
SUBSTITUTE HOUSE BILL 2325

State of Washington

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By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Sterk, Scott, Gardner, Linville, Benson, Ogden, Dunshee, Appelwick, Kessler, Chopp, Cody, Costa, Backlund, Anderson, Schoesler, D. Sommers, Sheahan, Smith, Constantine, Gombosky, Conway and Lantz)

Read first time 01/28/98. Referred to Committee on .

1 AN ACT Relating to domestic violence; amending RCW 9.95.062,
2 10.64.025, 10.99.040, 9.94A.360, and 10.31.100; reenacting and amending
3 RCW 9.94A.120; and prescribing penalties.

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

5 **Sec. 1.** RCW 9.95.062 and 1996 c 275 s 9 are each amended to read
6 as follows:

7 (1) Notwithstanding CrR 3.2 or RAP 7.2, an appeal by a defendant in
8 a criminal action shall not stay the execution of the judgment of
9 conviction, if the court determines by a preponderance of the evidence
10 that:

11 (a) The defendant is likely to flee or to pose a danger to the
12 safety of any other person or the community if the judgment is stayed;
13 or

14 (b) The delay resulting from the stay will unduly diminish the
15 deterrent effect of the punishment; or

16 (c) A stay of the judgment will cause unreasonable trauma to the
17 victims of the crime or their families; or

18 (d) The defendant has not undertaken to the extent of the
19 defendant's financial ability to pay the financial obligations under

1 the judgment or has not posted an adequate performance bond to assure
2 payment.

3 (2) An appeal by a defendant convicted of one of the following
4 offenses shall not stay execution of the judgment of conviction: Rape
5 in the first or second degree (RCW 9A.44.040 and 9A.44.050); rape of a
6 child in the first, second, or third degree (RCW 9A.44.073, 9A.44.076,
7 and 9A.44.079); child molestation in the first, second, or third degree
8 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
9 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
10 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW
11 9A.40.090); any class A or B felony that is a sexually motivated
12 offense as defined in RCW 9.94A.030; a felony violation of RCW
13 9.68A.090; a felony domestic violence offense as defined in RCW
14 10.99.020; or any offense that is, under chapter 9A.28 RCW, a criminal
15 attempt, solicitation, or conspiracy to commit one of those offenses.

16 (3) In case the defendant has been convicted of a felony, and has
17 been unable to obtain release pending the appeal by posting an appeal
18 bond, cash, adequate security, release on personal recognizance, or any
19 other conditions imposed by the court, the time the defendant has been
20 imprisoned pending the appeal shall be deducted from the term for which
21 the defendant was sentenced, if the judgment is affirmed.

22 **Sec. 2.** RCW 10.64.025 and 1996 c 275 s 10 are each amended to read
23 as follows:

24 (1) A defendant who has been found guilty of a felony and is
25 awaiting sentencing shall be detained unless the court finds by clear
26 and convincing evidence that the defendant is not likely to flee or to
27 pose a danger to the safety of any other person or the community if
28 released. Any bail bond that was posted on behalf of a defendant
29 shall, upon the defendant's conviction, be exonerated.

30 (2) A defendant who has been found guilty of one of the following
31 offenses shall be detained pending sentencing: Rape in the first or
32 second degree (RCW 9A.44.040 and 9A.44.050); rape of a child in the
33 first, second, or third degree (RCW 9A.44.073, 9A.44.076, and
34 9A.44.079); child molestation in the first, second, or third degree
35 (RCW 9A.44.083, 9A.44.086, and 9A.44.089); sexual misconduct with a
36 minor in the first or second degree (RCW 9A.44.093 and 9A.44.096);
37 indecent liberties (RCW 9A.44.100); incest (RCW 9A.64.020); luring (RCW
38 9A.40.090); any class A or B felony that is a sexually motivated

1 offense as defined in RCW 9.94A.030; a felony violation of RCW
2 9.68A.090; a felony domestic violence offense as defined in RCW
3 10.99.020; or any offense that is, under chapter 9A.28 RCW, a criminal
4 attempt, solicitation, or conspiracy to commit one of those offenses.

5 **Sec. 3.** RCW 10.99.040 and 1997 c 338 s 54 are each amended to read
6 as follows:

7 (1) Because of the serious nature of domestic violence, the court
8 in domestic violence actions:

9 (a) Shall not dismiss any charge or delay disposition because of
10 concurrent dissolution or other civil proceedings;

11 (b) Shall not require proof that either party is seeking a
12 dissolution of marriage prior to instigation of criminal proceedings;

13 (c) Shall waive any requirement that the victim's location be
14 disclosed to any person, other than the attorney of a criminal
15 defendant, upon a showing that there is a possibility of further
16 violence: PROVIDED, That the court may order a criminal defense
17 attorney not to disclose to his or her client the victim's location;
18 and

19 (d) Shall identify by any reasonable means on docket sheets those
20 criminal actions arising from acts of domestic violence.

21 (2) Because of the likelihood of repeated violence directed at
22 those who have been victims of domestic violence in the past, when any
23 person charged with or arrested for a crime involving domestic violence
24 is released from custody before arraignment or trial on bail or
25 personal recognizance, the court authorizing the release may prohibit
26 that person from having any contact with the victim.

27 (a) The jurisdiction authorizing the release shall determine
28 whether that person should be prohibited from having any contact with
29 the victim. If there is no outstanding restraining or protective order
30 prohibiting that person from having contact with the victim, the court
31 authorizing release may issue, by telephone, a no-contact order
32 prohibiting the person charged or arrested from having contact with the
33 victim. In issuing the order, the court shall consider the provisions
34 of RCW 9.41.800. The no-contact order shall also be issued in writing
35 as soon as possible.

36 (b) Upon the court's own motion, or upon a verified application by
37 the prosecuting attorney, alleging with specificity that the accused
38 has violated a condition of release imposed under (a) of this

1 subsection, the court shall order the accused to be arrested and held
2 without bail or release on personal recognizance, pending an immediate
3 hearing to reconsider the release authorized under this subsection.

4 (3) At the time of arraignment the court shall determine whether a
5 no-contact order shall be issued or extended. If a no-contact order is
6 issued or extended, the court may also include in the conditions of
7 release a requirement that the defendant submit to electronic
8 monitoring. If electronic monitoring is ordered, the court shall
9 specify who shall provide the monitoring services, and the terms under
10 which the monitoring shall be performed. Upon conviction, the court
11 may require as a condition of the sentence that the defendant reimburse
12 the providing agency for the costs of the electronic monitoring.

13 (4)(a) Willful violation of a court order issued under subsection
14 (2) or (3) of this section is a gross misdemeanor except as provided in
15 (b) and (c) of this subsection (4). Upon conviction and in addition to
16 other penalties provided by law, the court may require that the
17 defendant submit to electronic monitoring. The court shall specify who
18 shall provide the electronic monitoring services and the terms under
19 which the monitoring must be performed. The court also may include a
20 requirement that the defendant pay the costs of the monitoring. The
21 court shall consider the ability of the convicted person to pay for
22 electronic monitoring.

23 (b) Any assault that is a violation of an order issued under this
24 section and that does not amount to assault in the first or second
25 degree under RCW 9A.36.011 or 9A.36.021 is a class C felony punishable
26 under chapter 9A.20 RCW, and any conduct in violation of a protective
27 order issued under this section that is reckless and creates a
28 substantial risk of death or serious physical injury to another person
29 is a class C felony punishable under chapter 9A.20 RCW.

30 (c) A willful violation of a court order issued under this section
31 is a class C felony if the offender has at least two previous
32 convictions for violating the provisions of a no-contact order issued
33 under this chapter, a domestic violence protection order issued under
34 chapter 26.09, 26.10, 26.26, or 26.50 RCW, or any federal or out-of-
35 state order that is comparable to a no-contact order or protection
36 order issued under Washington law. The previous convictions may
37 involve the same victim or other victims specifically protected by the
38 no-contact orders or protection orders the offender violated.

1 (d) The written order releasing the person charged or arrested
2 shall contain the court's directives and shall bear the legend:
3 "Violation of this order is a criminal offense under chapter 10.99 RCW
4 and will subject a violator to arrest; any assault, drive-by shooting,
5 or reckless endangerment that is a violation of this order is a felony.
6 You can be arrested even if any person protected by the order invites
7 or allows you to violate the order's prohibitions. You have the sole
8 responsibility to avoid or refrain from violating the order's
9 provisions. Only the court can change the order. You are further
10 notified that, upon motion of the court or the prosecuting attorney,
11 alleging with specificity that you have violated a condition of this
12 order, you are subject to arrest without bail or release on personal
13 recognizance pending trial." A certified copy of the order shall be
14 provided to the victim. If a no-contact order has been issued prior to
15 charging, that order shall expire at arraignment or within seventy-two
16 hours if charges are not filed. Such orders need not be entered into
17 the computer-based criminal intelligence information system in this
18 state which is used by law enforcement agencies to list outstanding
19 warrants.

20 (5) Whenever an order prohibiting contact is issued, modified, or
21 terminated under subsection (2) or (3) of this section, the clerk of
22 the court shall forward a copy of the order on or before the next
23 judicial day to the appropriate law enforcement agency specified in the
24 order. Upon receipt of the copy of the order the law enforcement
25 agency shall forthwith enter the order for one year or until the
26 expiration date specified on the order into any computer-based criminal
27 intelligence information system available in this state used by law
28 enforcement agencies to list outstanding warrants. Entry into the law
29 enforcement information system constitutes notice to all law
30 enforcement agencies of the existence of the order. The order is fully
31 enforceable in any jurisdiction in the state.

32 **Sec. 4.** RCW 9.94A.360 and 1997 c 338 s 5 are each amended to read
33 as follows:

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

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

1 (1) A prior conviction is a conviction which exists before the date
2 of sentencing for the offense for which the offender score is being
3 computed. Convictions entered or sentenced on the same date as the
4 conviction for which the offender score is being computed shall be
5 deemed "other current offenses" within the meaning of RCW 9.94A.400.

6 (2) Class A and sex prior felony convictions shall always be
7 included in the offender score. Class B prior felony convictions other
8 than sex offenses shall not be included in the offender score, if since
9 the last date of release from confinement (including full-time
10 residential treatment) pursuant to a felony conviction, if any, or
11 entry of judgment and sentence, the offender had spent ten consecutive
12 years in the community without committing any crime that subsequently
13 results in a conviction. Class C prior felony convictions other than
14 sex offenses shall not be included in the offender score if, since the
15 last date of release from confinement (including full-time residential
16 treatment) pursuant to a felony conviction, if any, or entry of
17 judgment and sentence, the offender had spent five consecutive years in
18 the community without committing any crime that subsequently results in
19 a conviction. Serious traffic convictions shall not be included in the
20 offender score if, since the last date of release from confinement
21 (including full-time residential treatment) pursuant to a felony
22 conviction, if any, or entry of judgment and sentence, the offender
23 spent five years in the community without committing any crime that
24 subsequently results in a conviction. This subsection applies to both
25 adult and juvenile prior convictions.

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

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

1 (5)(a) In the case of multiple prior convictions, for the purpose
2 of computing the offender score, count all convictions separately,
3 except:

4 (i) Prior offenses which were found, under RCW 9.94A.400(1)(a), to
5 encompass the same criminal conduct, shall be counted as one offense,
6 the offense that yields the highest offender score. The current
7 sentencing court shall determine with respect to other prior adult
8 offenses for which sentences were served concurrently or prior juvenile
9 offenses for which sentences were served consecutively, whether those
10 offenses shall be counted as one offense or as separate offenses using
11 the "same criminal conduct" analysis found in RCW 9.94A.400(1)(a), and
12 if the court finds that they shall be counted as one offense, then the
13 offense that yields the highest offender score shall be used. The
14 current sentencing court may presume that such other prior offenses
15 were not the same criminal conduct from sentences imposed on separate
16 dates, or in separate counties or jurisdictions, or in separate
17 complaints, indictments, or informations;

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

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

30 (6) If the present conviction is one of the anticipatory offenses
31 of criminal attempt, solicitation, or conspiracy, count each prior
32 conviction as if the present conviction were for a completed offense.

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

38 (8) If the present conviction is for a violent offense and not
39 covered in subsection (9), (10), (11), or (12) of this section, count

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

4 (9) If the present conviction is for Murder 1 or 2, Assault 1,
5 Assault of a Child 1, Kidnapping 1, Homicide by Abuse, or Rape 1, count
6 three points for prior adult and juvenile convictions for crimes in
7 these categories, two points for each prior adult and juvenile violent
8 conviction (not already counted), one point for each prior adult
9 nonviolent felony conviction, and 1/2 point for each prior juvenile
10 nonviolent felony conviction.

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

16 (11) If the present conviction is for a felony traffic offense
17 count two points for each adult or juvenile prior conviction for
18 Vehicular Homicide or Vehicular Assault; for each felony offense or
19 serious traffic offense, count one point for each adult and 1/2 point
20 for each juvenile prior conviction.

21 (12) If the present conviction is for a drug offense count three
22 points for each adult prior felony drug offense conviction and two
23 points for each juvenile drug offense. All other adult and juvenile
24 felonies are scored as in subsection (8) of this section if the current
25 drug offense is violent, or as in subsection (7) of this section if the
26 current drug offense is nonviolent.

27 (13) If the present conviction is for Willful Failure to Return
28 from Furlough, RCW 72.66.060, Willful Failure to Return from Work
29 Release, RCW 72.65.070, or Escape from Community Custody, RCW
30 72.09.310, count only prior escape convictions in the offender score.
31 Count adult prior escape convictions as one point and juvenile prior
32 escape convictions as 1/2 point.

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

36 (15) If the present conviction is for Burglary 2 or residential
37 burglary, count priors as in subsection (7) of this section; however,
38 count two points for each adult and juvenile prior Burglary 1
39 conviction, two points for each adult prior Burglary 2 or residential

1 burglary conviction, and one point for each juvenile prior Burglary 2
2 or residential burglary conviction.

3 (16) If the present conviction is for a sex offense, count priors
4 as in subsections (7) through (15) of this section; however count three
5 points for each adult and juvenile prior sex offense conviction.

6 (17) If the present conviction is for an offense committed while
7 the offender was under community placement, add one point.

8 (18) If the present conviction is for a felony domestic violence
9 offense as defined in RCW 10.99.020, with respect to misdemeanor
10 domestic violence offenses, count one point for each adult and 1/2
11 point for each juvenile prior conviction.

12 **Sec. 5.** RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c
13 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and
14 amended to read as follows:

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

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

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

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

28 (4) A persistent offender shall be sentenced to a term of total
29 confinement for life without the possibility of parole or, when
30 authorized by RCW 10.95.030 for the crime of aggravated murder in the
31 first degree, sentenced to death, notwithstanding the maximum sentence
32 under any other law. An offender convicted of the crime of murder in
33 the first degree shall be sentenced to a term of total confinement not
34 less than twenty years. An offender convicted of the crime of assault
35 in the first degree or assault of a child in the first degree where the
36 offender used force or means likely to result in death or intended to
37 kill the victim shall be sentenced to a term of total confinement not
38 less than five years. An offender convicted of the crime of rape in

1 the first degree shall be sentenced to a term of total confinement not
2 less than five years. The foregoing minimum terms of total confinement
3 are mandatory and shall not be varied or modified as provided in
4 subsection (2) of this section. In addition, all offenders subject to
5 the provisions of this subsection shall not be eligible for community
6 custody, earned early release time, furlough, home detention, partial
7 confinement, work crew, work release, or any other form of early
8 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
9 or any other form of authorized leave of absence from the correctional
10 facility while not in the direct custody of a corrections officer or
11 officers during such minimum terms of total confinement except in the
12 case of an offender in need of emergency medical treatment or for the
13 purpose of commitment to an inpatient treatment facility in the case of
14 an offender convicted of the crime of rape in the first degree.

15 (5) In sentencing a first-time offender the court may waive the
16 imposition of a sentence within the sentence range and impose a
17 sentence which may include up to ninety days of confinement in a
18 facility operated or utilized under contract by the county and a
19 requirement that the offender refrain from committing new offenses.
20 The sentence may also include up to two years of community supervision,
21 which, in addition to crime-related prohibitions, may include
22 requirements that the offender perform any one or more of the
23 following:

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

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

28 (c) Pursue a prescribed, secular course of study or vocational
29 training;

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

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

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

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

1 (i) The offender is convicted of the manufacture, delivery, or
2 possession with intent to manufacture or deliver a controlled substance
3 classified in Schedule I or II that is a narcotic drug or a felony that
4 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,
5 criminal solicitation, or criminal conspiracy to commit such crimes,
6 and the violation does not involve a sentence enhancement under RCW
7 9.94A.310 (3) or (4);

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

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

14 (b) If the midpoint of the standard range is greater than one year
15 and the sentencing judge determines that the offender is eligible for
16 this option and that the offender and the community will benefit from
17 the use of the special drug offender sentencing alternative, the judge
18 may waive imposition of a sentence within the standard range and impose
19 a sentence that must include a period of total confinement in a state
20 facility for one-half of the midpoint of the standard range. During
21 incarceration in the state facility, offenders sentenced under this
22 subsection shall undergo a comprehensive substance abuse assessment and
23 receive, within available resources, treatment services appropriate for
24 the offender. The treatment services shall be designed by the division
25 of alcohol and substance abuse of the department of social and health
26 services, in cooperation with the department of corrections. If the
27 midpoint of the standard range is twenty-four months or less, no more
28 than three months of the sentence may be served in a work release
29 status. The court shall also impose one year of concurrent community
30 custody and community supervision that must include appropriate
31 outpatient substance abuse treatment, crime-related prohibitions
32 including a condition not to use illegal controlled substances, and a
33 requirement to submit to urinalysis or other testing to monitor that
34 status. The court may require that the monitoring for controlled
35 substances be conducted by the department or by a treatment
36 alternatives to street crime program or a comparable court or agency-
37 referred program. The offender may be required to pay thirty dollars
38 per month while on community custody to offset the cost of monitoring.

1 In addition, the court shall impose three or more of the following
2 conditions:

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

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

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

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

9 (v) Perform community service work;

10 (vi) Stay out of areas designated by the sentencing judge.

11 (c) If the offender violates any of the sentence conditions in (b)
12 of this subsection, the department shall impose sanctions
13 administratively, with notice to the prosecuting attorney and the
14 sentencing court. Upon motion of the court or the prosecuting
15 attorney, a violation hearing shall be held by the court. If the court
16 finds that conditions have been willfully violated, the court may
17 impose confinement consisting of up to the remaining one-half of the
18 midpoint of the standard range. All total confinement served during
19 the period of community custody shall be credited to the offender,
20 regardless of whether the total confinement is served as a result of
21 the original sentence, as a result of a sanction imposed by the
22 department, or as a result of a violation found by the court. The term
23 of community supervision shall be tolled by any period of time served
24 in total confinement as a result of a violation found by the court.

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

31 (7) If a sentence range has not been established for the
32 defendant's crime, the court shall impose a determinate sentence which
33 may include not more than one year of confinement, community service
34 work, a term of community supervision not to exceed one year, and/or
35 other legal financial obligations. The court may impose a sentence
36 which provides more than one year of confinement if the court finds,
37 considering the purpose of this chapter, that there are substantial and
38 compelling reasons justifying an exceptional sentence.

1 (8)(a)(i) When an offender is convicted of a sex offense other than
2 a violation of RCW 9A.44.050 or a sex offense that is also a serious
3 violent offense and has no prior convictions for a sex offense or any
4 other felony sex offenses in this or any other state, the sentencing
5 court, on its own motion or the motion of the state or the defendant,
6 may order an examination to determine whether the defendant is amenable
7 to treatment.

8 The report of the examination shall include at a minimum the
9 following: The defendant's version of the facts and the official
10 version of the facts, the defendant's offense history, an assessment of
11 problems in addition to alleged deviant behaviors, the offender's
12 social and employment situation, and other evaluation measures used.
13 The report shall set forth the sources of the evaluator's information.

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

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

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

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

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

32 (ii) After receipt of the reports, the court shall consider whether
33 the offender and the community will benefit from use of this special
34 sex offender sentencing alternative and consider the victim's opinion
35 whether the offender should receive a treatment disposition under this
36 subsection. If the court determines that this special sex offender
37 sentencing alternative is appropriate, the court shall then impose a
38 sentence within the sentence range. If this sentence is less than

1 eleven years of confinement, the court may suspend the execution of the
2 sentence and impose the following conditions of suspension:

3 (A) The court shall place the defendant on community custody for
4 the length of the suspended sentence or three years, whichever is
5 greater, and require the offender to comply with any conditions imposed
6 by the department of corrections under subsection (14) of this section;

7 (B) The court shall order treatment for any period up to three
8 years in duration. The court in its discretion shall order outpatient
9 sex offender treatment or inpatient sex offender treatment, if
10 available. A community mental health center may not be used for such
11 treatment unless it has an appropriate program designed for sex
12 offender treatment. The offender shall not change sex offender
13 treatment providers or treatment conditions without first notifying the
14 prosecutor, the community corrections officer, and the court, and shall
15 not change providers without court approval after a hearing if the
16 prosecutor or community corrections officer object to the change. In
17 addition, as conditions of the suspended sentence, the court may impose
18 other sentence conditions including up to six months of confinement,
19 not to exceed the sentence range of confinement for that offense,
20 crime-related prohibitions, and requirements that the offender perform
21 any one or more of the following:

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

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

26 (III) Report as directed to the court and a community corrections
27 officer;

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

31 (V) Make recoupment to the victim for the cost of any counseling
32 required as a result of the offender's crime; and

33 (C) Sex offenders sentenced under this special sex offender
34 sentencing alternative are not eligible to accrue any earned early
35 release time while serving a suspended sentence.

36 (iii) The sex offender therapist shall submit quarterly reports on
37 the defendant's progress in treatment to the court and the parties.
38 The report shall reference the treatment plan and include at a minimum
39 the following: Dates of attendance, defendant's compliance with

1 requirements, treatment activities, the defendant's relative progress
2 in treatment, and any other material as specified by the court at
3 sentencing.

4 (iv) At the time of sentencing, the court shall set a treatment
5 termination hearing for three months prior to the anticipated date for
6 completion of treatment. Prior to the treatment termination hearing,
7 the treatment professional and community corrections officer shall
8 submit written reports to the court and parties regarding the
9 defendant's compliance with treatment and monitoring requirements, and
10 recommendations regarding termination from treatment, including
11 proposed community supervision conditions. Either party may request
12 and the court may order another evaluation regarding the advisability
13 of termination from treatment. The defendant shall pay the cost of any
14 additional evaluation ordered unless the court finds the defendant to
15 be indigent in which case the state shall pay the cost. At the
16 treatment termination hearing the court may: (A) Modify conditions of
17 community custody, and either (B) terminate treatment, or (C) extend
18 treatment for up to the remaining period of community custody.

19 (v) If a violation of conditions occurs during community custody,
20 the department shall either impose sanctions as provided for in RCW
21 9.94A.205(2)(a) or refer the violation to the court and recommend
22 revocation of the suspended sentence as provided for in (a)(vi) of this
23 subsection.

24 (vi) The court may revoke the suspended sentence at any time during
25 the period of community custody and order execution of the sentence if:
26 (A) The defendant violates the conditions of the suspended sentence, or
27 (B) the court finds that the defendant is failing to make satisfactory
28 progress in treatment. All confinement time served during the period
29 of community custody shall be credited to the offender if the suspended
30 sentence is revoked.

31 (vii) Except as provided in (a)(viii) of this subsection, after
32 July 1, 1991, examinations and treatment ordered pursuant to this
33 subsection shall only be conducted by sex offender treatment providers
34 certified by the department of health pursuant to chapter 18.155 RCW.

35 (viii) A sex offender therapist who examines or treats a sex
36 offender pursuant to this subsection (8) does not have to be certified
37 by the department of health pursuant to chapter 18.155 RCW if the court
38 finds that: (A) The offender has already moved to another state or
39 plans to move to another state for reasons other than circumventing the

1 certification requirements; (B) no certified providers are available
2 for treatment within a reasonable geographical distance of the
3 offender's home; and (C) the evaluation and treatment plan comply with
4 this subsection (8) and the rules adopted by the department of health.

5 (ix) For purposes of this subsection (8), "victim" means any person
6 who has sustained emotional, psychological, physical, or financial
7 injury to person or property as a result of the crime charged.
8 "Victim" also means a parent or guardian of a victim who is a minor
9 child unless the parent or guardian is the perpetrator of the offense.

10 (x) If the defendant was less than eighteen years of age when the
11 charge was filed, the state shall pay for the cost of initial
12 evaluation and treatment.

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

20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his or her term of confinement, the department
23 of corrections may request the court to convert the balance of
24 confinement to community supervision and to place conditions on the
25 offender including crime-related prohibitions and requirements that the
26 offender perform any one or more of the following:

27 (i) Devote time to a specific employment or occupation;

28 (ii) Remain within prescribed geographical boundaries and notify
29 the court or the community corrections officer prior to any change in
30 the offender's address or employment;

31 (iii) Report as directed to the court and a community corrections
32 officer;

33 (iv) Undergo available outpatient treatment.

34 If the offender violates any of the terms of his or her community
35 supervision, the court may order the offender to serve out the balance
36 of his or her community supervision term in confinement in the custody
37 of the department of corrections.

38 Nothing in this subsection (8)(b) shall confer eligibility for such
39 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (8)(b) does not apply
2 to any crime committed after July 1, 1990.

3 (c) Offenders convicted and sentenced for a sex offense committed
4 prior to July 1, 1987, may, subject to available funds, request an
5 evaluation by the department of corrections to determine whether they
6 are amenable to treatment. If the offender is determined to be
7 amenable to treatment, the offender may request placement in a
8 treatment program within a correctional facility operated by the
9 department. Placement in such treatment program is subject to
10 available funds.

11 (9)(a) When a court sentences a person to a term of total
12 confinement to the custody of the department of corrections for an
13 offense categorized as a sex offense or a serious violent offense
14 committed after July 1, 1988, but before July 1, 1990, assault in the
15 second degree, assault of a child in the second degree, any crime
16 against a person where it is determined in accordance with RCW
17 9.94A.125 that the defendant or an accomplice was armed with a deadly
18 weapon at the time of commission, any felony domestic violence offense
19 as defined in RCW 10.99.020, or any felony offense under chapter 69.50
20 or 69.52 RCW not sentenced under subsection (6) of this section,
21 committed on or after July 1, 1988, the court shall in addition to the
22 other terms of the sentence, sentence the offender to a one-year term
23 of community placement beginning either upon completion of the term of
24 confinement or at such time as the offender is transferred to community
25 custody in lieu of earned early release in accordance with RCW
26 9.94A.150 (1) and (2). When the court sentences an offender under this
27 subsection to the statutory maximum period of confinement then the
28 community placement portion of the sentence shall consist entirely of
29 such community custody to which the offender may become eligible, in
30 accordance with RCW 9.94A.150 (1) and (2). Any period of community
31 custody actually served shall be credited against the community
32 placement portion of the sentence.

33 (b) When a court sentences a person to a term of total confinement
34 to the custody of the department of corrections for an offense
35 categorized as a sex offense committed on or after July 1, 1990, but
36 before June 6, 1996, a serious violent offense, vehicular homicide, or
37 vehicular assault, committed on or after July 1, 1990, the court shall
38 in addition to other terms of the sentence, sentence the offender to
39 community placement for two years or up to the period of earned early

1 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
2 longer. The community placement shall begin either upon completion of
3 the term of confinement or at such time as the offender is transferred
4 to community custody in lieu of earned early release in accordance with
5 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
6 this subsection to the statutory maximum period of confinement then the
7 community placement portion of the sentence shall consist entirely of
8 the community custody to which the offender may become eligible, in
9 accordance with RCW 9.94A.150 (1) and (2). Any period of community
10 custody actually served shall be credited against the community
11 placement portion of the sentence. Unless a condition is waived by the
12 court, the terms of community placement for offenders sentenced
13 pursuant to this section shall include the following conditions:

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

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

18 (iii) The offender shall not possess or consume controlled
19 substances except pursuant to lawfully issued prescriptions;

20 (iv) The offender shall pay supervision fees as determined by the
21 department of corrections;

22 (v) The residence location and living arrangements are subject to
23 the prior approval of the department of corrections during the period
24 of community placement; and

25 (vi) The offender shall submit to affirmative acts necessary to
26 monitor compliance with the orders of the court as required by the
27 department.

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

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

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

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

37 (iv) The offender shall not consume alcohol;

38 (v) The offender shall comply with any crime-related prohibitions;

39 or

1 (vi) For an offender convicted of a felony sex offense against a
2 minor victim after June 6, 1996, the offender shall comply with any
3 terms and conditions of community placement imposed by the department
4 of corrections relating to contact between the sex offender and a minor
5 victim or a child of similar age or circumstance as a previous victim.

6 (d) Prior to transfer to, or during, community placement, any
7 conditions of community placement may be removed or modified so as not
8 to be more restrictive by the sentencing court, upon recommendation of
9 the department of corrections.

10 (10)(a) When a court sentences a person to the custody of the
11 department of corrections for an offense categorized as a sex offense
12 committed on or after June 6, 1996, the court shall, in addition to
13 other terms of the sentence, sentence the offender to community custody
14 for three years or up to the period of earned early release awarded
15 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
16 community custody shall begin either upon completion of the term of
17 confinement or at such time as the offender is transferred to community
18 custody in lieu of earned early release in accordance with RCW
19 9.94A.150 (1) and (2).

20 (b) Unless a condition is waived by the court, the terms of
21 community custody shall be the same as those provided for in subsection
22 (9)(b) of this section and may include those provided for in subsection
23 (9)(c) of this section. As part of any sentence that includes a term
24 of community custody imposed under this subsection, the court shall
25 also require the offender to comply with any conditions imposed by the
26 department of corrections under subsection (14) of this section.

27 (c) At any time prior to the completion of a sex offender's term of
28 community custody, if the court finds that public safety would be
29 enhanced, the court may impose and enforce an order extending any or
30 all of the conditions imposed pursuant to this section for a period up
31 to the maximum allowable sentence for the crime as it is classified in
32 chapter 9A.20 RCW, regardless of the expiration of the offender's term
33 of community custody. If a violation of a condition extended under
34 this subsection occurs after the expiration of the offender's term of
35 community custody, it shall be deemed a violation of the sentence for
36 the purposes of RCW 9.94A.195 and may be punishable as contempt of
37 court as provided for in RCW 7.21.040.

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 (12) If a sentence imposed includes payment of a legal financial
6 obligation, the sentence shall specify the total amount of the legal
7 financial obligation owed, and shall require the offender to pay a
8 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 for ten years following the entry of the
15 judgment and sentence or ten years following the offender's release
16 from total confinement. All monetary payments ordered shall be paid no
17 later than ten years after the last date of release from confinement
18 pursuant to a felony conviction or the date the sentence was entered
19 unless the superior court extends the criminal judgment an additional
20 ten years. If the legal financial obligations including crime victims'
21 assessments are not paid during the initial ten-year period, the
22 superior court may extend jurisdiction under the criminal judgment an
23 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
24 9.94A.145. If jurisdiction under the criminal judgment is extended,
25 the department is not responsible for supervision of the offender
26 during the subsequent period. Independent of the department, the party
27 or entity to whom the legal financial obligation is owed shall have the
28 authority to utilize any other remedies available to the party or
29 entity to collect the legal financial obligation. Nothing in this
30 section makes the department, the state, or any of its employees,
31 agents, or other persons acting on their behalf liable under any
32 circumstances for the payment of these legal financial obligations. If
33 an order includes restitution as one of the monetary assessments, the
34 county clerk shall make disbursements to victims named in the order.

35 (13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
36 court may not impose a sentence providing for a term of confinement or
37 community supervision or community placement which exceeds the
38 statutory maximum for the crime as provided in chapter 9A.20 RCW.

1 (14) All offenders sentenced to terms involving community
2 supervision, community service, community placement, or legal financial
3 obligation shall be under the supervision of the department of
4 corrections and shall follow explicitly the instructions and conditions
5 of the department of corrections. The department may require an
6 offender to perform affirmative acts it deems appropriate to monitor
7 compliance with the conditions of the sentence imposed.

8 (a) The instructions shall include, at a minimum, reporting as
9 directed to a community corrections officer, remaining within
10 prescribed geographical boundaries, notifying the community corrections
11 officer of any change in the offender's address or employment, and
12 paying the supervision fee assessment.

13 (b) For offenders sentenced to terms involving community custody
14 for crimes committed on or after June 6, 1996, the department may
15 include, in addition to the instructions in (a) of this subsection, any
16 appropriate conditions of supervision, including but not limited to,
17 prohibiting the offender from having contact with any other specified
18 individuals or specific class of individuals. The conditions
19 authorized under this subsection (14)(b) may be imposed by the
20 department prior to or during an offender's community custody term. If
21 a violation of conditions imposed by the court or the department
22 pursuant to subsection (10) of this section occurs during community
23 custody, it shall be deemed a violation of community placement for the
24 purposes of RCW 9.94A.207 and shall authorize the department to
25 transfer an offender to a more restrictive confinement status as
26 provided in RCW 9.94A.205. At any time prior to the completion of a
27 sex offender's term of community custody, the department may recommend
28 to the court that any or all of the conditions imposed by the court or
29 the department pursuant to subsection (10) of this section be continued
30 beyond the expiration of the offender's term of community custody as
31 authorized in subsection (10)(c) of this section.

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

37 (15) All offenders sentenced to terms involving community
38 supervision, community service, or community placement under the
39 supervision of the department of corrections shall not own, use, or

1 possess firearms or ammunition. Offenders who own, use, or are found
2 to be in actual or constructive possession of firearms or ammunition
3 shall be subject to the appropriate violation process and sanctions.
4 "Constructive possession" as used in this subsection means the power
5 and intent to control the firearm or ammunition. "Firearm" as used in
6 this subsection means a weapon or device from which a projectile may be
7 fired by an explosive such as gunpowder.

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

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

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

24 (19) As a part of any sentence, the court may impose and enforce an
25 order that relates directly to the circumstances of the crime for which
26 the offender has been convicted, prohibiting the offender from having
27 any contact with other specified individuals or a specific class of
28 individuals for a period not to exceed the maximum allowable sentence
29 for the crime, regardless of the expiration of the offender's term of
30 community supervision or community placement.

31 (20) In any sentence of partial confinement, the court may require
32 the defendant to serve the partial confinement in work release, in a
33 program of home detention, on work crew, or in a combined program of
34 work crew and home detention.

35 (21) All court-ordered legal financial obligations collected by the
36 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any
2 other payments of monetary obligations.

3 **Sec. 6.** RCW 10.31.100 and 1997 c 66 s 10 are each amended to read
4 as follows:

5 A police officer having probable cause to believe that a person has
6 committed or is committing a felony shall have the authority to arrest
7 the person without a warrant. A police officer may arrest a person
8 without a warrant for committing a misdemeanor or gross misdemeanor
9 only when the offense is committed in the presence of the officer,
10 except as provided in subsections (1) through (10) of this section.

11 (1) Any police officer having probable cause to believe that a
12 person has committed or is committing a misdemeanor or gross
13 misdemeanor, involving physical harm or threats of harm to any person
14 or property or the unlawful taking of property or involving the use or
15 possession of cannabis, or involving the acquisition, possession, or
16 consumption of alcohol by a person under the age of twenty-one years
17 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
18 or 9A.52.080, shall have the authority to arrest the person.

19 (2) A police officer shall arrest and take into custody, pending
20 release on bail, personal recognizance, or court order, a person
21 without a warrant when the officer has probable cause to believe that:

22 (a) An order has been issued of which the person has knowledge
23 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,
24 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW
25 restraining the person and the person has violated the terms of the
26 order restraining the person from acts or threats of violence or
27 restraining the person from going onto the grounds of or entering a
28 residence, workplace, school, or day care or, in the case of an order
29 issued under RCW 26.44.063, imposing any other restrictions or
30 conditions upon the person; or

31 (b) ~~The person ((is sixteen years or older and within the preceding~~
32 ~~four hours has assaulted a family or household member as defined in RCW~~
33 ~~10.99.020 and the officer believes:—(i) A felonious assault has~~
34 ~~occurred; (ii) an assault has occurred which has resulted in bodily~~
35 ~~injury to the victim, whether the injury is observable by the~~
36 ~~responding officer or not; or (iii) that any physical action has~~
37 ~~occurred which was intended to cause another person reasonably to fear~~
38 ~~imminent serious bodily injury or death. Bodily injury means physical~~

1 ~~pain, illness, or an impairment of physical condition))~~ has committed
2 a domestic violence offense as defined in RCW 10.99.020. When the
3 officer has probable cause to believe that family or household members
4 have assaulted each other, the officer is not required to arrest both
5 persons. The officer shall arrest the person whom the officer believes
6 to be the primary physical aggressor. In making this determination,
7 the officer shall make every reasonable effort to consider: (i) The
8 intent to protect victims of domestic violence under RCW 10.99.010;
9 (ii) the comparative extent of injuries inflicted or serious threats
10 creating fear of physical injury; and (iii) the history of domestic
11 violence between the persons involved.

12 (3) Any police officer having probable cause to believe that a
13 person has committed or is committing a violation of any of the
14 following traffic laws shall have the authority to arrest the person:

15 (a) RCW 46.52.010, relating to duty on striking an unattended car
16 or other property;

17 (b) RCW 46.52.020, relating to duty in case of injury to or death
18 of a person or damage to an attended vehicle;

19 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
20 racing of vehicles;

21 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
22 influence of intoxicating liquor or drugs;

23 (e) RCW 46.20.342, relating to driving a motor vehicle while
24 operator's license is suspended or revoked;

25 (f) RCW 46.61.5249, relating to operating a motor vehicle in a
26 negligent manner.

27 (4) A law enforcement officer investigating at the scene of a motor
28 vehicle accident may arrest the driver of a motor vehicle involved in
29 the accident if the officer has probable cause to believe that the
30 driver has committed in connection with the accident a violation of any
31 traffic law or regulation.

32 (5) Any police officer having probable cause to believe that a
33 person has committed or is committing a violation of RCW 88.12.025
34 shall have the authority to arrest the person.

35 (6) An officer may act upon the request of a law enforcement
36 officer in whose presence a traffic infraction was committed, to stop,
37 detain, arrest, or issue a notice of traffic infraction to the driver
38 who is believed to have committed the infraction. The request by the

1 witnessing officer shall give an officer the authority to take
2 appropriate action under the laws of the state of Washington.

3 (7) Any police officer having probable cause to believe that a
4 person has committed or is committing any act of indecent exposure, as
5 defined in RCW 9A.88.010, may arrest the person.

6 (8) A police officer may arrest and take into custody, pending
7 release on bail, personal recognizance, or court order, a person
8 without a warrant when the officer has probable cause to believe that
9 an order has been issued of which the person has knowledge under
10 chapter 10.14 RCW and the person has violated the terms of that order.

11 (9) Any police officer having probable cause to believe that a
12 person has, within twenty-four hours of the alleged violation,
13 committed a violation of RCW 9A.50.020 may arrest such person.

14 (10) A police officer having probable cause to believe that a
15 person illegally possesses or illegally has possessed a firearm or
16 other dangerous weapon on private or public elementary or secondary
17 school premises shall have the authority to arrest the person.

18 For purposes of this subsection, the term "firearm" has the meaning
19 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
20 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

21 (11) Except as specifically provided in subsections (2), (3), (4),
22 and (6) of this section, nothing in this section extends or otherwise
23 affects the powers of arrest prescribed in Title 46 RCW.

24 (12) No police officer may be held criminally or civilly liable for
25 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police
26 officer acts in good faith and without malice.

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