threat
18 of physical violence against a reasonably ascertainable victim or
19 victims. In addition to any other requirements to report violations,
20 the sex offender treatment provider is obligated to report an
21 offender's expressions of intent to harm or other predatory behavior,
22 whether or not there is an ascertainable victim, in progress reports
23 and other established processes that enable courts and supervising
24 entities to assess and address the progress and appropriateness of
25 treatment. This limited liability provision applies only to the
26 conduct of certified sex offender treatment providers, and certified
27 affiliate sex offender treatment providers who have completed at least
28 fifty percent of the required hours under the supervision of a
29 certified sex offender treatment provider, and not the conduct of the
30 state.

31 (2) Sex offender treatment providers who provide services to the
32 department of corrections by identifying risk factors and notifying the
33 department of risks for the subset of high risk offenders who are not
34 amenable to treatment and who are under court order for treatment or
35 supervision are practicing within the scope of their profession.

36 **Sec. 40.** RCW 9.95.017 and 2003 c 218 s 2 are each amended to read
37 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.

8 (2) Persons committed to the department of corrections and who are
9 under the authority of the board for crimes committed on or after
10 September 1, 2001, are subject to the provisions for duration of
11 confinement, release to community custody, and length of community
12 custody established in RCW 9.94A.712, (~~(9.94A.713)~~) section 10 of this
13 act, 72.09.335, and 9.95.420 through 9.95.440.

14 **Sec. 41.** RCW 9.95.064 and 2001 2nd sp.s. c 12 s 326 are each
15 amended to read as follows:

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

21 (2) Offenders released under RCW 9.95.420 are subject to crime-
22 related prohibitions and affirmative conditions established by the
23 court, the department of corrections, or the board pursuant to RCW
24 (~~(9.94A.715 and)~~) 9.94A.712, (~~(9.94A.713)~~) section 10 of this act,
25 72.09.335, and 9.95.420 through 9.95.440.

26 **Sec. 42.** RCW 9.95.110 and 2003 c 218 s 7 are each amended to read
27 as follows:

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

35 The board may establish rules and regulations under which an

1 offender may be allowed to leave the confines of a state correctional
2 institution on parole, and may return such person to the confines of
3 the institution from which he or she was paroled, at its discretion.

4 (2) The board may permit an offender convicted of a crime committed
5 on or after September 1, 2001, and sentenced under RCW 9.94A.712, to
6 leave a state correctional institution on community custody according
7 to the provisions of RCW 9.94A.712, (~~9.94A.713~~) section 10 of this
8 act, 72.09.335, and 9.95.420 through 9.95.440. The person may be
9 returned to the institution following a violation of his or her
10 conditions of release to community custody pursuant to the hearing
11 provisions of RCW 9.95.435.

12 **Sec. 43.** RCW 9.95.123 and 2001 2nd sp.s. c 12 s 336 are each
13 amended to read as follows:

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

1 refused to testify. A copy of the order shall be served upon the
2 witness. If it appears to the court that the subpoena was properly
3 issued and that the particular questions which the witness refuses to
4 answer are reasonable and relevant, the court shall enter an order that
5 the witness appear at the time and place fixed in the order and testify
6 or produce the required papers, and on failing to obey the order, the
7 witness shall be dealt with as for contempt of court.

8 **Sec. 44.** RCW 9.95.420 and 2007 c 363 s 2 are each amended to read
9 as follows:

10 (1)(a) Except as provided in (c) of this subsection, before the
11 expiration of the minimum term, as part of the end of sentence review
12 process under RCW 72.09.340, 72.09.345, and where appropriate,
13 72.09.370, the department shall conduct, and the offender shall
14 participate in, an examination of the offender, incorporating
15 methodologies that are recognized by experts in the prediction of
16 sexual dangerousness, and including a prediction of the probability
17 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 (c) If at the time the sentence is imposed by the superior court
21 the offender's minimum term has expired or will expire within one
22 hundred twenty days of the sentencing hearing, the department shall
23 conduct, within ninety days of the offender's arrival at a department
24 of corrections facility, and the offender shall participate in, an
25 examination of the offender, incorporating methodologies that are
26 recognized by experts in the prediction of sexual dangerousness, and
27 including a prediction of the probability that the offender will engage
28 in sex offenses if released.

29 (2) The board shall impose the conditions and instructions provided
30 for in (~~RCW 9.94A.720~~) section 10 of this act. The board shall
31 consider the department's recommendations and may impose conditions in
32 addition to those recommended by the department. The board may impose
33 or modify conditions of community custody following notice to the
34 offender.

35 (3)(a) Except as provided in (b) of this subsection, no later than
36 ninety days before expiration of the minimum term, but after the board
37 receives the results from the end of sentence review process and the

1 recommendations for additional or modified conditions of community
2 custody from the department, the board shall conduct a hearing to
3 determine whether it is more likely than not that the offender will
4 engage in sex offenses if released on conditions to be set by the
5 board. The board may consider an offender's failure to participate in
6 an evaluation under subsection (1) of this section in determining
7 whether to release the offender. The board shall order the offender
8 released, under such affirmative and other conditions as the board
9 determines appropriate, unless the board determines by a preponderance
10 of the evidence that, despite such conditions, it is more likely than
11 not that the offender will commit sex offenses if released. If the
12 board does not order the offender released, the board shall establish
13 a new minimum term as provided in RCW 9.95.011.

14 (b) If at the time the offender's minimum term has expired or will
15 expire within one hundred twenty days of the offender's arrival at a
16 department of correction's facility, then no later than one hundred
17 twenty days after the offender's arrival at a department of corrections
18 facility, but after the board receives the results from the end of
19 sentence review process and the recommendations for additional or
20 modified conditions of community custody from the department, the board
21 shall conduct a hearing to determine whether it is more likely than not
22 that the offender will engage in sex offenses if released on conditions
23 to be set by the board. The board may consider an offender's failure
24 to participate in an evaluation under subsection (1) of this section in
25 determining whether to release the offender. The board shall order the
26 offender released, under such affirmative and other conditions as the
27 board determines appropriate, unless the board determines by a
28 preponderance of the evidence that, despite such conditions, it is more
29 likely than not that the offender will commit sex offenses if released.
30 If the board does not order the offender released, the board shall
31 establish a new minimum term as provided in RCW 9.95.011.

32 (4) In a hearing conducted under subsection (3) of this section,
33 the board shall provide opportunities for the victims of any crimes for
34 which the offender has been convicted to present oral, video, written,
35 or in-person testimony to the board. The procedures for victim input
36 shall be developed by rule. To facilitate victim involvement, county
37 prosecutor's offices shall ensure that any victim impact statements and

1 known contact information for victims of record are forwarded as part
2 of the judgment and sentence.

3 **Sec. 45.** RCW 9.95.440 and 2003 c 218 s 6 are each amended to read
4 as follows:

5 In the event the board suspends the release status of an offender
6 released under RCW 9.95.420 by reason of an alleged violation of a
7 condition of release, or pending disposition of a new criminal charge,
8 the board may nullify the suspension order and reinstate release under
9 previous conditions or any new conditions the board determines
10 advisable under ((RCW 9.94A.713(5))) section 10 of this act. Before
11 the board may nullify a suspension order and reinstate release, it
12 shall determine that the best interests of society and the offender
13 shall be served by such reinstatement rather than return to
14 confinement.

15 **Sec. 46.** RCW 46.61.524 and 2006 c 73 s 16 are each amended to read
16 as follows:

17 ((~~(1) A person convicted under RCW 46.61.502(6), 46.61.504(6),~~
18 ~~46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community~~
19 ~~custody imposed under RCW 9.94A.545 or community placement imposed~~
20 ~~under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or~~
21 ~~drug dependency agency approved by the department of social and health~~
22 ~~services or a qualified probation department, as defined under RCW~~
23 ~~46.61.516 that has been approved by the department of social and health~~
24 ~~services. This report shall be forwarded to the department of~~
25 ~~licensing. If the person is found to have an alcohol or drug problem~~
26 ~~that requires treatment, the person shall complete treatment in a~~
27 ~~program approved by the department of social and health services under~~
28 ~~chapter 70.96A RCW. If the person is found not to have an alcohol or~~
29 ~~drug problem that requires treatment, he or she shall complete a course~~
30 ~~in an information school approved by the department of social and~~
31 ~~health services under chapter 70.96A RCW. The convicted person shall~~
32 ~~pay all costs for any evaluation, education, or treatment required by~~
33 ~~this section, unless the person is eligible for an existing program~~
34 ~~offered or approved by the department of social and health services.~~
35 ~~Nothing in chapter 348, Laws of 1991 requires the addition of new~~

1 ~~treatment or assessment facilities nor affects the department of social~~
2 ~~and health services use of existing programs and facilities authorized~~
3 ~~by law.~~

4 (2)) As provided for under RCW 46.20.285, the department shall
5 revoke the license, permit to drive, or a nonresident privilege of a
6 person convicted of vehicular homicide under RCW 46.61.520 or vehicular
7 assault under RCW 46.61.522. The department shall determine the
8 eligibility of a person convicted of vehicular homicide under RCW
9 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to
10 receive a license based upon the report provided by the designated
11 alcoholism treatment facility or probation department designated
12 pursuant to section 9(4)(b) of this act, and shall deny reinstatement
13 until satisfactory progress in an approved program has been established
14 and the person is otherwise qualified.

15 **Sec. 47.** RCW 72.09.015 and 2007 c 483 s 202 are each amended to
16 read as follows:

17 The definitions in this section apply throughout this chapter.

18 (1) "Adult basic education" means education or instruction designed
19 to achieve general competence of skills in reading, writing, and oral
20 communication, including English as a second language and preparation
21 and testing services for obtaining a high school diploma or a general
22 equivalency diploma.

23 (2) "Base level of correctional services" means the minimum level
24 of field services the department of corrections is required by statute
25 to provide for the supervision and monitoring of offenders.

26 (3) "Community custody" has the same meaning as that provided in
27 RCW 9.94A.030 and also includes community placement and community
28 supervision as defined in section 52 of this act.

29 (4) "Contraband" means any object or communication the secretary
30 determines shall not be allowed to be: (a) Brought into; (b) possessed
31 while on the grounds of; or (c) sent from any institution under the
32 control of the secretary.

33 ((4)) (5) "County" means a county or combination of counties.

34 ((5)) (6) "Department" means the department of corrections.

35 ((6)) (7) "Earned early release" means earned release as
36 authorized by RCW 9.94A.728.

1 ((~~7~~)) (8) "Evidence-based" means a program or practice that has
2 had multiple-site random controlled trials across heterogeneous
3 populations demonstrating that the program or practice is effective in
4 reducing recidivism for the population.

5 ((~~8~~)) (9) "Extended family visit" means an authorized visit
6 between an inmate and a member of his or her immediate family that
7 occurs in a private visiting unit located at the correctional facility
8 where the inmate is confined.

9 ((~~9~~)) (10) "Good conduct" means compliance with department rules
10 and policies.

11 ((~~10~~)) (11) "Good performance" means successful completion of a
12 program required by the department, including an education, work, or
13 other program.

14 ((~~11~~)) (12) "Immediate family" means the inmate's children,
15 stepchildren, grandchildren, great grandchildren, parents, stepparents,
16 grandparents, great grandparents, siblings, and a person legally
17 married to an inmate. "Immediate family" does not include an inmate
18 adopted by another inmate or the immediate family of the adopted or
19 adopting inmate.

20 ((~~12~~)) (13) "Indigent inmate," "indigent," and "indigency" mean
21 an inmate who has less than a ten-dollar balance of disposable income
22 in his or her institutional account on the day a request is made to
23 utilize funds and during the thirty days previous to the request.

24 ((~~13~~)) (14) "Individual reentry plan" means the plan to prepare
25 an offender for release into the community. It should be developed
26 collaboratively between the department and the offender and based on an
27 assessment of the offender using a standardized and comprehensive tool
28 to identify the (~~offenders' [offender's]~~) offender's risks and needs.
29 The individual reentry plan describes actions that should occur to
30 prepare individual offenders for release from prison or jail, specifies
31 the supervision and services they will experience in the community, and
32 describes an offender's eventual discharge to aftercare upon successful
33 completion of supervision. An individual reentry plan is updated
34 throughout the period of an offender's incarceration and supervision to
35 be relevant to the offender's current needs and risks.

36 ((~~14~~)) (15) "Inmate" means a person committed to the custody of
37 the department, including but not limited to persons residing in a
38 correctional institution or facility and persons released from such

1 facility on furlough, work release, or community custody, and persons
2 received from another state, state agency, county, or federal
3 jurisdiction.

4 ~~((15))~~ (16) "Privilege" means any goods or services, education or
5 work programs, or earned early release days, the receipt of which are
6 directly linked to an inmate's (a) good conduct; and (b) good
7 performance. Privileges do not include any goods or services the
8 department is required to provide under the state or federal
9 Constitution or under state or federal law.

10 ~~((16))~~ (17) "Promising practice" means a practice that presents,
11 based on preliminary information, potential for becoming a
12 research-based or consensus-based practice.

13 ~~((17))~~ (18) "Research-based" means a program or practice that has
14 some research demonstrating effectiveness, but that does not yet meet
15 the standard of evidence-based practices.

16 ~~((18))~~ (19) "Secretary" means the secretary of corrections or his
17 or her designee.

18 ~~((19))~~ (20) "Significant expansion" includes any expansion into
19 a new product line or service to the class I business that results from
20 an increase in benefits provided by the department, including a
21 decrease in labor costs, rent, or utility rates (for water, sewer,
22 electricity, and disposal), an increase in work program space, tax
23 advantages, or other overhead costs.

24 ~~((20))~~ (21) "Superintendent" means the superintendent of a
25 correctional facility under the jurisdiction of the Washington state
26 department of corrections, or his or her designee.

27 ~~((21))~~ (22) "Unfair competition" means any net competitive
28 advantage that a business may acquire as a result of a correctional
29 industries contract, including labor costs, rent, tax advantages,
30 utility rates (water, sewer, electricity, and disposal), and other
31 overhead costs. To determine net competitive advantage, the
32 correctional industries board shall review and quantify any expenses
33 unique to operating a for-profit business inside a prison.

34 ~~((22))~~ (23) "Vocational training" or "vocational education" means
35 "vocational education" as defined in RCW 72.62.020.

36 ~~((23))~~ (24) "Washington business" means an in-state manufacturer
37 or service provider subject to chapter 82.04 RCW existing on June 10,
38 2004.

1 (~~(24)~~) (25) "Work programs" means all classes of correctional
2 industries jobs authorized under RCW 72.09.100.

3 **Sec. 48.** RCW 72.09.270 and 2007 c 483 s 203 are each amended to
4 read as follows:

5 (1) The department of corrections shall develop an individual
6 reentry plan as defined in RCW 72.09.015 for every offender who is
7 committed to the jurisdiction of the department except:

8 (a) Offenders who are sentenced to life without the possibility of
9 release or sentenced to death under chapter 10.95 RCW; and

10 (b) Offenders who are subject to the provisions of 8 U.S.C. Sec.
11 1227.

12 (2) The individual reentry plan may be one document, or may be a
13 series of individual plans that combine to meet the requirements of
14 this section.

15 (3) In developing individual reentry plans, the department shall
16 assess all offenders using standardized and comprehensive tools to
17 identify the criminogenic risks, programmatic needs, and educational
18 and vocational skill levels for each offender. The assessment tool
19 should take into account demographic biases, such as culture, age, and
20 gender, as well as the needs of the offender, including any learning
21 disabilities, substance abuse or mental health issues, and social or
22 behavior deficits.

23 (4)(a) The initial assessment shall be conducted as early as
24 sentencing, but, whenever possible, no later than forty-five days of
25 being sentenced to the jurisdiction of the department of corrections.

26 (b) The offender's individual reentry plan shall be developed as
27 soon as possible after the initial assessment is conducted, but,
28 whenever possible, no later than sixty days after completion of the
29 assessment, and shall be periodically reviewed and updated as
30 appropriate.

31 (5) The individual reentry plan shall, at a minimum, include:

32 (a) A plan to maintain contact with the inmate's children and
33 family, if appropriate. The plan should determine whether parenting
34 classes, or other services, are appropriate to facilitate successful
35 reunification with the offender's children and family;

36 (b) An individualized portfolio for each offender that includes the

1 offender's education achievements, certifications, employment, work
2 experience, skills, and any training received prior to and during
3 incarceration; and

4 (c) A plan for the offender during the period of incarceration
5 through reentry into the community that addresses the needs of the
6 offender including education, employment, substance abuse treatment,
7 mental health treatment, family reunification, and other areas which
8 are needed to facilitate a successful reintegration into the community.

9 (6)(a) Prior to discharge of any offender, the department shall:

10 (i) Evaluate the offender's needs and, to the extent possible,
11 connect the offender with existing services and resources that meet
12 those needs; and

13 (ii) Connect the offender with a community justice center and/or
14 community transition coordination network in the area in which the
15 offender will be residing once released from the correctional system if
16 one exists.

17 (b) If the department recommends partial confinement in an
18 offender's individual reentry plan, the department shall maximize the
19 period of partial confinement for the offender as allowed pursuant to
20 RCW 9.94A.728 to facilitate the offender's transition to the community.

21 (7) The department shall establish mechanisms for sharing
22 information from individual reentry plans to those persons involved
23 with the offender's treatment, programming, and reentry, when deemed
24 appropriate. When feasible, this information shall be shared
25 electronically.

26 (8)(a) In determining the county of discharge for an offender
27 released to community custody (~~(or community placement)~~), the
28 department may not approve a residence location that is not in the
29 offender's county of origin unless it is determined by the department
30 that the offender's return to his or her county of origin would be
31 inappropriate considering any court-ordered condition of the offender's
32 sentence, victim safety concerns, negative influences on the offender
33 in the community, or the location of family or other sponsoring persons
34 or organizations that will support the offender.

35 (b) If the offender is not returned to his or her county of origin,
36 the department shall provide the law and justice council of the county
37 in which the offender is placed with a written explanation.

1 (c) For purposes of this section, the offender's county of origin
2 means the county of the offender's first felony conviction in
3 Washington.

4 (9) Nothing in this section creates a vested right in programming,
5 education, or other services.

6 **Sec. 49.** RCW 72.09.345 and 1997 c 364 s 4 are each amended to read
7 as follows:

8 (1) In addition to any other information required to be released
9 under this chapter, the department is authorized, pursuant to RCW
10 4.24.550, to release relevant information that is necessary to protect
11 the public concerning offenders convicted of sex offenses.

12 (2) In order for public agencies to have the information necessary
13 to notify the public as authorized in RCW 4.24.550, the secretary shall
14 establish and administer an end-of-sentence review committee for the
15 purposes of assigning risk levels, reviewing available release plans,
16 and making appropriate referrals for sex offenders. The committee
17 shall assess, on a case-by-case basis, the public risk posed by sex
18 offenders who are: (a) Preparing for their release from confinement
19 for sex offenses committed on or after July 1, 1984; and (b) accepted
20 from another state under a reciprocal agreement under the interstate
21 compact authorized in chapter 72.74 RCW.

22 (3) Notwithstanding any other provision of law, the committee shall
23 have access to all relevant records and information in the possession
24 of public agencies relating to the offenders under review, including
25 police reports; prosecutors' statements of probable cause; presentence
26 investigations and reports; complete judgments and sentences; current
27 classification referrals; criminal history summaries; violation and
28 disciplinary reports; all psychological evaluations and psychiatric
29 hospital reports; sex offender treatment program reports; and juvenile
30 records. Records and information obtained under this subsection shall
31 not be disclosed outside the committee unless otherwise authorized by
32 law.

33 (4) The committee shall review each sex offender under its
34 authority before the offender's release from confinement or start of
35 the offender's term of (~~community placement or~~) community custody in
36 order to: (a) Classify the offender into a risk level for the purposes

1 of public notification under RCW 4.24.550; (b) where available, review
2 the offender's proposed release plan in accordance with the
3 requirements of RCW 72.09.340; and (c) make appropriate referrals.

4 (5) The committee shall classify as risk level I those sex
5 offenders whose risk assessments indicate a low risk of reoffense
6 within the community at large. The committee shall classify as risk
7 level II those offenders whose risk assessments indicate a moderate
8 risk of reoffense within the community at large. The committee shall
9 classify as risk level III those offenders whose risk assessments
10 indicate a high risk of reoffense within the community at large.

11 (6) The committee shall issue to appropriate law enforcement
12 agencies, for their use in making public notifications under RCW
13 4.24.550, narrative notices regarding the pending release of sex
14 offenders from the department's facilities. The narrative notices
15 shall, at a minimum, describe the identity and criminal history
16 behavior of the offender and shall include the department's risk level
17 classification for the offender. For sex offenders classified as
18 either risk level II or III, the narrative notices shall also include
19 the reasons underlying the classification.

20 **Sec. 50.** RCW 72.09.580 and 1999 c 196 s 12 are each amended to
21 read as follows:

22 Except as specifically prohibited by other law, and for purposes of
23 determining, modifying, or monitoring compliance with conditions of
24 community custody(~~(, community placement, or community supervision as~~
25 ~~authorized under RCW 9.94A.505 and 9.94A.545)), the department:~~

26 (1) Shall have access to all relevant records and information in
27 the possession of public agencies relating to offenders, including
28 police reports, prosecutors' statements of probable cause, complete
29 criminal history information, psychological evaluations and psychiatric
30 hospital reports, sex offender treatment program reports, and juvenile
31 records; and

32 (2) May require periodic reports from providers of treatment or
33 other services required by the court or the department, including
34 progress reports, evaluations and assessments, and reports of
35 violations of conditions imposed by the court or the department.

1 NEW SECTION. **Sec. 51.** (1) This chapter codifies sentencing
2 provisions that may be applicable to sentences for crimes committed
3 prior to July 1, 2000.

4 (2) This chapter supplements chapter 9.94A RCW and should be read
5 in conjunction with that chapter.

6 NEW SECTION. **Sec. 52.** In addition to the definitions set out in
7 RCW 9.94A.030, the following definitions apply for purposes of this
8 chapter:

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

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

26 (3) "Postrelease supervision" is that portion of an offender's
27 community placement that is not community custody.

28 NEW SECTION. **Sec. 53.** The court may order an offender whose
29 sentence includes community placement or community supervision to
30 undergo a mental status evaluation and to participate in available
31 outpatient mental health treatment, if the court finds that reasonable
32 grounds exist to believe that the offender is a mentally ill person as
33 defined in RCW 71.24.025, and that this condition is likely to have
34 influenced the offense. An order requiring mental status evaluation or
35 treatment must be based on a presentence report and, if applicable,
36 mental status evaluations that have been filed with the court to

1 determine the offender's competency or eligibility for a defense of
2 insanity. The court may order additional evaluations at a later date
3 if deemed appropriate

4 NEW SECTION. **Sec. 54.** A person convicted of a sex offense or an
5 offense categorized as a serious violent offense, assault in the second
6 degree, vehicular homicide, vehicular assault, assault of a child in
7 the second degree, any crime against persons where it is determined in
8 accordance with RCW 9.94A.602 that the offender or an accomplice was
9 armed with a deadly weapon at the time of commission, or any felony
10 offense under chapter 69.50 or 69.52 RCW, committed before July 1,
11 2000, may become eligible, in accordance with a program developed by
12 the department, for transfer to community custody status in lieu of
13 earned release time pursuant to RCW 9.94A.728(1).

14 NEW SECTION. **Sec. 55.** (1) Sections 6 through 58 of this act apply
15 to all sentences imposed or reimposed on or after August 1, 2009, for
16 any crime committed on or after the effective date of this section.

17 (2) Sections 6 through 58 of this act also apply to all sentences
18 imposed or reimposed on or after August 1, 2009, for crimes committed
19 prior to the effective date of this section, to the extent that such
20 application is constitutionally permissible.

21 (3) To the extent that application of sections 6 through 58 of this
22 act is not constitutionally permissible with respect to any offender,
23 the sentence for such offender shall be governed by the law as it
24 existed before the effective date of this section, or on such prior
25 date as may be constitutionally required, notwithstanding any amendment
26 or repeal of provisions of such law.

27 (4) If application of sections 6 through 58 of this act is not
28 constitutionally permissible with respect to any offender, the judgment
29 and sentence shall specify the particular sentencing provisions that
30 will not apply to such offender. Whenever practical, the judgment and
31 sentence shall use the terminology set out in this act.

32 (5) The sentencing guidelines commission shall prepare a summary of
33 the circumstances under which application of sections 6 through 58 of
34 this act is not constitutionally permissible. The summary should
35 include recommendations of conditions that could be included in

1 judgments and sentences in order to prevent unconstitutional
2 application of the act. This summary shall be incorporated into the
3 *Adult Sentencing Guidelines Manual*.

4 (6) Sections 6 through 58 of this act shall not affect the
5 enforcement of any sentence that was imposed prior to August 1, 2009,
6 unless the offender is resentenced after that date.

7 NEW SECTION. **Sec. 56.** (1) The following sections are recodified
8 as part of a new chapter in Title 9 RCW: RCW 9.94A.628, 9.94A.634,
9 9.94A.700, 9.94A.705, and 9.94A.710.

10 (2) RCW 9.94A.610 (as amended by this act), 9.94A.612 (as amended
11 by this act), 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620 are each
12 recodified as sections in chapter 72.09 RCW.

13 (3) Sections 51 through 54 of this act are added to the new chapter
14 created in subsection (1) of this section.

15 (4) The code reviser is authorized to improve the organization of
16 chapter 9.94A RCW by renumbering existing sections and adding
17 subchapter headings.

18 (5) The code reviser shall correct any cross-references to sections
19 affected by this section in other sections of the code.

20 NEW SECTION. **Sec. 57.** The following acts or parts of acts are
21 each repealed:

22 (1) RCW 9.94A.545 (Community custody) and 2006 c 128 s 4, 2003 c
23 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209
24 s 22;

25 (2) RCW 9.94A.713 (Nonpersistent offenders--Conditions) and 2006 c
26 130 s 1 & 2001 2nd sp.s. c 12 s 304;

27 (3) RCW 9.94A.715 (Community custody for specified offenders--
28 Conditions) and 2006 c 130 s 2, 2006 c 128 s 5, 2003 c 379 s 6, 2001
29 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25;

30 (4) RCW 9.94A.720 (Supervision of offenders) and 2003 c 379 s 7,
31 2002 c 175 s 14, & 2000 c 28 s 26;

32 (5) RCW 9.94A.800 (Sex offender treatment in correctional facility)
33 and 2000 c 28 s 34;

34 (6) RCW 9.94A.830 (Legislative finding and intent--Commitment of
35 felony sexual offenders after July 1, 1987) and 1987 c 402 s 2 & 1986
36 c 301 s 1; and

1 (7) RCW 79A.60.070 (Conviction under RCW 79A.60.050 or 79A.60.060--
2 Community supervision or community placement--Conditions) and 2000 c 11
3 s 96 & 1998 c 219 s 3.

4 NEW SECTION. **Sec. 58.** The repealers in section 57 of this act
5 shall not affect the validity of any sentence that was imposed prior to
6 the effective date of this section or the authority of the department
7 of corrections to supervise any offender pursuant to such sentence.

8 NEW SECTION. **Sec. 59.** The code reviser shall report to the 2009
9 legislature on any amendments necessary to accomplish the purposes of
10 this act.

11 NEW SECTION. **Sec. 60.** Section 24 of this act expires July 1,
12 2010.

13 NEW SECTION. **Sec. 61.** Sections 6 through 60 of this act take
14 effect August 1, 2009.

15 NEW SECTION. **Sec. 62.** If any provision of this act or its
16 application to any person or circumstance is held invalid, the
17 remainder of the act or the application of the provision to other
18 persons or circumstances is not affected.

Passed by the House March 12, 2008.

Passed by the Senate March 12, 2008.

Approved by the Governor March 28, 2008.

Filed in Office of Secretary of State March 28, 2008.