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HOUSE BILL 3124

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State of Washington

56th Legislature

2000 Regular Session

By Representatives H. Sommers, Huff, Kessler, Ballasiotes, O'Brien and Alexander

Read first time 02/07/2000. Referred to Committee on Appropriations.

1 AN ACT Relating to sentencing of sexually violent predators;  
2 amending RCW 9.94A.060, 9.94A.190, 9.94A.370, 9.94A.390, 9.95.900,  
3 9A.28.020, 9A.36.021, 9A.40.030, and 9A.44.100; reenacting and amending  
4 RCW 9.94A.030 and 9.94A.120; adding new sections to chapter 9.94A RCW;  
5 creating new sections; repealing RCW 9.95.0011; prescribing penalties;  
6 and declaring an emergency.

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

8 **Sec. 1.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999  
9 c 196 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) "Board" means the indeterminate sentence review board created  
13 under RCW 9.95.001.

14 (2) "Collect," or any derivative thereof, "collect and remit," or  
15 "collect and deliver," when used with reference to the department of  
16 corrections, means that the department, either directly or through a  
17 collection agreement authorized by RCW 9.94A.145, is responsible for  
18 monitoring and enforcing the offender's sentence with regard to the  
19 legal financial obligation, receiving payment thereof from the

1 offender, and, consistent with current law, delivering daily the entire  
2 payment to the superior court clerk without depositing it in a  
3 departmental account.

4 ~~((+2))~~ (3) "Commission" means the sentencing guidelines  
5 commission.

6 ~~((+3))~~ (4) "Community corrections officer" means an employee of  
7 the department who is responsible for carrying out specific duties in  
8 supervision of sentenced offenders and monitoring of sentence  
9 conditions.

10 ~~((+4))~~ (5) "Community custody" means that portion of an offender's  
11 sentence of confinement in lieu of earned release time or imposed  
12 pursuant to RCW 9.94A.120 (5), (6), (7), (8), (10), or (11), or RCW  
13 9.94A.383, served in the community subject to controls placed on the  
14 offender's movement and activities by the department of corrections.  
15 For offenders placed on community custody for crimes committed on or  
16 after July 1, 2000, the department shall assess the offender's risk of  
17 reoffense and may establish and modify conditions of community custody,  
18 in addition to those imposed by the court, based upon the risk to  
19 community safety.

20 ~~((+5))~~ (6) "Community custody range" means the minimum and maximum  
21 period of community custody included as part of a sentence under RCW  
22 9.94A.120(11), as established by the sentencing guidelines commission  
23 or the legislature under RCW 9.94A.040, for crimes committed on or  
24 after July 1, 2000.

25 ~~((+6))~~ (7) "Community placement" means that period during which  
26 the offender is subject to the conditions of community custody and/or  
27 postrelease supervision, which begins either upon completion of the  
28 term of confinement (postrelease supervision) or at such time as the  
29 offender is transferred to community custody in lieu of earned release.  
30 Community placement may consist of entirely community custody, entirely  
31 postrelease supervision, or a combination of the two.

32 ~~((+7))~~ (8) "Community service" means compulsory service, without  
33 compensation, performed for the benefit of the community by the  
34 offender.

35 ~~((+8))~~ (9) "Community supervision" means a period of time during  
36 which a convicted offender is subject to crime-related prohibitions and  
37 other sentence conditions imposed by a court pursuant to this chapter  
38 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the  
39 supervision may include crime-related prohibitions and other conditions

1 imposed pursuant to RCW 9.94A.120(5). Where the court finds that any  
2 offender has a chemical dependency that has contributed to his or her  
3 offense, the conditions of supervision may, subject to available  
4 resources, include treatment. For purposes of the interstate compact  
5 for out-of-state supervision of parolees and probationers, RCW  
6 9.95.270, community supervision is the functional equivalent of  
7 probation and should be considered the same as probation by other  
8 states.

9 ~~((9))~~ (10) "Confinement" means total or partial confinement as  
10 defined in this section.

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

14 ~~((11))~~ (12) "Court-ordered legal financial obligation" means a  
15 sum of money that is ordered by a superior court of the state of  
16 Washington for legal financial obligations which may include  
17 restitution to the victim, statutorily imposed crime victims'  
18 compensation fees as assessed pursuant to RCW 7.68.035, court costs,  
19 county or interlocal drug funds, court-appointed attorneys' fees, and  
20 costs of defense, fines, and any other financial obligation that is  
21 assessed to the offender as a result of a felony conviction. Upon  
22 conviction for vehicular assault while under the influence of  
23 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular  
24 homicide while under the influence of intoxicating liquor or any drug,  
25 RCW 46.61.520(1)(a), legal financial obligations may also include  
26 payment to a public agency of the expense of an emergency response to  
27 the incident resulting in the conviction, subject to the provisions in  
28 RCW 38.52.430.

29 ~~((12))~~ (13) "Crime-related prohibition" means an order of a court  
30 prohibiting conduct that directly relates to the circumstances of the  
31 crime for which the offender has been convicted, and shall not be  
32 construed to mean orders directing an offender affirmatively to  
33 participate in rehabilitative programs or to otherwise perform  
34 affirmative conduct. However, affirmative acts necessary to monitor  
35 compliance with the order of a court may be required by the department.

36 ~~((13))~~ (14) "Criminal history" means the list of a defendant's  
37 prior convictions and juvenile adjudications, whether in this state, in  
38 federal court, or elsewhere. The history shall include, where known,  
39 for each conviction (a) whether the defendant has been placed on

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

3 ~~((14))~~ (15) "Day fine" means a fine imposed by the sentencing  
4 judge that equals the difference between the offender's net daily  
5 income and the reasonable obligations that the offender has for the  
6 support of the offender and any dependents.

7 ~~((15))~~ (16) "Day reporting" means a program of enhanced  
8 supervision designed to monitor the defendant's daily activities and  
9 compliance with sentence conditions, and in which the defendant is  
10 required to report daily to a specific location designated by the  
11 department or the sentencing judge.

12 ~~((16))~~ (17) "Department" means the department of corrections.

13 ~~((17))~~ (18) "Determinate sentence" means a sentence that states  
14 with exactitude the number of actual years, months, or days of total  
15 confinement, of partial confinement, of community supervision, the  
16 number of actual hours or days of community service work, or dollars or  
17 terms of a legal financial obligation. The fact that an offender  
18 through "earned release" can reduce the actual period of confinement  
19 shall not affect the classification of the sentence as a determinate  
20 sentence.

21 ~~((18))~~ (19) "Disposable earnings" means that part of the earnings  
22 of an individual remaining after the deduction from those earnings of  
23 any amount required by law to be withheld. For the purposes of this  
24 definition, "earnings" means compensation paid or payable for personal  
25 services, whether denominated as wages, salary, commission, bonuses, or  
26 otherwise, and, notwithstanding any other provision of law making the  
27 payments exempt from garnishment, attachment, or other process to  
28 satisfy a court-ordered legal financial obligation, specifically  
29 includes periodic payments pursuant to pension or retirement programs,  
30 or insurance policies of any type, but does not include payments made  
31 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
32 or Title 74 RCW.

33 ~~((19))~~ (20) "Drug offense" means:

34 (a) Any felony violation of chapter 69.50 RCW except possession of  
35 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
36 controlled substance (RCW 69.50.403);

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

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

4 (~~(20)~~) (21) "Escape" means:

5 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
6 second degree (RCW 9A.76.120), willful failure to return from furlough  
7 (RCW 72.66.060), willful failure to return from work release (RCW  
8 72.65.070), or willful failure to be available for supervision by the  
9 department while in community custody (RCW 72.09.310); or

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

13 (~~(21)~~) (22) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
16 and-run injury-accident (RCW 46.52.020(4)); or

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

20 (~~(22)~~) (23) "Fines" means the requirement that the offender pay  
21 a specific sum of money over a specific period of time to the court.

22 (~~(23)~~) (24) "First-time offender" means any person who is  
23 convicted of a felony (a) not classified as a violent offense or a sex  
24 offense under this chapter, or (b) that is not the manufacture,  
25 delivery, or possession with intent to manufacture or deliver a  
26 controlled substance classified in Schedule I or II that is a narcotic  
27 drug or flunitrazepam classified in Schedule IV, nor the manufacture,  
28 delivery, or possession with intent to deliver methamphetamine, its  
29 salts, isomers, and salts of its isomers as defined in RCW  
30 69.50.206(d)(2), nor the selling for profit of any controlled substance  
31 or counterfeit substance classified in Schedule I, RCW 69.50.204,  
32 except leaves and flowering tops of marihuana, who previously has never  
33 been convicted of a felony in this state, federal court, or another  
34 state, and who has never participated in a program of deferred  
35 prosecution for a felony offense.

36 (~~(24)~~) (25) "Home detention" means a program of partial  
37 confinement available to offenders wherein the offender is confined in  
38 a private residence subject to electronic surveillance.

1       (~~(25)~~) (26) "Most serious offense" means any of the following  
2 felonies or a felony attempt to commit any of the following felonies,  
3 as now existing or hereafter amended:

4       (a) Any felony defined under any law as a class A felony or  
5 criminal solicitation of or criminal conspiracy to commit a class A  
6 felony;

7       (b) Assault in the second degree;

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

9       (d) Child molestation in the second degree;

10       (e) Controlled substance homicide;

11       (f) Extortion in the first degree;

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

13       (h) Indecent liberties;

14       (i) Kidnapping in the second degree;

15       (j) Leading organized crime;

16       (k) Manslaughter in the first degree;

17       (l) Manslaughter in the second degree;

18       (m) Promoting prostitution in the first degree;

19       (n) Rape in the third degree;

20       (o) Robbery in the second degree;

21       (p) Sexual exploitation;

22       (q) Vehicular assault;

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

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

29       (t) Any other felony with a deadly weapon verdict under RCW  
30 9.94A.125;

31       (u) Any felony offense in effect at any time prior to December 2,  
32 1993, that is comparable to a most serious offense under this  
33 subsection, or any federal or out-of-state conviction for an offense  
34 that under the laws of this state would be a felony classified as a  
35 most serious offense under this subsection;

36       (v)(i) A prior conviction for indecent liberties under RCW  
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;  
3 (ii) A prior conviction for indecent liberties under RCW  
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
5 if: (A) The crime was committed against a child under the age of  
6 fourteen; or (B) the relationship between the victim and perpetrator is  
7 included in the definition of indecent liberties under RCW  
8 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
9 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
10 through July 27, 1997.

11 (~~(26)~~) (27) "Nonviolent offense" means an offense which is not a  
12 violent offense.

13 (~~(27)~~) (28) "Offender" means a person who has committed a felony  
14 established by state law and is eighteen years of age or older or is  
15 less than eighteen years of age but whose case is under superior court  
16 jurisdiction under RCW 13.04.030 or has been transferred by the  
17 appropriate juvenile court to a criminal court pursuant to RCW  
18 13.40.110. Throughout this chapter, the terms "offender" and  
19 "defendant" are used interchangeably.

20 (~~(28)~~) (29) "Partial confinement" means confinement for no more  
21 than one year in a facility or institution operated or utilized under  
22 contract by the state or any other unit of government, or, if home  
23 detention or work crew has been ordered by the court, in an approved  
24 residence, for a substantial portion of each day with the balance of  
25 the day spent in the community. Partial confinement includes work  
26 release, home detention, work crew, and a combination of work crew and  
27 home detention as defined in this section.

28 (~~(29)~~) (30) "Persistent offender" is an offender who:

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

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

1 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
2 of a child in the first degree, child molestation in the first degree,  
3 rape in the second degree, rape of a child in the second degree, or  
4 indecent liberties by forcible compulsion; (B) murder in the first  
5 degree, murder in the second degree, homicide by abuse, kidnapping in  
6 the first degree, kidnapping in the second degree, assault in the first  
7 degree, assault in the second degree, assault of a child in the first  
8 degree, or burglary in the first degree, with a finding of sexual  
9 motivation; or (C) an attempt to commit any crime listed in this  
10 subsection (~~((29))~~) (30)(b)(i); and

11 (ii) Has, before the commission of the offense under (b)(i) of this  
12 subsection, been convicted as an offender on at least one occasion,  
13 whether in this state or elsewhere, of an offense listed in (b)(i) of  
14 this subsection. A conviction for rape of a child in the first degree  
15 constitutes a conviction under (b)(i) of this subsection (~~((29)(b)(i))~~)  
16 only when the offender was sixteen years of age or older when the  
17 offender committed the offense. A conviction for rape of a child in  
18 the second degree constitutes a conviction under (b)(i) of this  
19 subsection (~~((29)(b)(i))~~) only when the offender was eighteen years of  
20 age or older when the offender committed the offense.

21 (~~((30))~~) (31) "Postrelease supervision" is that portion of an  
22 offender's community placement that is not community custody.

23 (~~((31))~~) (32) "Predatory crime of sexual violence" means an offense  
24 listed in subsection (30)(b)(i) of this section, which the court finds,  
25 at a sentencing hearing, was committed against a stranger or an  
26 individual with whom a relationship was established or promoted for the  
27 purpose of victimization.

28 (33) "Restitution" means the requirement that the offender pay a  
29 specific sum of money over a specific period of time to the court as  
30 payment of damages. The sum may include both public and private costs.  
31 The imposition of a restitution order does not preclude civil redress.

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

1       (~~(33)~~) (35) "Serious traffic offense" means:

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

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

10       (~~(34)~~) (36) "Serious violent offense" is a subcategory of violent  
11 offense and means:

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

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

21       (~~(35)~~) (37) "Sentence range" means the sentencing court's  
22 discretionary range in imposing a nonappealable sentence.

23       (~~(36)~~) (38) "Sex offense" means:

24       (a) A felony that is a violation of chapter 9A.44 RCW, other than  
25 RCW 9A.44.130(~~(10)~~) (11), or RCW 9A.64.020 or 9.68A.090 or a felony  
26 that is, under chapter 9A.28 RCW, a criminal attempt, criminal  
27 solicitation, or criminal conspiracy to commit such crimes;

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

31       (c) A felony with a finding of sexual motivation under RCW  
32 9.94A.127 or 13.40.135; or

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

36       (~~(37)~~) (39) "Sexual motivation" means that one of the purposes  
37 for which the defendant committed the crime was for the purpose of his  
38 or her sexual gratification.

1       (~~(38)~~) (40) "Total confinement" means confinement inside the  
2 physical boundaries of a facility or institution operated or utilized  
3 under contract by the state or any other unit of government for twenty-  
4 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5       (~~(39)~~) (41) "Transition training" means written and verbal  
6 instructions and assistance provided by the department to the offender  
7 during the two weeks prior to the offender's successful completion of  
8 the work ethic camp program. The transition training shall include  
9 instructions in the offender's requirements and obligations during the  
10 offender's period of community custody.

11       (~~(40)~~) (42) "Victim" means any person who has sustained  
12 emotional, psychological, physical, or financial injury to person or  
13 property as a direct result of the crime charged.

14       (~~(41)~~) (43) "Violent offense" means:

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

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

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 violent  
33 offense under (a) or (b) of this subsection.

34       (~~(42)~~) (44) "Work crew" means a program of partial confinement  
35 consisting of civic improvement tasks for the benefit of the community  
36 of not less than thirty-five hours per week that complies with RCW  
37 9.94A.135. The civic improvement tasks shall have minimal negative  
38 impact on existing private industries or the labor force in the county  
39 where the service or labor is performed. The civic improvement tasks

1 shall not affect employment opportunities for people with developmental  
2 disabilities contracted through sheltered workshops as defined in RCW  
3 82.04.385. Only those offenders sentenced to a facility operated or  
4 utilized under contract by a county or the state, or sanctioned under  
5 RCW 9.94A.205, are eligible to participate on a work crew. Offenders  
6 sentenced for a sex offense as defined in subsection (~~((+36+))~~) (38) of  
7 this section are not eligible for the work crew program.

8 (~~((+43+))~~) (45) "Work ethic camp" means an alternative incarceration  
9 program designed to reduce recidivism and lower the cost of corrections  
10 by requiring offenders to complete a comprehensive array of real-world  
11 job and vocational experiences, character-building work ethics  
12 training, life management skills development, substance abuse  
13 rehabilitation, counseling, literacy training, and basic adult  
14 education.

15 (~~((+44+))~~) (46) "Work release" means a program of partial confinement  
16 available to offenders who are employed or engaged as a student in a  
17 regular course of study at school. Participation in work release shall  
18 be conditioned upon the offender attending work or school at regularly  
19 defined hours and abiding by the rules of the work release facility.

20 **Sec. 2.** RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c  
21 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as  
22 follows:

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

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

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

32 (3) Whenever a sentence outside the standard range is imposed, the  
33 court shall set forth the reasons for its decision in written findings  
34 of fact and conclusions of law. A sentence outside the standard range  
35 shall be a determinate sentence unless it is imposed on a sexually  
36 violent predator offender eligible to be sentenced under subsection  
37 (12) of this section. An exceptional sentence imposed on an offender  
38 eligible for sentencing under subsection (12) of this section shall be

1 to a minimum term set by the court and a maximum term equal to the  
2 statutory maximum sentence for the offense of conviction.

3 (4) A persistent offender shall be sentenced to a term of total  
4 confinement for life without the possibility of parole or, when  
5 authorized by RCW 10.95.030 for the crime of aggravated murder in the  
6 first degree, sentenced to death, notwithstanding the maximum sentence  
7 under any other law. An offender convicted of the crime of murder in  
8 the first degree shall be sentenced to a term of total confinement not  
9 less than twenty years. An offender convicted of the crime of assault  
10 in the first degree or assault of a child in the first degree where the  
11 offender used force or means likely to result in death or intended to  
12 kill the victim shall be sentenced to a term of total confinement not  
13 less than five years. An offender convicted of the crime of rape in  
14 the first degree shall be sentenced to a term of total confinement not  
15 less than five years. The foregoing minimum terms of total confinement  
16 are mandatory and shall not be varied or modified as provided in  
17 subsection (2) of this section. In addition, all offenders subject to  
18 the provisions of this subsection shall not be eligible for community  
19 custody, earned release time, furlough, home detention, partial  
20 confinement, work crew, work release, or any other form of early  
21 release as defined under RCW 9.94A.150 (1), (2), (3), ~~((5), (7), or~~  
22 ~~(8))~~ (6), (8), or (9), or any other form of authorized leave of  
23 absence from the correctional facility while not in the direct custody  
24 of a corrections officer or officers during such minimum terms of total  
25 confinement except: (a) In the case of an offender in need of  
26 emergency medical treatment; (b) for the purpose of commitment to an  
27 inpatient treatment facility in the case of an offender convicted of  
28 the crime of rape in the first degree; or (c) for an extraordinary  
29 medical placement when authorized under RCW 9.94A.150(4).

30 (5)(a) In sentencing a first-time offender the court may waive the  
31 imposition of a sentence within the sentence range and impose a  
32 sentence which may include up to ninety days of confinement in a  
33 facility operated or utilized under contract by the county and a  
34 requirement that the offender refrain from committing new offenses.  
35 The sentence may also include a term of community supervision or  
36 community custody as specified in (b) of this subsection, which, in  
37 addition to crime-related prohibitions, may include requirements that  
38 the offender perform any one or more of the following:

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

1 (ii) Undergo available outpatient treatment for up to the period  
2 specified in (b) of this subsection, or inpatient treatment not to  
3 exceed the standard range of confinement for that offense;

4 (iii) Pursue a prescribed, secular course of study or vocational  
5 training;

6 (iv) Remain within prescribed geographical boundaries and notify  
7 the community corrections officer prior to any change in the offender's  
8 address or employment;

9 (v) Report as directed to a community corrections officer; or

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

12 (b) The terms and statuses applicable to sentences under (a) of  
13 this subsection are:

14 (i) For sentences imposed on or after July 25, 1999, for crimes  
15 committed before July 1, 2000, up to one year of community supervision.  
16 If treatment is ordered, the period of community supervision may  
17 include up to the period of treatment, but shall not exceed two years;  
18 and

19 (ii) For crimes committed on or after July 1, 2000, up to one year  
20 of community custody unless treatment is ordered, in which case the  
21 period of community custody may include up to the period of treatment,  
22 but shall not exceed two years. Any term of community custody imposed  
23 under this subsection (5) is subject to conditions and sanctions as  
24 authorized in this subsection (5) and in subsection (11)(b) and (c) of  
25 this section.

26 (c) The department shall discharge from community supervision any  
27 offender sentenced under this subsection (5) before July 25, 1999, who  
28 has served at least one year of community supervision and has completed  
29 any treatment ordered by the court.

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

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

35 (ii) The offender has no current or prior convictions for a sex  
36 offense or violent offense in this state, another state, or the United  
37 States;

38 (iii) For a violation of the uniform controlled substances act  
39 under chapter 69.50 RCW or a criminal solicitation to commit such a

1 violation under chapter 9A.28 RCW, the offense involved only a small  
2 quantity of the particular controlled substance as determined by the  
3 judge upon consideration of such factors as the weight, purity,  
4 packaging, sale price, and street value of the controlled substance;  
5 and

6 (iv) The offender has not been found by the United States attorney  
7 general to be subject to a deportation detainer or order.

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

21 The court shall also impose:

22 (i) The remainder of the midpoint of the standard range as a term  
23 of community custody which must include appropriate substance abuse  
24 treatment in a program that has been approved by the division of  
25 alcohol and substance abuse of the department of social and health  
26 services;

27 (ii) Crime-related prohibitions including a condition not to use  
28 illegal controlled substances; and

29 (iii) A requirement to submit to urinalysis or other testing to  
30 monitor that status.

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

39 (A) Devote time to a specific employment or training;

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

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

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

6 (E) Perform community service work;

7 (F) Stay out of areas designated by the sentencing judge;

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

10 (c) If the offender violates any of the sentence conditions in (b)  
11 of this subsection, a violation hearing shall be held by the department  
12 unless waived by the offender. If the department finds that conditions  
13 have been willfully violated, the offender may be reclassified to serve  
14 the remaining balance of the original sentence.

15 (d) The department shall determine the rules for calculating the  
16 value of a day fine based on the offender's income and reasonable  
17 obligations which the offender has for the support of the offender and  
18 any dependents. These rules shall be developed in consultation with  
19 the administrator for the courts, the office of financial management,  
20 and the commission.

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

33 (7) If a sentence range has not been established for the  
34 defendant's crime, the court shall impose a determinate sentence which  
35 may include not more than one year of confinement; community service  
36 work; until July 1, 2000, a term of community supervision not to exceed  
37 one year and on and after July 1, 2000, a term of community custody not  
38 to exceed one year, subject to conditions and sanctions as authorized  
39 in subsection (11)(b) and (c) of this section; and/or other legal

1 financial obligations. The court may impose a sentence which provides  
2 more than one year of confinement if the court finds, considering the  
3 purpose of this chapter, that there are substantial and compelling  
4 reasons justifying an exceptional sentence.

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

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

18 The examiner shall assess and report regarding the defendant's  
19 amenability to treatment and relative risk to the community. A  
20 proposed treatment plan shall be provided and shall include, at a  
21 minimum:

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

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

25 (C) Monitoring plans, including any requirements regarding living  
26 conditions, lifestyle requirements, and monitoring by family members  
27 and others;

28 (D) Anticipated length of treatment; and

29 (E) Recommended crime-related prohibitions.

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

36 (ii) After receipt of the reports, the court shall consider whether  
37 the offender and the community will benefit from use of this special  
38 sex offender sentencing alternative and consider the victim's opinion  
39 whether the offender should receive a treatment disposition under this

1 subsection. If the court determines that this special sex offender  
2 sentencing alternative is appropriate, the court shall:

3 (A) Then impose a sentence within the sentence range unless the  
4 offender is eligible to be sentenced under subsection (12) of this  
5 section; or

6 (B) If the offender is eligible to be sentenced under subsection  
7 (12) of this section, then impose a sentence to a maximum term equal to  
8 the statutory maximum sentence for the offense of conviction and a  
9 minimum term within the standard range for the offense of conviction.

10 If ~~((this))~~ the sentence imposed under (a)(ii)(A) of this  
11 subsection is less than eleven years of confinement, the court may  
12 suspend the execution of the sentence ~~((and))~~. If the sentence is  
13 imposed under (a)(ii)(B) of this subsection and is less than eleven  
14 years, the court may suspend both the minimum and the maximum terms.  
15 If the sentence is imposed under either (a)(ii)(A) or (B) of this  
16 subsection, the court may impose the following conditions of  
17 suspension:

18 ~~((A))~~ (I) The court shall place the defendant on community  
19 custody for the length of the suspended sentence or three years,  
20 whichever is greater, and require the offender to comply with any  
21 conditions imposed by the department of corrections under subsection  
22 ~~((15))~~ (16) of this section;

23 ~~((B))~~ (II) The court shall order treatment for any period up to  
24 three years in duration. The court in its discretion shall order  
25 outpatient sex offender treatment or inpatient sex offender treatment,  
26 if available. A community mental health center may not be used for  
27 such 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: ~~((I))~~ Devote time to a specific  
38 employment or occupation; ~~((II))~~ remain within prescribed  
39 geographical boundaries and notify the court or the community

1 corrections officer prior to any change in the offender's address or  
2 employment; ~~((III))~~ report as directed to the court and a community  
3 corrections officer; ~~((IV))~~ pay all court-ordered legal financial  
4 obligations as provided in RCW 9.94A.030, perform community service  
5 work, or any combination thereof; or ~~((V))~~ make recoupment to the  
6 victim for the cost of any counseling required as a result of the  
7 offender's crime; and

8 ~~((C))~~ (III) Sex offenders sentenced under this special sex  
9 offender sentencing alternative are not eligible to accrue any earned  
10 release time while serving a suspended sentence.

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 custody, and either (B) terminate treatment, or (C) extend  
32 treatment for up to the remaining period of community custody.

33 (v) If a violation of conditions occurs during community custody,  
34 the department shall either impose sanctions as provided for in RCW  
35 9.94A.205(2)(a) or refer the violation to the court and recommend  
36 revocation of the suspended sentence as provided for in (a)(vi) of this  
37 subsection.

38 (vi) The court may revoke the suspended sentence at any time during  
39 the period of community custody and order execution of the sentence if:

1 (A) The defendant violates the conditions of the suspended sentence, or  
2 (B) the court finds that the defendant is failing to make satisfactory  
3 progress in treatment. All confinement time served during the period  
4 of community custody shall be credited to the offender if the suspended  
5 sentence is revoked. If the sentence of an offender sentenced under  
6 subsection (12) of this section is revoked pursuant to this subsection,  
7 the offender shall thereafter be released only pursuant to subsection  
8 (12) of this section.

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

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

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

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

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

37 Except for an offender who has been convicted of a violation of RCW  
38 9A.44.040 or 9A.44.050, if the offender completes the treatment program  
39 before the expiration of his or her term of confinement, the department

1 of corrections may request the court to convert the balance of  
2 confinement to community supervision and to place conditions on the  
3 offender including crime-related prohibitions and requirements that the  
4 offender perform any one or more of the following:

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

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

9 (iii) Report as directed to the court and a community corrections  
10 officer;

11 (iv) Undergo available outpatient treatment.

12 If the offender violates any of the terms of his or her community  
13 supervision, the court may order the offender to serve out the balance  
14 of his or her community supervision term in confinement in the custody  
15 of the department of corrections.

16 Nothing in this subsection (8)(b) shall confer eligibility for such  
17 programs for offenders convicted and sentenced for a sex offense  
18 committed prior to July 1, 1987. This subsection (8)(b) does not apply  
19 to any crime committed after July 1, 1990.

20 (c) Offenders convicted and sentenced for a sex offense committed  
21 prior to July 1, 1987, may, subject to available funds, request an  
22 evaluation by the department of corrections to determine whether they  
23 are amenable to treatment. If the offender is determined to be  
24 amenable to treatment, the offender may request placement in a  
25 treatment program within a correctional facility operated by the  
26 department. Placement in such treatment program is subject to  
27 available funds.

28 (d) Within the funds available for this purpose, the department  
29 shall develop and monitor transition and relapse prevention strategies,  
30 including risk assessment and release plans, to reduce risk to the  
31 community after sex offenders' terms of confinement in the custody of  
32 the department.

33 (9)(a)(i) When a court sentences a person to a term of total  
34 confinement to the custody of the department of corrections for an  
35 offense categorized as a sex offense or a serious violent offense  
36 committed after July 1, 1988, but before July 1, 1990, assault in the  
37 second degree, assault of a child in the second degree, any crime  
38 against a person where it is determined in accordance with RCW  
39 9.94A.125 that the defendant or an accomplice was armed with a deadly

1 weapon at the time of commission, or any felony offense under chapter  
2 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
3 committed on or after July 1, 1988, but before July 25, 1999, the court  
4 shall in addition to the other terms of the sentence, sentence the  
5 offender to a one-year term of community placement beginning either  
6 upon completion of the term of confinement or at such time as the  
7 offender is transferred to community custody in lieu of earned release  
8 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
9 an offender under this subsection to the statutory maximum period of  
10 confinement then the community placement portion of the sentence shall  
11 consist entirely of such community custody to which the offender may  
12 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any  
13 period of community custody actually served shall be credited against  
14 the community placement portion of the sentence.

15 (ii) Except for persons sentenced under (b) of this subsection or  
16 subsection (10)(a) of this section, when a court sentences a person to  
17 a term of total confinement to the custody of the department of  
18 corrections for a violent offense, any crime against a person under RCW  
19 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW  
20 not sentenced under subsection (6) of this section, committed on or  
21 after July 25, 1999, but before July 1, 2000, the court shall in  
22 addition to the other terms of the sentence, sentence the offender to  
23 a one-year term of community placement beginning either upon completion  
24 of the term of confinement or at such time as the offender is  
25 transferred to community custody in lieu of earned release in  
26 accordance with RCW 9.94A.150 (1) and (2). When the court sentences  
27 the offender under this subsection (9)(a)(ii) to the statutory maximum  
28 period of confinement, then the community placement portion of the  
29 sentence shall consist entirely of such community custody to which the  
30 offender may become eligible, in accordance with RCW 9.94A.150 (1) and  
31 (2). Any period of community custody actually served shall be credited  
32 against the community 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, or a serious violent offense, vehicular homicide,  
37 or vehicular assault, committed on or after July 1, 1990, but before  
38 July 1, 2000, the court shall in addition to other terms of the  
39 sentence, sentence the offender to community placement for two years or

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

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

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

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

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

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

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

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

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

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

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

38 (iv) The offender shall not consume alcohol;

1 (v) The offender shall comply with any crime-related prohibitions;  
2 or

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

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

12 (10)(a) When a court sentences a person to the custody of the  
13 department of corrections for an offense categorized as a sex offense  
14 committed on or after June 6, 1996, but before July 1, 2000, the court  
15 shall, in addition to other terms of the sentence, sentence the  
16 offender to community custody for three years or up to the period of  
17 earned release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever  
18 is longer. The community custody shall begin either upon completion of  
19 the term of confinement or at such time as the offender is transferred  
20 to community custody in lieu of earned release in accordance with RCW  
21 9.94A.150 (1) and (2).

22 (b) Unless a condition is waived by the court, the terms of  
23 community custody shall be the same as those provided for in subsection  
24 (9)(b) of this section and may include those provided for in subsection  
25 (9)(c) of this section. As part of any sentence that includes a term  
26 of community custody imposed under this subsection, the court shall  
27 also require the offender to comply with any conditions imposed by the  
28 department of corrections under subsection ~~((15))~~ (16) of this  
29 section.

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

1 the purposes of RCW 9.94A.195 and may be punishable as contempt of  
2 court as provided for in RCW 7.21.040.

3 (11)(a) When a court sentences a person to the custody of the  
4 department of corrections for a sex offense not sentenced under  
5 subsection (12) of this section, a violent offense, any crime against  
6 a person under RCW 9.94A.440(2), or a felony offense under chapter  
7 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
8 committed on or after July 1, 2000, the court shall in addition to the  
9 other terms of the sentence, sentence the offender to community custody  
10 for the community custody range or up to the period of earned release  
11 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.  
12 The community custody shall begin either upon completion of the term of  
13 confinement or at such time as the offender is transferred to community  
14 custody in lieu of earned release in accordance with RCW 9.94A.150 (1)  
15 and (2).

16 (b) Unless a condition is waived by the court, the conditions of  
17 community custody shall include those provided for in subsection  
18 (9)(b)(i) through (vi) of this section. The conditions may also  
19 include those provided for in subsection (9)(c)(i) through (vi) of this  
20 section. The court may also order the offender to participate in  
21 rehabilitative programs or otherwise perform affirmative conduct  
22 reasonably related to the circumstances of the offense, the offender's  
23 risk of reoffending, or the safety of the community, and the department  
24 shall enforce such conditions pursuant to (f) of this subsection. As  
25 part of any sentence that includes a term of community custody imposed  
26 under this subsection, the court shall also require the offender to  
27 comply with any conditions imposed by the department of corrections  
28 under subsection (~~((15))~~) (16) of this section. The department shall  
29 assess the offender's risk of reoffense and may establish and modify  
30 additional conditions of the offender's community custody based upon  
31 the risk to community safety. The department may not impose conditions  
32 that are contrary to those ordered by the court and may not contravene  
33 or decrease court imposed conditions. The department shall notify the  
34 offender in writing of any such conditions or modifications. In  
35 setting, modifying, and enforcing conditions of community custody, the  
36 department shall be deemed to be performing a quasi-judicial function.

37 (c) If an offender violates conditions imposed by the court or the  
38 department pursuant to this subsection during community custody, the  
39 department may transfer the offender to a more restrictive confinement

1 status and impose other available sanctions as provided in RCW  
2 9.94A.205 and 9.94A.207.

3 (d) Except for terms of community custody under subsection (8) of  
4 this section, the department shall discharge the offender from  
5 community custody on a date determined by the department, which the  
6 department may modify, based on risk and performance of the offender,  
7 within the range or at the end of the period of earned release,  
8 whichever is later.

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

23 (f) Within the funds available for community custody, the  
24 department shall determine conditions and duration of community custody  
25 on the basis of risk to community safety, and shall supervise offenders  
26 during community custody on the basis of risk to community safety and  
27 conditions imposed by the court. The secretary shall adopt rules to  
28 implement the provisions of this subsection (11)(f).

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

36 (12)(a) An offender who has been convicted of a sex offense  
37 committed on or after July 1, 2000, shall be sentenced as a sexually  
38 violent predator if the offender is not a persistent offender and the

1 court finds that the current offense, or any prior offense of which the  
2 offender was convicted, was a predatory crime of sexual violence.

3 (b) Upon a finding at the sentencing hearing that the offender is  
4 a sexually violent predator, the court shall impose one of the  
5 following sentences:

6 (i) A sentence under subsection (8) of this section if the offender  
7 is otherwise eligible for such a sentence;

8 (ii) A sentence outside the standard range pursuant to subsection  
9 (2) of this section and RCW 9.94A.390, if the offender is otherwise  
10 eligible for such a sentence; or

11 (iii) A sentence to a maximum term consisting of the statutory  
12 maximum sentence for the offense and a minimum term within the standard  
13 sentence range for the offense.

14 (c) A sexually violent predator sentenced under (b)(ii) or (iii) of  
15 this subsection, or whose suspended sentence under subsection (8) of  
16 this subsection has been revoked and ordered executed, shall serve the  
17 sentence in a facility or institution operated, or utilized under  
18 contract, by the state.

19 (d) The department shall provide the offender with the opportunity  
20 for sex offender treatment during incarceration. Before the expiration  
21 of the minimum term, as part of the end of sentence review process  
22 under RCW 72.09.340 and 72.09.345, the department shall conduct, and  
23 the offender shall participate in, an examination of the offender,  
24 incorporating methodologies that are recognized by experts in the  
25 prediction of sexual dangerousness, and including a prediction of the  
26 probability that the offender will engage in predatory crimes of sexual  
27 violence if released. The indeterminate sentence review board may  
28 contract for an additional, independent examination, subject to the  
29 standards in this subsection.

30 (e) No later than ninety days before expiration of the minimum  
31 term, the indeterminate sentence review board shall conduct a hearing  
32 to determine whether it is likely that the offender will engage in  
33 predatory crimes of sexual violence if released on conditions set by  
34 the board. The board may consider an offender's failure to participate  
35 in an evaluation under (d) of this subsection in determining whether to  
36 release the offender. The board shall order the offender released,  
37 under such conditions as the board determines appropriate, unless the  
38 board determines by a preponderance of the evidence that, despite such  
39 conditions, it is more likely than not that the offender will commit

1 predatory crimes of sexual violence if released. If the board does not  
2 order the offender released, the board shall establish a new minimum  
3 term, not to exceed the remainder of the maximum term.

4 (f) An offender released by the board under this subsection shall  
5 be subject to the supervision of the department until the expiration of  
6 the maximum term of the sentence. The department shall monitor the  
7 offender's compliance with release conditions set by the board, and  
8 promptly report any violations to the board. The department may  
9 recommend conditions of release, subject to board approval. The board  
10 may modify conditions of release at any time. Any violation of release  
11 conditions established or modified by the board shall be subject to the  
12 provisions of sections 3 through 8 of this act.

13 (g) If the department finds that an emergency exists requiring the  
14 immediate imposition of conditions of release in addition to those set  
15 by the board under (e) and (f) of this subsection in order to prevent  
16 the offender from committing a crime, the department may impose  
17 additional conditions. The department may not impose conditions that  
18 are contrary to those set by the board and may not contravene or  
19 decrease board-imposed conditions. Conditions imposed under this  
20 subsection (12)(g) shall take effect immediately, but shall not remain  
21 in effect longer than seven working days unless approved by the board  
22 under (f) of this subsection within seven working days. The board and  
23 the secretary shall adopt rules to implement the provisions of this  
24 subsection (12)(g).

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

31 ((13)) (14) If a sentence imposed includes payment of a legal  
32 financial obligation, the sentence shall specify the total amount of  
33 the legal financial obligation owed, and shall require the offender to  
34 pay a specified monthly sum toward that legal financial obligation.  
35 Restitution to victims shall be paid prior to any other payments of  
36 monetary obligations. Any legal financial obligation that is imposed  
37 by the court may be collected by the department, which shall deliver  
38 the amount paid to the county clerk for credit. The offender's  
39 compliance with payment of legal financial obligations shall be

1 supervised by the department for ten years following the entry of the  
2 judgment and sentence or ten years following the offender's release  
3 from total confinement. All monetary payments ordered shall be paid no  
4 later than ten years after the last date of release from confinement  
5 pursuant to a felony conviction or the date the sentence was entered  
6 unless the superior court extends the criminal judgment an additional  
7 ten years. If the legal financial obligations including crime victims'  
8 assessments are not paid during the initial ten-year period, the  
9 superior court may extend jurisdiction under the criminal judgment an  
10 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
11 9.94A.145. If jurisdiction under the criminal judgment is extended,  
12 the department is not responsible for supervision of the offender  
13 during the subsequent period. Independent of the department, the party  
14 or entity to whom the legal financial obligation is owed shall have the  
15 authority to utilize any other remedies available to the party or  
16 entity to collect the legal financial obligation. Nothing in this  
17 section makes the department, the state, or any of its employees,  
18 agents, or other persons acting on their behalf liable under any  
19 circumstances for the payment of these legal financial obligations. If  
20 an order includes restitution as one of the monetary assessments, the  
21 county clerk shall make disbursements to victims named in the order.

22 ~~((14))~~ (15) Except as provided under RCW 9.94A.140(1) and  
23 9.94A.142(1), a court may not impose a sentence providing for a term of  
24 confinement or community supervision, community placement, or community  
25 custody which exceeds the statutory maximum for the crime as provided  
26 in chapter 9A.20 RCW.

27 ~~((15))~~ (16) All offenders sentenced to terms involving community  
28 supervision, community service, community placement, community custody,  
29 or legal financial obligation shall be under the supervision of the  
30 department of corrections and shall follow explicitly the instructions  
31 and conditions of the department of corrections. The department may  
32 require an offender to perform affirmative acts it deems appropriate to  
33 monitor compliance with the conditions of the sentence imposed.

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

1 (b) For offenders sentenced to terms involving community custody  
2 for crimes committed on or after June 6, 1996, the department may  
3 include, in addition to the instructions in (a) of this subsection, any  
4 appropriate conditions of supervision, including but not limited to,  
5 prohibiting the offender from having contact with any other specified  
6 individuals or specific class of individuals. For offenders sentenced  
7 to terms of community custody for crimes committed on or after July 1,  
8 2000, the department may additionally require the offender to  
9 participate in rehabilitative programs or otherwise perform affirmative  
10 conduct, and to obey all laws.

11 The conditions authorized under this subsection (~~((+15+))~~) (16)(b)  
12 may be imposed by the department prior to or during an offender's  
13 community custody term. If a violation of conditions imposed by the  
14 court or the department pursuant to subsection (10) of this section  
15 occurs during community custody, it shall be deemed a violation of  
16 community placement for the purposes of RCW 9.94A.207 and shall  
17 authorize the department to transfer an offender to a more restrictive  
18 confinement status as provided in RCW 9.94A.205. At any time prior to  
19 the completion of an offender's term of community custody, the  
20 department may recommend to the court that any or all of the conditions  
21 imposed by the court or the department pursuant to subsection (10) or  
22 (11) of this section be continued beyond the expiration of the  
23 offender's term of community custody as authorized in subsection  
24 (10)(c) or (11)(e) of this section.

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

30 (~~((+16+))~~) (17) All offenders sentenced to terms involving community  
31 supervision, community service, community custody, or community  
32 placement under the supervision of the department of corrections shall  
33 not own, use, or possess firearms or ammunition. Offenders who own,  
34 use, or are found to be in actual or constructive possession of  
35 firearms or ammunition shall be subject to the appropriate violation  
36 process and sanctions. "Constructive possession" as used in this  
37 subsection means the power and intent to control the firearm or  
38 ammunition. "Firearm" as used in this subsection means a weapon or

1 device from which a projectile may be fired by an explosive such as  
2 gunpowder.

3 ~~((17))~~ (18) The sentencing court shall give the offender credit  
4 for all confinement time served before the sentencing if that  
5 confinement was solely in regard to the offense for which the offender  
6 is being sentenced.

7 ~~((18))~~ (19) A departure from the standards in RCW 9.94A.400 (1)  
8 and (2) governing whether sentences are to be served consecutively or  
9 concurrently is an exceptional sentence subject to the limitations in  
10 subsections (2) and (3) of this section, and may be appealed by the  
11 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

12 ~~((19))~~ (20) The court shall order restitution whenever the  
13 offender is convicted of a felony that results in injury to any person  
14 or damage to or loss of property, whether the offender is sentenced to  
15 confinement or placed under community supervision, unless extraordinary  
16 circumstances exist that make restitution inappropriate in the court's  
17 judgment. The court shall set forth the extraordinary circumstances in  
18 the record if it does not order restitution.

19 ~~((20))~~ (21) As a part of any sentence, the court may impose and  
20 enforce an order that relates directly to the circumstances of the  
21 crime for which the offender has been convicted, prohibiting the  
22 offender from having any contact with other specified individuals or a  
23 specific class of individuals for a period not to exceed the maximum  
24 allowable sentence for the crime, regardless of the expiration of the  
25 offender's term of community supervision or community placement.

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

38 ~~((22))~~ (23) In any sentence of partial confinement, the court may  
39 require the defendant to serve the partial confinement in work release,

1 in a program of home detention, on work crew, or in a combined program  
2 of work crew and home detention.

3 ~~((23))~~ (24) All court-ordered legal financial obligations  
4 collected by the department and remitted to the county clerk shall be  
5 credited and paid where restitution is ordered. Restitution shall be  
6 paid prior to any other payments of monetary obligations.

7 ~~((24))~~ (25) In sentencing an offender convicted of a crime of  
8 domestic violence, as defined in RCW 10.99.020, if the offender has a  
9 minor child, or if the victim of the offense for which the offender was  
10 convicted has a minor child, the court may, as part of any term of  
11 community supervision, order the offender to participate in a domestic  
12 violence perpetrator program approved under RCW 26.50.150.

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

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

35 NEW SECTION. **Sec. 3.** Whenever the board or a community  
36 corrections officer of this state has reason to believe an offender  
37 released under RCW 9.94A.120(12) has violated a release condition or  
38 the laws of this state, any community corrections officer may arrest or

1 cause the arrest and detention of the offender pending a determination  
2 by the board whether the offender's release should be revoked. The  
3 community corrections officer shall report all facts and circumstances  
4 surrounding the alleged violation to the board, with recommendations.  
5 On the basis of the community corrections officer's report, the board  
6 may revise or modify the conditions of release, or order the arrest and  
7 detention of the offender by peace officers until arrangements can be  
8 made by the board to return the offender to state correctional  
9 facilities. Any modifications or revisions of the conditions of  
10 release or the order suspending release status shall be personally  
11 served upon the offender.

12 NEW SECTION. **Sec. 4.** Any offender released under RCW  
13 9.94A.120(12) who is arrested and detained in physical custody by the  
14 authority of a community corrections officer, or upon the written order  
15 of the board, shall not be released from custody on bail or personal  
16 recognizance, except upon approval of the board and the issuance by the  
17 board of an order reinstating the offender's release on the same or  
18 modified conditions. All chiefs of police, marshals of cities and  
19 towns, sheriffs of counties, and all police, prison, and peace officers  
20 and constables shall execute any such order in the same manner as any  
21 ordinary criminal process.

22 NEW SECTION. **Sec. 5.** Whenever an offender released by the board  
23 under RCW 9.94A.120(12) is accused of violating a condition of release,  
24 other than the commission of, and conviction for, a felony or  
25 misdemeanor under the laws of this state, the laws of any state where  
26 the offender may then be, or federal law, the offender shall be  
27 entitled to a fair and impartial hearing of such charges within thirty  
28 days from the time that the offender is served with charges of the  
29 violation of conditions of release after arrest and detention. The  
30 hearing shall be held before one or more members of the board at a  
31 place or places within the state, reasonably near the site of the  
32 alleged violation or violations.

33 NEW SECTION. **Sec. 6.** In the event the board suspends release  
34 status of an offender released under RCW 9.94A.120(12) by reason of an  
35 alleged violation of a condition of release, or pending disposition of  
36 a new criminal charge, the board may nullify the suspension order and

1 reinstate release under previous conditions or any new conditions the  
2 board determines advisable. Before the board may nullify a suspension  
3 order and reinstate release, it shall determine that the best interests  
4 of society and the offender shall be served by such reinstatement  
5 rather than return to confinement.

6 NEW SECTION. **Sec. 7.** (1) Within fifteen days from the date of  
7 notice to the department of the arrest and detention of an offender  
8 released under RCW 9.94A.120(12) who is alleged to have violated a  
9 condition of release, the offender shall be personally served by a  
10 state community corrections officer with a copy of the factual  
11 allegations of the violation of the conditions of release, and at the  
12 same time shall be advised of rights pertaining to an on-site  
13 revocation hearing and the rights and privileges provided in this  
14 section. The alleged violator, after service of the allegations of  
15 violations of the conditions and advice of rights, may waive the on-  
16 site revocation hearing and admit one or more of the alleged  
17 violations. If the board accepts the waiver it shall either: (a)  
18 Reinstate the offender's release status under the same or modified  
19 conditions; or (b) revoke release and enter an order of revocation and  
20 return to state custody. The board shall determine a new minimum  
21 sentence, not to exceed the unserved portion of the statutory maximum  
22 sentence, within thirty days of return to state custody. If the board  
23 rejects the waiver made by the offender, it shall hold an on-site  
24 revocation hearing under the provisions of this subsection.

25 (2) At any on-site revocation hearing the alleged violator shall be  
26 entitled to be represented by an attorney of the alleged violator's own  
27 choosing and at the alleged violator's own expense. Upon the alleged  
28 violator's presentation of satisfactory evidence of indigency and  
29 request for the appointment of an attorney, the board may cause the  
30 appointment of an attorney to represent the alleged violator, to be  
31 paid for at state expense, and the board may assume all or such other  
32 expenses in the presentation of evidence on behalf of the alleged  
33 violator as it may have authorized. Attorneys to represent alleged  
34 violators in on-site hearings shall be appointed by the superior courts  
35 for the counties wherein the on-site hearing is to be held and shall be  
36 compensated in such manner and in such amount as shall be fixed in a  
37 schedule of fees adopted by the board.

1 (3) In conducting on-site revocation hearings, the board shall have  
2 the authority to administer oaths and affirmations, examine witnesses,  
3 receive evidence, and issue subpoenas for compulsory attendance of  
4 witnesses and the production of evidence for presentation at such  
5 hearings. Subpoenas issued by the board shall be effective throughout  
6 the state. Witnesses in attendance at any on-site revocation hearing  
7 shall be paid the same fees and allowances, and in the same manner and  
8 under the same conditions as provided for witnesses in the courts of  
9 the state in accordance with chapter 2.40 RCW. If any person, after  
10 the board has offered to pay statutory fees and mileage at the time of  
11 service of the subpoena, fails or refuses to obey a subpoena issued by  
12 the board, or obeys the subpoena but refuses to testify concerning any  
13 matter under examination at the hearing, the board may petition the  
14 superior court of the county where the hearing is being conducted for  
15 enforcement of the subpoena. The petition shall be accompanied by a  
16 copy of the subpoena and proof of service, and shall set forth in what  
17 specific manner the subpoena has not been complied with, and shall ask  
18 an order of the court to compel the witness to appear and testify  
19 before the board. The court, upon such petition, shall enter an order  
20 directing the witness to appear before the court at a time and place to  
21 be fixed in such order and then and there to show cause why the witness  
22 has not responded to the subpoena or has refused to testify. A copy of  
23 the order shall be served upon the witness. If it appears to the court  
24 that the subpoena was properly issued and that the particular questions  
25 which the witness refuses to answer are reasonable and relevant, the  
26 court shall enter an order that the witness appear at the time and  
27 place fixed in the order and testify or produce the required papers,  
28 and on failing to obey said order the witness shall be dealt with as  
29 for contempt of court.

30 (4) At all on-site revocation hearings the community corrections  
31 officer of the department, having made the allegations of the  
32 violations of the conditions of release, may be represented by the  
33 attorney general. The attorney general may make independent  
34 recommendations to the board about whether the violations constitute  
35 sufficient cause for the revocation of release status and return of the  
36 offender to a state correctional facility. The hearings shall be open  
37 to the public unless the board for specifically stated reasons closes  
38 the hearing in whole or in part. The hearings shall be recorded on  
39 audiotape. An alleged violator of release conditions may be requested

1 to testify and any such testimony shall be used against the offender in  
2 any criminal prosecution. The board shall adopt rules governing the  
3 formal and informal procedures authorized by this chapter and make  
4 rules of practice before the board in on-site community custody  
5 revocation hearings, together with forms and instructions.

6 (5) After the on-site revocation hearing has been concluded, the  
7 members of the board having heard the matter shall enter their decision  
8 of record within ten days, and make findings and conclusions upon the  
9 allegations of the violations of the conditions of release. If the  
10 member or members having heard the matter should conclude that the  
11 allegations have not been proven by a preponderance of the evidence, or  
12 that those which have been proven by a preponderance of the evidence  
13 are not sufficient cause for the revocation of release, then the  
14 offender shall be reinstated on release status on the same or modified  
15 conditions. For violations of release conditions not resulting in new  
16 convictions, modified conditions may include sanctions based on an  
17 administrative grid. If the member or members having heard the matter  
18 should conclude that the allegations have been proven by a  
19 preponderance of the evidence and constitute sufficient cause for  
20 revocation of release, then the member or members shall enter an order  
21 of revocation and return the offender to state custody. Within thirty  
22 days of the offender's return to a state correctional facility the  
23 board shall enter an order determining a new minimum sentence, not to  
24 exceed the remaining unserved portion of the statutory maximum  
25 sentence.

26 (6) All officers and employees of the state, counties, cities, and  
27 political subdivisions of the state shall cooperate with the board in  
28 making available suitable facilities for conducting revocation  
29 hearings.

30 NEW SECTION. **Sec. 8.** To assist it in fixing a new minimum  
31 sentence and in fixing the conditions for an offender's release from  
32 confinement under RCW 9.94A.120(12), it shall be the duty of the board  
33 not only to inform itself thoroughly as to the facts of the offender's  
34 crime but also to inform itself as thoroughly as possible of the  
35 offender's personality. The department and the institutions under its  
36 control shall make available to the board on request its case  
37 investigations, any file, or other record in order to assist the board

1 in developing information for carrying out the purposes of this  
2 section.

3 **Sec. 9.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to read  
4 as follows:

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

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

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

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

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

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

20 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

32 In making the appointments, the governor shall endeavor to assure  
33 that the commission membership includes adequate representation and  
34 expertise relating to both the adult criminal justice system and the  
35 juvenile justice system. In making the appointments, the governor  
36 shall seek the recommendations of Washington prosecutors in respect to  
37 the prosecuting attorney members, of the Washington state bar  
38 association in respect to the defense attorney members, of the

1 association of superior court judges in respect to the members who are  
2 judges, of the Washington association of sheriffs and police chiefs in  
3 respect to the member who is a law enforcement officer, of the  
4 Washington state association of counties in respect to the member who  
5 is a county official, of the association of Washington cities in  
6 respect to the member who is a city official, of the office of crime  
7 victims advocacy and other organizations of crime victims in respect to  
8 the member who is a victim of crime or a crime victims' advocate, and  
9 of the Washington association of juvenile court administrators in  
10 respect to the member who is an administrator of juvenile court  
11 services.

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

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

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

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

30 **Sec. 10.** RCW 9.94A.190 and 1995 c 108 s 4 are each amended to read  
31 as follows:

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

1 residence of either the defendant or a member of the defendant's  
2 immediate family.

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

15 (3) A person who is sentenced for a felony to a term of not more  
16 than one year, and who is committed or returned to incarceration in a  
17 state facility on another felony conviction, either under the  
18 indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter  
19 shall serve all terms of confinement, including a sentence of not more  
20 than one year, in a facility or institution operated, or utilized under  
21 contract, by the state, consistent with the provisions of RCW  
22 9.94A.400.

23 (4) For sentences imposed pursuant to RCW 9.94A.120(6) which have  
24 a sentence range of over one year, notwithstanding any other provision  
25 of this section all such sentences regardless of length shall be served  
26 in a facility or institution operated, or utilized under contract, by  
27 the state.

28 (5) Sentences imposed pursuant to RCW 9.94A.120(12) shall be served  
29 in a facility or institution operated, or utilized under contract, by  
30 the state.

31 **Sec. 11.** RCW 9.94A.370 and 1999 c 143 s 16 are each amended to  
32 read as follows:

33 (1) The intersection of the column defined by the offender score  
34 and the row defined by the offense seriousness score determines the  
35 presumptive sentencing range (see RCW 9.94A.310, (Table 1)). The  
36 additional time for deadly weapon findings or for those offenses  
37 enumerated in RCW 9.94A.310(4) that were committed in a state  
38 correctional facility or county jail shall be added to the entire

1 presumptive sentence range. The court may impose any sentence within  
2 the range that it deems appropriate. All presumptive sentence ranges  
3 are expressed in terms of total confinement.

4 (2) In determining any sentence, the trial court may rely on no  
5 more information than is admitted by the plea agreement, or admitted,  
6 acknowledged, or proved in a trial or at the time of sentencing.  
7 Acknowledgement includes not objecting to information stated in the  
8 presentence reports. Where the defendant disputes material facts, the  
9 court must either not consider the fact or grant an evidentiary hearing  
10 on the point. The facts shall be deemed proved at the hearing by a  
11 preponderance of the evidence. Facts that establish the elements of a  
12 more serious crime or additional crimes may not be used to go outside  
13 the presumptive sentence range except upon stipulation or when  
14 specifically provided for in RCW 9.94A.390(2) (d), (e), (g), ((and))  
15 (h), (m), and (n).

16 **Sec. 12.** RCW 9.94A.390 and 1999 c 330 s 1 are each amended to read  
17 as follows:

18 If the sentencing court finds that an exceptional sentence outside  
19 the standard range should be imposed in accordance with RCW  
20 9.94A.120(2), the sentence is subject to review only as provided for in  
21 RCW 9.94A.210(4).

22 The following are illustrative factors which the court may consider  
23 in the exercise of its discretion to impose an exceptional sentence.  
24 The following are illustrative only and are not intended to be  
25 exclusive reasons for exceptional sentences.

26 (1) Mitigating Circumstances

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

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

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

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

37 (e) The defendant's capacity to appreciate the wrongfulness of his  
38 or her conduct or to conform his or her conduct to the requirements of

1 the law, was significantly impaired (voluntary use of drugs or alcohol  
2 is excluded).

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

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

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

12 (2) Aggravating Circumstances

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

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

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

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

23 (i) The current offense involved multiple victims or multiple  
24 incidents per victim;

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

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

29 (iv) The defendant used his or her position of trust, confidence,  
30 or fiduciary responsibility to facilitate the commission of the current  
31 offense.

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

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

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

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

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

8 (v) The current offense involved a high degree of sophistication or  
9 planning or occurred over a lengthy period of time or involved a broad  
10 geographic area of disbursement; or

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

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

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

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

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

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

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

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

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

36 (k) The offense resulted in the pregnancy of a child victim of  
37 rape.

38 (l) The defendant knew that the victim of the current offense was  
39 a youth who was not residing with a legal custodian and the defendant

1 established or promoted the relationship for the primary purpose of  
2 victimization.

3 (m) The defendant has been convicted of a predatory crime of sexual  
4 violence, has a history of similar acts, and lacks amenability to  
5 treatment.

6 (n) The defendant has been convicted of a predatory crime of sexual  
7 violence and the defendant's conduct involved multiple incidents of  
8 cruelty or sexual deviance, directed at the victim over a prolonged  
9 period of time.

10 **Sec. 13.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to read  
11 as follows:

12 The following sections of law do not apply to any felony offense  
13 committed on or after July 1, 1984, except offenses committed on or  
14 after the effective date of this section and sentenced under RCW  
15 9.94A.120(11): RCW 9.95.003, 9.95.005, 9.95.007, 9.95.010, 9.95.015,  
16 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.040, 9.95.052, 9.95.070,  
17 9.95.080, 9.95.090, 9.95.100, 9.95.110, 9.95.115, 9.95.120, 9.95.121,  
18 9.95.122, 9.95.123, 9.95.124, 9.95.125, 9.95.126, 9.95.130, 9.95.140,  
19 9.95.150, 9.95.160, 9.95.170, 9.95.190, 9.95.200, 9.95.210, 9.95.220,  
20 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.350, and  
21 9.95.360.

22 **Sec. 14.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to  
23 read as follows:

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

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

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

32 (a) Class A felony when the crime attempted is murder in the first  
33 degree, murder in the second degree, ((or)) arson in the first degree,  
34 child molestation in the first degree, indecent liberties by forcible  
35 compulsion, rape in the first degree, rape in the second degree, rape  
36 of a child in the first degree, or rape of a child in the second  
37 degree;

1 (b) Class B felony when the crime attempted is a class A felony  
2 other than murder in the first degree, murder in the second degree,  
3 ((or)) arson in the first degree, child molestation in the first  
4 degree, indecent liberties by forcible compulsion, rape in the first  
5 degree, rape in the second degree, rape of a child in the first degree,  
6 or rape of a child in the second degree;

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

8 (d) Gross misdemeanor when the crime attempted is a class C felony;

9 (e) Misdemeanor when the crime attempted is a gross misdemeanor or  
10 misdemeanor.

11 **Sec. 15.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to read  
12 as follows:

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

15 (a) Intentionally assaults another and thereby recklessly inflicts  
16 substantial bodily harm; or

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

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

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

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

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

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

30 **Sec. 16.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are  
31 each amended to read as follows:

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

35 (2) In any prosecution for kidnapping in the second degree, it is  
36 a defense if established by the defendant by a preponderance of the  
37 evidence that (a) the abduction does not include the use of or intent

1 to use or threat to use deadly force, and (b) the actor is a relative  
2 of the person abducted, and (c) the actor's sole intent is to assume  
3 custody of that person. Nothing contained in this paragraph shall  
4 constitute a defense to a prosecution for, or preclude a conviction of,  
5 any other crime.

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

9 **Sec. 17.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to  
10 read as follows:

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

14 (a) By forcible compulsion;

15 (b) When the other person is incapable of consent by reason of  
16 being mentally defective, mentally incapacitated, or physically  
17 helpless;

18 (c) When the victim is developmentally disabled and the perpetrator  
19 is a person who is not married to the victim and who has supervisory  
20 authority over the victim;

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

28 (e) When the victim is a resident of a facility for mentally  
29 disordered or chemically dependent persons and the perpetrator is a  
30 person who is not married to the victim and has supervisory authority  
31 over the victim; or

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

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

1        NEW SECTION.    **Sec. 18.**    RCW 9.95.0011 (Indeterminate sentence  
2 review board--Report--Recommendation of governor) and 1997 c 350 s 1,  
3 1989 c 259 s 4, & 1986 c 224 s 12 are each repealed.

4        NEW SECTION.    **Sec. 19.**    The secretary of corrections and the  
5 indeterminate sentence review board may adopt rules to implement  
6 sections 2 through 8 of this act.

7        NEW SECTION.    **Sec. 20.**    Sections 3 through 8 of this act are each  
8 added to chapter 9.94A RCW.

9        NEW SECTION.    **Sec. 21.**    This act shall not affect the validity of  
10 any sentence imposed under any other law for any offense committed  
11 before, on, or after the effective date of this act.

12        NEW SECTION.    **Sec. 22.**    This act shall apply to offenses committed  
13 on or after the effective date of this act.

14        NEW SECTION.    **Sec. 23.**    This act is necessary for the immediate  
15 preservation of the public peace, health, or safety, or support of the  
16 state government and its existing public institutions, and takes effect  
17 immediately.

18        NEW SECTION.    **Sec. 24.**    If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

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