
SENATE BILL 6274

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By Senators Long, Hargrove, Roach, Quigley, Wood, Smith, Schow, Winsley, Oke, A. Anderson, Rasmussen, Haugen and McAuliffe

Read first time 01/10/96. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to supervision of sex offenders; amending RCW
2 9.94A.120 and 9.94A.205; reenacting and amending RCW 9.94A.030;
3 creating new sections; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that improving the
6 supervision of convicted sex offenders in the community upon release
7 from incarceration is a substantial public policy goal, in that
8 effective supervision accomplishes many purposes including protecting
9 the community, supporting crime victims, assisting offenders to change,
10 and providing important information to decision makers.

11 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
12 as follows:

13 When a person is convicted of a felony, the court shall impose
14 punishment as provided in this section.

15 (1) Except as authorized in subsections (2), (4), (5), (6), and (8)
16 of this section, the court shall impose a sentence within the sentence
17 range for the offense.

1 (2) The court may impose a sentence outside the standard sentence
2 range for that offense if it finds, considering the purpose of this
3 chapter, that there are substantial and compelling reasons justifying
4 an exceptional sentence.

5 (3) Whenever a sentence outside the standard range is imposed, the
6 court shall set forth the reasons for its decision in written findings
7 of fact and conclusions of law. A sentence outside the standard range
8 shall be a determinate sentence.

9 (4) A persistent offender shall be sentenced to a term of total
10 confinement for life without the possibility of parole or, when
11 authorized by RCW 10.95.030 for the crime of aggravated murder in the
12 first degree, sentenced to death, notwithstanding the maximum sentence
13 under any other law. An offender convicted of the crime of murder in
14 the first degree shall be sentenced to a term of total confinement not
15 less than twenty years. An offender convicted of the crime of assault
16 in the first degree or assault of a child in the first degree where the
17 offender used force or means likely to result in death or intended to
18 kill the victim shall be sentenced to a term of total confinement not
19 less than five years. An offender convicted of the crime of rape in
20 the first degree shall be sentenced to a term of total confinement not
21 less than five years. The foregoing minimum terms of total confinement
22 are mandatory and shall not be varied or modified as provided in
23 subsection (2) of this section. In addition, all offenders subject to
24 the provisions of this subsection shall not be eligible for community
25 custody, earned early release time, furlough, home detention, partial
26 confinement, work crew, work release, or any other form of early
27 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
28 or any other form of authorized leave of absence from the correctional
29 facility while not in the direct custody of a corrections officer or
30 officers during such minimum terms of total confinement except in the
31 case of an offender in need of emergency medical treatment or for the
32 purpose of commitment to an inpatient treatment facility in the case of
33 an offender convicted of the crime of rape in the first degree.

34 (5) In sentencing a first-time offender the court may waive the
35 imposition of a sentence within the sentence range and impose a
36 sentence which may include up to ninety days of confinement in a
37 facility operated or utilized under contract by the county and a
38 requirement that the offender refrain from committing new offenses.
39 The sentence may also include up to two years of community supervision,

1 which, in addition to crime-related prohibitions, may include
2 requirements that the offender perform any one or more of the
3 following:

4 (a) Devote time to a specific employment or occupation;

5 (b) Undergo available outpatient treatment for up to two years, or
6 inpatient treatment not to exceed the standard range of confinement for
7 that offense;

8 (c) Pursue a prescribed, secular course of study or vocational
9 training;

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

13 (e) Report as directed to the court and a community corrections
14 officer; or

15 (f) Pay all court-ordered legal financial obligations as provided
16 in RCW 9.94A.030 and/or perform community service work.

17 (6)(a) An offender is eligible for the special drug offender
18 sentencing alternative if:

19 (i) The offender is convicted of the manufacture, delivery, or
20 possession with intent to manufacture or deliver a controlled substance
21 classified in Schedule I or II that is a narcotic drug or a felony that
22 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
23 criminal solicitation, or criminal conspiracy to commit such crimes,
24 and the violation does not involve a sentence enhancement under RCW
25 9.94A.310(~~((3))~~)(4);

26 (ii) The offender has no prior convictions for a felony in this
27 state, another state, or the United States; and

28 (iii) The offense involved only a small quantity of the particular
29 controlled substance as determined by the judge upon consideration of
30 such factors as the weight, purity, packaging, sale price, and street
31 value of the controlled substance.

32 (b) If the midpoint of the standard range is greater than one year
33 and the sentencing judge determines that the offender is eligible for
34 this option and that the offender and the community will benefit from
35 the use of the special drug offender sentencing alternative, the judge
36 may waive imposition of a sentence within the standard range and impose
37 a sentence that must include a period of total confinement in a state
38 facility for one-half of the midpoint of the standard range. During
39 incarceration in the state facility, offenders sentenced under this

1 subsection shall undergo a comprehensive substance abuse assessment and
2 receive, within available resources, treatment services appropriate for
3 the offender. The treatment services shall be designed by the division
4 of alcohol and substance abuse of the department of social and health
5 services, in cooperation with the department of corrections. If the
6 midpoint of the standard range is twenty-four months or less, no more
7 than three months of the sentence may be served in a work release
8 status. The court shall also impose one year of concurrent community
9 custody and community supervision that must include appropriate
10 outpatient substance abuse treatment, crime-related prohibitions
11 including a condition not to use illegal controlled substances, and a
12 requirement to submit to urinalysis or other testing to monitor that
13 status. The court may require that the monitoring for controlled
14 substances be conducted by the department or by a treatment
15 (~~alternative[s]~~) alternatives to street crime program or a comparable
16 court or agency-referred program. The offender may be required to pay
17 thirty dollars per month while on community custody to offset the cost
18 of monitoring. In addition, the court shall impose three or more of
19 the following conditions:

- 20 (i) Devote time to a specific employment or training;
- 21 (ii) Remain within prescribed geographical boundaries and notify
22 the court or the community corrections officer before any change in the
23 offender's address or employment;
- 24 (iii) Report as directed to a community corrections officer;
- 25 (iv) Pay all court-ordered legal financial obligations;
- 26 (v) Perform community service work;
- 27 (vi) Stay out of areas designated by the sentencing judge.
- 28 (c) If the offender violates any of the sentence conditions in (b)
29 of this subsection, the department shall impose sanctions
30 administratively, with notice to the prosecuting attorney and the
31 sentencing court. Upon motion of the court or the prosecuting
32 attorney, a violation hearing shall be held by the court. If the court
33 finds that conditions have been willfully violated, the court may
34 impose confinement consisting of up to the remaining one-half of the
35 midpoint of the standard range. All total confinement served during
36 the period of community custody shall be credited to the offender,
37 regardless of whether the total confinement is served as a result of
38 the original sentence, as a result of a sanction imposed by the
39 department, or as a result of a violation found by the court. The term

1 of community supervision shall be tolled by any period of time served
2 in total confinement as a result of a violation found by the court.

3 (d) The department shall determine the rules for calculating the
4 value of a day fine based on the offender's income and reasonable
5 obligations which the offender has for the support of the offender and
6 any dependents. These rules shall be developed in consultation with
7 the administrator for the courts, the office of financial management,
8 and the commission.

9 (7) If a sentence range has not been established for the
10 defendant's crime, the court shall impose a determinate sentence which
11 may include not more than one year of confinement, community service
12 work, a term of community supervision not to exceed one year, and/or
13 other legal financial obligations. The court may impose a sentence
14 which provides more than one year of confinement if the court finds,
15 considering the purpose of this chapter, that there are substantial and
16 compelling reasons justifying an exceptional sentence.

17 (8)(a)(i) When an offender is convicted of a sex offense other than
18 a violation of RCW 9A.44.050 or a sex offense that is also a serious
19 violent offense and has no prior convictions for a sex offense or any
20 other felony sex offenses in this or any other state, the sentencing
21 court, on its own motion or the motion of the state or the defendant,
22 may order an examination to determine whether the defendant is amenable
23 to treatment.

24 The report of the examination shall include at a minimum the
25 following: The defendant's version of the facts and the official
26 version of the facts, the defendant's offense history, an assessment of
27 problems in addition to alleged deviant behaviors, the offender's
28 social and employment situation, and other evaluation measures used.
29 The report shall set forth the sources of the evaluator's information.

30 The examiner shall assess and report regarding the defendant's
31 amenability to treatment and relative risk to the community. A
32 proposed treatment plan shall be provided and shall include, at a
33 minimum:

34 (A) Frequency and type of contact between offender and therapist;

35 (B) Specific issues to be addressed in the treatment and
36 description of planned treatment modalities;

37 (C) Monitoring plans, including any requirements regarding living
38 conditions, lifestyle requirements, and monitoring by family members
39 and others;

- 1 (D) Anticipated length of treatment; and
- 2 (E) Recommended crime-related prohibitions.

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

9 (ii) After receipt of the reports, the court shall consider whether
10 the offender and the community will benefit from use of this special
11 sexual offender sentencing alternative and consider the victim's
12 opinion whether the offender should receive a treatment disposition
13 under this subsection. If the court determines that this special sex
14 offender sentencing alternative is appropriate, the court shall then
15 impose a sentence within the sentence range. If this sentence is less
16 than eight years of confinement, the court may suspend the execution of
17 the sentence and impose the following conditions of suspension:

18 (A) The court shall place the defendant on community
19 (~~supervision~~) custody for the length of the suspended sentence or
20 three years, whichever is greater, and require the offender to comply
21 with any conditions imposed by the department of corrections under
22 subsection (14) of this section; and

23 (B) The court shall order treatment for any period up to three
24 years in duration. The court in its discretion shall order outpatient
25 sex offender treatment or inpatient sex offender treatment, if
26 available. A community mental health center may not be used for such
27 treatment unless it has an appropriate program designed for sex
28 offender treatment. The offender shall not change sex offender
29 treatment providers or treatment conditions without first notifying the
30 prosecutor, the community corrections officer, and the court, and shall
31 not change providers without court approval after a hearing if the
32 prosecutor or community corrections officer object to the change. In
33 addition, as conditions of the suspended sentence, the court may impose
34 other sentence conditions including up to six months of confinement,
35 not to exceed the sentence range of confinement for that offense,
36 crime-related prohibitions, and requirements that the offender perform
37 any one or more of the following:

38 (I) Devote time to a specific employment or occupation;

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

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

6 (IV) Pay all court-ordered legal financial obligations as provided
7 in RCW 9.94A.030, perform community service work, or any combination
8 thereof; or

9 (V) Make recoupment to the victim for the cost of any counseling
10 required as a result of the offender's crime.

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

18 (iv) At the time of sentencing, the court shall set a treatment
19 termination hearing for three months prior to the anticipated date for
20 completion of treatment. Prior to the treatment termination hearing,
21 the treatment professional and community corrections officer shall
22 submit written reports to the court and parties regarding the
23 defendant's compliance with treatment and monitoring requirements, and
24 recommendations regarding termination from treatment, including
25 proposed community supervision conditions. Either party may request
26 and the court may order another evaluation regarding the advisability
27 of termination from treatment. The defendant shall pay the cost of any
28 additional evaluation ordered unless the court finds the defendant to
29 be indigent in which case the state shall pay the cost. At the
30 treatment termination hearing the court may: (A) Modify conditions of
31 community (~~supervision~~) custody, and either (B) terminate treatment,
32 or (C) extend treatment for up to the remaining period of community
33 (~~supervision~~) custody.

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

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

8 (vi) Except as provided in (a)(vii) of this subsection, after July
9 1, 1991, examinations and treatment ordered pursuant to this subsection
10 shall only be conducted by sex offender treatment providers certified
11 by the department of health pursuant to chapter 18.155 RCW.

12 (vii) A sex offender therapist who examines or treats a sex
13 offender pursuant to this subsection (8) does not have to be certified
14 by the department of health pursuant to chapter 18.155 RCW if the court
15 finds that: (A) The offender has already moved to another state or
16 plans to move to another state for reasons other than circumventing the
17 certification requirements; (B) no certified providers are available
18 for treatment within a reasonable geographical distance of the
19 offender's home; and (C) the evaluation and treatment plan comply with
20 this subsection (8) and the rules adopted by the department of health.

21 For purposes of this subsection, "victim" means any person who has
22 sustained emotional, psychological, physical, or financial injury to
23 person or property as a result of the crime charged. "Victim" also
24 means a parent or guardian of a victim who is a minor child unless the
25 parent or guardian is the perpetrator of the offense.

26 (b) When an offender commits any felony sex offense on or after
27 July 1, 1987, and is sentenced to a term of confinement of more than
28 one year but less than six years, the sentencing court may, on its own
29 motion or on the motion of the offender or the state, request the
30 department of corrections to evaluate whether the offender is amenable
31 to treatment and the department may place the offender in a treatment
32 program within a correctional facility operated by the department.

33 Except for an offender who has been convicted of a violation of RCW
34 9A.44.040 or 9A.44.050, if the offender completes the treatment program
35 before the expiration of his or her term of confinement, the department
36 of corrections may request the court to convert the balance of
37 confinement to community supervision and to place conditions on the
38 offender including crime-related prohibitions and requirements that the
39 offender perform any one or more of the following:

- 1 (i) Devote time to a specific employment or occupation;
- 2 (ii) Remain within prescribed geographical boundaries and notify
- 3 the court or the community corrections officer prior to any change in
- 4 the offender's address or employment;
- 5 (iii) Report as directed to the court and a community corrections
- 6 officer;
- 7 (iv) Undergo available outpatient treatment.

8 If the offender violates any of the terms of his or her community

9 supervision, the court may order the offender to serve out the balance

10 of his or her community supervision term in confinement in the custody

11 of the department of corrections.

12 Nothing in this subsection (8)(b) shall confer eligibility for such

13 programs for offenders convicted and sentenced for a sex offense

14 committed prior to July 1, 1987. This subsection (8)(b) does not apply

15 to any crime committed after July 1, 1990.

16 (c) Offenders convicted and sentenced for a sex offense committed

17 prior to July 1, 1987, may, subject to available funds, request an

18 evaluation by the department of corrections to determine whether they

19 are amenable to treatment. If the offender is determined to be

20 amenable to treatment, the offender may request placement in a

21 treatment program within a correctional facility operated by the

22 department. Placement in such treatment program is subject to

23 available funds.

24 (9)(a) When a court sentences a person to a term of total

25 confinement to the custody of the department of corrections for an

26 offense categorized as a sex offense or a serious violent offense

27 committed after July 1, 1988, but before July 1, 1990, assault in the

28 second degree, assault of a child in the second degree, any crime

29 against a person where it is determined in accordance with RCW

30 9.94A.125 that the defendant or an accomplice was armed with a deadly

31 weapon at the time of commission, or any felony offense under chapter

32 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,

33 committed on or after July 1, 1988, the court shall in addition to the

34 other terms of the sentence, sentence the offender to a one-year term

35 of community placement beginning either upon completion of the term of

36 confinement or at such time as the offender is transferred to community

37 custody in lieu of earned early release in accordance with RCW

38 9.94A.150 (1) and (2). When the court sentences an offender under this

39 subsection to the statutory maximum period of confinement then the

1 community placement portion of the sentence shall consist entirely of
2 such community custody to which the offender may become eligible, in
3 accordance with RCW 9.94A.150 (1) and (2). Any period of community
4 custody actually served shall be credited against the community
5 placement portion of the sentence.

6 (b) When a court sentences a person to a term of total confinement
7 to the custody of the department of corrections for an offense
8 categorized as a sex offense committed on or after July 1, 1990, but
9 before the effective date of this act, or a serious violent offense
10 committed on or after July 1, 1990, the court shall in addition to
11 other terms of the sentence, sentence the offender to community
12 placement for two years or up to the period of earned early release
13 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.
14 The community placement shall begin either upon completion of the term
15 of confinement or at such time as the offender is transferred to
16 community custody in lieu of earned early release in accordance with
17 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
18 this subsection to the statutory maximum period of confinement then the
19 community placement portion of the sentence shall consist entirely of
20 the community custody to which the offender may become eligible, in
21 accordance with RCW 9.94A.150 (1) and (2). Any period of community
22 custody actually served shall be credited against the community
23 placement portion of the sentence. Unless a condition is waived by the
24 court, the terms of community placement for offenders sentenced
25 pursuant to this section shall include the following conditions:

26 (i) The offender shall report to and be available for contact with
27 the assigned community corrections officer as directed;

28 (ii) The offender shall work at department of corrections-approved
29 education, employment, and/or community service;

30 (iii) The offender shall not consume controlled substances except
31 pursuant to lawfully issued prescriptions;

32 (iv) An offender in community custody shall not unlawfully possess
33 controlled substances;

34 (v) The offender shall pay supervision fees as determined by the
35 department of corrections; and

36 (vi) The residence location and living arrangements are subject to
37 the prior approval of the department of corrections during the period
38 of community placement.

1 (c) As a part of any sentence imposed under (a) or (b) of this
2 subsection, the court may also order any of the following special
3 conditions:

4 (i) The offender shall remain within, or outside of, a specified
5 geographical boundary;

6 (ii) The offender shall not have direct or indirect contact with
7 the victim of the crime or a specified class of individuals;

8 (iii) The offender shall participate in crime-related treatment or
9 counseling services;

10 (iv) The offender shall not consume alcohol; or

11 (v) The offender shall comply with any crime-related prohibitions.

12 ~~((d))~~ (e) Prior to transfer to, or during, community placement,
13 any conditions of community placement may be removed or modified so as
14 not to be more restrictive by the sentencing court, upon recommendation
15 of the department of corrections.

16 (10)(a) When a court sentences a person to the custody of the
17 department of corrections for an offense categorized as a sex offense
18 committed on or after the effective date of this act, the court shall,
19 in addition to other terms of the sentence, sentence the offender to
20 community custody for three years or up to the period of earned early
21 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
22 longer. The community custody shall begin either upon completion of
23 the term of confinement or at such time as the offender is transferred
24 to community custody in lieu of earned early release in accordance with
25 RCW 9.94A.150 (1) and (2).

26 (b) Unless a condition is waived by the court, the terms of
27 community custody shall be the same as those provided for in subsection
28 (9)(b) and (c) of this section. As part of any sentence that includes
29 a term of community custody imposed under this subsection, the court
30 shall also require the offender to comply with any conditions imposed
31 by the department of corrections under subsection (14) of this section.

32 (c) At any time prior to the completion of a sex offender's term of
33 community custody, if the court finds that public safety would be
34 enhanced, the court may impose and enforce an order extending any or
35 all of the conditions imposed pursuant to this section for a period up
36 to the maximum allowable sentence for the crime, regardless of the
37 expiration of the offender's term of community custody.

38 (11) If the court imposes a sentence requiring confinement of
39 thirty days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

5 ~~((11))~~ (12) If a sentence imposed includes payment of a legal
6 financial obligation, the sentence shall specify the total amount of
7 the legal financial obligation owed, and shall require the offender to
8 pay a specified monthly sum toward that legal financial obligation.
9 Restitution to victims shall be paid prior to any other payments of
10 monetary obligations. Any legal financial obligation that is imposed
11 by the court may be collected by the department, which shall deliver
12 the amount paid to the county clerk for credit. The offender's
13 compliance with payment of legal financial obligations shall be
14 supervised by the department. All monetary payments ordered shall be
15 paid no later than ten years after the last date of release from
16 confinement pursuant to a felony conviction or the date the sentence
17 was entered. Independent of the department, the party or entity to
18 whom the legal financial obligation is owed shall have the authority to
19 utilize any other remedies available to the party or entity to collect
20 the legal financial obligation. Nothing in this section makes the
21 department, the state, or any of its employees, agents, or other
22 persons acting on their behalf liable under any circumstances for the
23 payment of these legal financial obligations. If an order includes
24 restitution as one of the monetary assessments, the county clerk shall
25 make disbursements to victims named in the order.

26 ~~((12))~~ (13) Except as provided under RCW 9.94A.140(1) and
27 9.94A.142(1), a court may not impose a sentence providing for a term of
28 confinement or community supervision or community placement which
29 exceeds the statutory maximum for the crime as provided in chapter
30 9A.20 RCW.

31 ~~((13))~~ (14) All offenders sentenced to terms involving community
32 supervision, community service, community placement, or legal financial
33 obligation shall be under the supervision of the ~~((secretary of the))~~
34 department of corrections ~~((or such person as the secretary may~~
35 ~~designate))~~ and shall follow explicitly the instructions and conditions
36 of the ~~((secretary including))~~ department of corrections.

37 (a) The instructions shall include, at a minimum, reporting as
38 directed to a community corrections officer, remaining within
39 prescribed geographical boundaries, notifying the community corrections

1 officer of any change in the offender's address or employment, and
2 paying the supervision fee assessment.

3 (b) For sex offenders sentenced to terms involving community
4 custody for crimes committed on or after the effective date of this
5 act, the department may include, in addition to the instructions in (a)
6 of this subsection, any appropriate conditions of supervision,
7 including without limitation, prohibiting the offender from having
8 contact with any other specified individuals or specific class of
9 individuals. The conditions authorized under this subsection (14)(b)
10 may be imposed by the department prior to or during a sex offenders'
11 community custody term. If a violation of conditions occurs during
12 community custody, it shall be deemed a violation of community
13 placement for the purposes of RCW 9.94A.207 and shall authorize the
14 department to transfer an offender to a more restrictive confinement
15 status as provided in RCW 9.94A.205. At any time prior to the
16 completion of a sex offender's term of community custody, the
17 department may recommend to the court that any or all of the conditions
18 imposed by the court or the department pursuant to subsection (10) of
19 this section be continued beyond the expiration of the offender's term
20 of community custody.

21 The department may require offenders to pay for special services
22 rendered on or after July 25, 1993, including electronic monitoring,
23 day reporting, and telephone reporting, dependent upon the offender's
24 ability to pay. The department may pay for these services for
25 offenders who are not able to pay.

26 ~~((14))~~ (15) All offenders sentenced to terms involving community
27 supervision, community service, or community placement under the
28 supervision of the department of corrections shall not own, use, or
29 possess firearms or ammunition. Offenders who own, use, or are found
30 to be in actual or constructive possession of firearms or ammunition
31 shall be subject to the appropriate violation process and sanctions.
32 "Constructive possession" as used in this subsection means the power
33 and intent to control the firearm or ammunition. "Firearm" as used in
34 this subsection means a weapon or device from which a projectile may be
35 fired by an explosive such as gunpowder.

36 ~~((15))~~ (16) The sentencing court shall give the offender credit
37 for all confinement time served before the sentencing if that
38 confinement was solely in regard to the offense for which the offender
39 is being sentenced.

1 (~~(16)~~) (17) A departure from the standards in RCW 9.94A.400 (1)
2 and (2) governing whether sentences are to be served consecutively or
3 concurrently is an exceptional sentence subject to the limitations in
4 subsections (2) and (3) of this section, and may be appealed by the
5 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

6 (~~(17)~~) (18) The court shall order restitution whenever the
7 offender is convicted of a felony that results in injury to any person
8 or damage to or loss of property, whether the offender is sentenced to
9 confinement or placed under community supervision, unless extraordinary
10 circumstances exist that make restitution inappropriate in the court's
11 judgment. The court shall set forth the extraordinary circumstances in
12 the record if it does not order restitution.

13 (~~(18)~~) (19) As a part of any sentence, the court may impose and
14 enforce an order that relates directly to the circumstances of the
15 crime for which the offender has been convicted, prohibiting the
16 offender from having any contact with other specified individuals or a
17 specific class of individuals for a period not to exceed the maximum
18 allowable sentence for the crime, regardless of the expiration of the
19 offender's term of community supervision or community placement.

20 (~~(19)~~) (20) In any sentence of partial confinement, the court may
21 require the defendant to serve the partial confinement in work release,
22 in a program of home detention, on work crew, or in a combined program
23 of work crew and home detention.

24 (~~(20)~~) (21) All court-ordered legal financial obligations
25 collected by the department and remitted to the county clerk shall be
26 credited and paid where restitution is ordered. Restitution shall be
27 paid prior to any other payments of monetary obligations.

28 **Sec. 3.** RCW 9.94A.205 and 1988 c 153 s 4 are each amended to read
29 as follows:

30 If an inmate violates any condition or requirement of community
31 custody, the department may transfer the inmate to a more restrictive
32 confinement status to serve the remaining portion of the sentence, less
33 credit for any period actually spent in community custody or in
34 detention awaiting disposition of an alleged violation. If a sex
35 offender sentenced to a term of community custody under RCW
36 9.94A.120(10) violates any condition of community custody after having
37 completed his or her maximum term of total confinement, including
38 earned early release time, the department may transfer the sex offender

1 to a more restrictive confinement status for a period not to exceed
2 sixty days for each violation. If an inmate is accused of violating
3 any condition or requirement of community custody, he or she is
4 entitled to a hearing before the department prior to the imposition of
5 sanctions. The hearing shall be considered as inmate disciplinary
6 proceedings and shall not be subject to chapter 34.05 RCW. The
7 department shall develop hearing procedures and sanctions.

8 **Sec. 4.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995
9 c 101 s 2 are each reenacted and amended to read as follows:

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

12 (1) "Collect," or any derivative thereof, "collect and remit," or
13 "collect and deliver," when used with reference to the department of
14 corrections, means that the department is responsible for monitoring
15 and enforcing the offender's sentence with regard to the legal
16 financial obligation, receiving payment thereof from the offender, and,
17 consistent with current law, delivering daily the entire payment to the
18 superior court clerk without depositing it in a departmental account.

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

20 (3) "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 (4) "Community custody" means that portion of an inmate's sentence
25 of confinement in lieu of earned early release time or imposed pursuant
26 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
27 controls placed on the inmate's movement and activities by the
28 department of corrections.

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

36 (6) "Community service" means compulsory service, without
37 compensation, performed for the benefit of the community by the
38 offender.

1 (7) "Community supervision" means a period of time during which a
2 convicted offender is subject to crime-related prohibitions and other
3 sentence conditions imposed by a court pursuant to this chapter or RCW
4 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
5 may include crime-related prohibitions and other conditions imposed
6 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
7 for out-of-state supervision of parolees and probationers, RCW
8 9.95.270, community supervision is the functional equivalent of
9 probation and should be considered the same as probation by other
10 states.

11 (8) "Confinement" means total or partial confinement as defined in
12 this section.

13 (9) "Conviction" means an adjudication of guilt pursuant to Titles
14 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
15 acceptance of a plea of guilty.

16 (10) "Court-ordered legal financial obligation" means a sum of
17 money that is ordered by a superior court of the state of Washington
18 for 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 the provisions in RCW 38.52.430.

30 (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.

36 (12)(a) "Criminal history" means the list of a defendant's prior
37 convictions, whether in this state, in federal court, or elsewhere.
38 The history shall include, where known, for each conviction (i) whether
39 the defendant has been placed on probation and the length and terms

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

3 (b) "Criminal history" shall always include juvenile convictions
4 for sex offenses and serious violent offenses and shall also include a
5 defendant's other prior convictions in juvenile court if: (i) The
6 conviction was for an offense which is a felony or a serious traffic
7 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
8 the defendant was fifteen years of age or older at the time the offense
9 was committed; and (iii) with respect to prior juvenile class B and C
10 felonies or serious traffic offenses, the defendant was less than
11 twenty-three years of age at the time the offense for which he or she
12 is being sentenced was committed.

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

17 (14) "Day reporting" means a program of enhanced supervision
18 designed to monitor the defendant's daily activities and compliance
19 with sentence conditions, and in which the defendant is required to
20 report daily to a specific location designated by the department or the
21 sentencing judge.

22 (15) "Department" means the department of corrections.

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

31 (17) "Disposable earnings" means that part of the earnings of an
32 individual remaining after the deduction from those earnings of any
33 amount required by law to be withheld. For the purposes of this
34 definition, "earnings" means compensation paid or payable for personal
35 services, whether denominated as wages, salary, commission, bonuses, or
36 otherwise, and, notwithstanding any other provision of law making the
37 payments exempt from garnishment, attachment, or other process to
38 satisfy a court-ordered legal financial obligation, specifically
39 includes periodic payments pursuant to pension or retirement programs,

1 or insurance policies of any type, but does not include payments made
2 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
3 or Title 74 RCW.

4 (18) "Drug offense" means:

5 (a) Any felony violation of chapter 69.50 RCW except possession of
6 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
7 controlled substance (RCW 69.50.403);

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

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

14 (19) "Escape" means:

15 (a) Escape in the first degree (RCW 9A.76.110), escape in the
16 second degree (RCW 9A.76.120), willful failure to return from furlough
17 (RCW 72.66.060), willful failure to return from work release (RCW
18 72.65.070), or willful failure to be available for supervision by the
19 department while in community custody (RCW 72.09.310); or

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

23 (20) "Felony traffic offense" means:

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

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

30 (21) "Fines" means the requirement that the offender pay a specific
31 sum of money over a specific period of time to the court.

32 (22)(a) "First-time offender" means any person who is convicted of
33 a felony (i) not classified as a violent offense or a sex offense under
34 this chapter, or (ii) that is not the manufacture, delivery, or
35 possession with intent to manufacture or deliver a controlled substance
36 classified in schedule I or II that is a narcotic drug, nor the
37 manufacture, delivery, or possession with intent to deliver
38 methamphetamine, its salts, isomers, and salts of its isomers as
39 defined in RCW 69.50.206(d)(2), nor the selling for profit of any

1 controlled substance or counterfeit substance classified in schedule I,
2 RCW 69.50.204, except leaves and flowering tops of marihuana, and
3 except as provided in (b) of this subsection, who previously has never
4 been convicted of a felony in this state, federal court, or another
5 state, and who has never participated in a program of deferred
6 prosecution for a felony offense.

7 (b) For purposes of (a) of this subsection, a juvenile adjudication
8 for an offense committed before the age of fifteen years is not a
9 previous felony conviction except for adjudications of sex offenses and
10 serious violent offenses.

11 (23) "Most serious offense" means any of the following felonies or
12 a felony attempt to commit any of the following felonies, as now
13 existing or hereafter amended:

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

17 (b) Assault in the second degree;

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

19 (d) Child molestation in the second degree;

20 (e) Controlled substance homicide;

21 (f) Extortion in the first degree;

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

23 (h) Indecent liberties;

24 (i) Kidnapping in the second degree;

25 (j) Leading organized crime;

26 (k) Manslaughter in the first degree;

27 (l) Manslaughter in the second degree;

28 (m) Promoting prostitution in the first degree;

29 (n) Rape in the third degree;

30 (o) Robbery in the second degree;

31 (p) Sexual exploitation;

32 (q) Vehicular assault;

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

37 (s) Any other class B felony offense with a finding of sexual
38 motivation, as "sexual motivation" is defined under this section;

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

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

8 (24) "Nonviolent offense" means an offense which is not a violent
9 offense.

10 (25) "Offender" means a person who has committed a felony
11 established by state law and is eighteen years of age or older or is
12 less than eighteen years of age but whose case has been transferred by
13 the appropriate juvenile court to a criminal court pursuant to RCW
14 13.40.110. Throughout this chapter, the terms "offender" and
15 "defendant" are used interchangeably.

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

24 (27) "Persistent offender" is an offender who:

25 (a) Has been convicted in this state of any felony considered a
26 most serious offense; and

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

35 (28) "Postrelease supervision" is that portion of an offender's
36 community placement that is not community custody.

37 (29) "Restitution" means the requirement that the offender pay a
38 specific sum of money over a specific period of time to the court as

1 payment of damages. The sum may include both public and private costs.
2 The imposition of a restitution order does not preclude civil redress.

3 (30) "Serious traffic offense" means:

4 (a) Driving while under the influence of intoxicating liquor or any
5 drug (RCW 46.61.502), actual physical control while under the influence
6 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
7 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
8 or

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

12 (31) "Serious violent offense" is a subcategory of violent offense
13 and means:

14 (a) Murder in the first degree, homicide by abuse, murder in the
15 second degree, assault in the first degree, kidnapping in the first
16 degree, or rape in the first degree, assault of a child in the first
17 degree, or an attempt, criminal solicitation, or criminal conspiracy to
18 commit one of these felonies; or

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

22 (32) "Sentence range" means the sentencing court's discretionary
23 range in imposing a nonappealable sentence.

24 (33) "Sex offense" means:

25 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
26 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a
27 criminal attempt, criminal solicitation, or criminal conspiracy to
28 commit such crimes;

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

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

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

37 (35) "Total confinement" means confinement inside the physical
38 boundaries of a facility or institution operated or utilized under

1 contract by the state or any other unit of government for twenty-four
2 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

3 (36) "Transition training" means written and verbal instructions
4 and assistance provided by the department to the offender during the
5 two weeks prior to the offender's successful completion of the work
6 ethic camp program. The transition training shall include instructions
7 in the offender's requirements and obligations during the offender's
8 period of community custody.

9 (37) "Victim" means any person who has sustained emotional,
10 psychological, physical, or financial injury to person or property as
11 a direct result of the crime charged.

12 (38) "Violent offense" means:

13 (a) Any of the following felonies, as now existing or hereafter
14 amended: Any felony defined under any law as a class A felony or an
15 attempt to commit a class A felony, criminal solicitation of or
16 criminal conspiracy to commit a class A felony, manslaughter in the
17 first degree, manslaughter in the second degree, indecent liberties if
18 committed by forcible compulsion, kidnapping in the second degree,
19 arson in the second degree, assault in the second degree, assault of a
20 child in the second degree, extortion in the first degree, robbery in
21 the second degree, vehicular assault, and vehicular homicide, when
22 proximately caused by the driving of any vehicle by any person while
23 under the influence of intoxicating liquor or any drug as defined by
24 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

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

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

31 (39) "Work crew" means a program of partial confinement consisting
32 of civic improvement tasks for the benefit of the community of not less
33 than thirty-five hours per week that complies with RCW 9.94A.135. The
34 civic improvement tasks shall have minimal negative impact on existing
35 private industries or the labor force in the county where the service
36 or labor is performed. The civic improvement tasks shall not affect
37 employment opportunities for people with developmental disabilities
38 contracted through sheltered workshops as defined in RCW 82.04.385.
39 Only those offenders sentenced to a facility operated or utilized under

1 contract by a county or the state are eligible to participate on a work
2 crew. Offenders sentenced for a sex offense as defined in subsection
3 (33) of this section are not eligible for the work crew program.

4 (40) "Work ethic camp" means an alternative incarceration program
5 designed to reduce recidivism and lower the cost of corrections by
6 requiring offenders to complete a comprehensive array of real-world job
7 and vocational experiences, character-building work ethics training,
8 life management skills development, substance abuse rehabilitation,
9 counseling, literacy training, and basic adult education.

10 (41) "Work release" means a program of partial confinement
11 available to offenders who are employed or engaged as a student in a
12 regular course of study at school. Participation in work release shall
13 be conditioned upon the offender attending work or school at regularly
14 defined hours and abiding by the rules of the work release facility.

15 (42) "Home detention" means a program of partial confinement
16 available to offenders wherein the offender is confined in a private
17 residence subject to electronic surveillance.

18 NEW SECTION. **Sec. 5.** This act applies to crimes committed on or
19 after the effective date of this act.

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