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SECOND SUBSTITUTE SENATE BILL 5421

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State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke)

Read first time 03/08/1999.

1 AN ACT Relating to the supervision of offenders in the community;  
2 amending RCW 9.94A.010, 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.170,  
3 9.94A.205, 9.94A.207, 9.94A.383, and 9.94A.440; reenacting and amending  
4 RCW 9.94A.040 and 9.94A.145; adding new sections to chapter 72.09 RCW;  
5 creating new sections; prescribing penalties; providing an effective  
6 date; and providing an expiration date.

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

8 **Sec. 1.** RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read  
9 as follows:

10 The purpose of this chapter is to make the criminal justice system  
11 accountable to the public by developing a system for the sentencing of  
12 felony offenders which structures, but does not eliminate,  
13 discretionary decisions affecting sentences, and to (~~add a new chapter~~  
14 ~~to Title 9 RCW designed to~~):

15 (1) Ensure that the punishment for a criminal offense is  
16 proportionate to the seriousness of the offense and the offender's  
17 criminal history;

18 (2) Promote respect for the law by providing punishment which is  
19 just;

- 1 (3) Be commensurate with the punishment imposed on others
- 2 committing similar offenses;
- 3 (4) Protect the public;
- 4 (5) Offer the offender an opportunity to improve him or herself;
- 5 (~~and~~)
- 6 (6) Make frugal use of the state's and local governments'
- 7 resources; and
- 8 (7) Reduce the risk of reoffending by offenders in the community.

9 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read  
10 as follows:

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

13 (1) "Collect," or any derivative thereof, "collect and remit," or  
14 "collect and deliver," when used with reference to the department of  
15 corrections, means that the department, either directly or through a  
16 collection agreement authorized by RCW 9.94A.145, is responsible for  
17 monitoring and enforcing the offender's sentence with regard to the  
18 legal financial obligation, receiving payment thereof from the  
19 offender, and, consistent with current law, delivering daily the entire  
20 payment to the superior court clerk without depositing it in a  
21 departmental account.

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

23 (3) "Community corrections officer" means an employee of the  
24 department who is responsible for carrying out specific duties in  
25 supervision of sentenced offenders and monitoring of sentence  
26 conditions.

27 (4) "Community custody" means that portion of an (~~inmate's~~)  
28 offender's sentence of confinement in lieu of earned (~~early~~) release  
29 time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), (~~or~~)~~  
30 ~~(10), or (11), or RCW 9.94A.383,~~ served in the community subject to  
31 controls placed on the (~~inmate's~~) offender's movement and activities  
32 by the department of corrections. For offenders placed on community  
33 custody for crimes committed on or after July 1, 2000, the department  
34 shall assess the offender's risk of reoffense and may establish and  
35 modify conditions of community custody, in addition to those imposed by  
36 the court, based upon the risk to community safety.

37 (5) "Community custody range" means the minimum and maximum period  
38 of community custody included as part of a sentence under RCW 9.94A.120

1 (11), as established by the sentencing guidelines commission or the  
2 legislature under RCW 9.94A.040, for crimes committed on or after July  
3 1, 2000.

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

12 ((+6)) (7) "Community service" means compulsory service, without  
13 compensation, performed for the benefit of the community by the  
14 offender.

15 ((+7)) (8) "Community supervision" means a period of time during  
16 which a convicted offender is subject to crime-related prohibitions and  
17 other sentence conditions imposed by a court pursuant to this chapter  
18 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the  
19 supervision may include crime-related prohibitions and other conditions  
20 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate  
21 compact for out-of-state supervision of parolees and probationers, RCW  
22 9.95.270, community supervision is the functional equivalent of  
23 probation and should be considered the same as probation by other  
24 states.

25 ((+8)) (9) "Confinement" means total or partial confinement as  
26 defined in this section.

27 ((+9)) (10) "Conviction" means an adjudication of guilt pursuant  
28 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of  
29 guilty, and acceptance of a plea of guilty.

30 ((+10)) (11) "Court-ordered legal financial obligation" means a  
31 sum of money that is ordered by a superior court of the state of  
32 Washington for legal financial obligations which may include  
33 restitution to the victim, statutorily imposed crime victims'  
34 compensation fees as assessed pursuant to RCW 7.68.035, court costs,  
35 county or interlocal drug funds, court-appointed attorneys' fees, and  
36 costs of defense, fines, and any other financial obligation that is  
37 assessed to the offender as a result of a felony conviction. Upon  
38 conviction for vehicular assault while under the influence of  
39 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular

1 homicide while under the influence of intoxicating liquor or any drug,  
2 RCW 46.61.520(1)(a), legal financial obligations may also include  
3 payment to a public agency of the expense of an emergency response to  
4 the incident resulting in the conviction, subject to the provisions in  
5 RCW 38.52.430.

6 ~~((11))~~ (12) "Crime-related prohibition" means an order of a court  
7 prohibiting conduct that directly relates to the circumstances of the  
8 crime for which the offender has been convicted, and shall not be  
9 construed to mean orders directing an offender affirmatively to  
10 participate in rehabilitative programs or to otherwise perform  
11 affirmative conduct. However, affirmative acts necessary to monitor  
12 compliance with the order of a court may be required by the department.

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

19 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing  
20 judge that equals the difference between the offender's net daily  
21 income and the reasonable obligations that the offender has for the  
22 support of the offender and any dependents.

23 ~~((14))~~ (15) "Day reporting" means a program of enhanced  
24 supervision designed to monitor the defendant's daily activities and  
25 compliance with sentence conditions, and in which the defendant is  
26 required to report daily to a specific location designated by the  
27 department or the sentencing judge.

28 ~~((15))~~ (16) "Department" means the department of corrections.

29 ~~((16))~~ (17) "Determinate sentence" means a sentence that states  
30 with exactitude the number of actual years, months, or days of total  
31 confinement, of partial confinement, of community supervision, the  
32 number of actual hours or days of community service work, or dollars or  
33 terms of a legal financial obligation. The fact that an offender  
34 through "earned ~~((early))~~ release" can reduce the actual period of  
35 confinement shall not affect the classification of the sentence as a  
36 determinate sentence.

37 ~~((17))~~ (18) "Disposable earnings" means that part of the earnings  
38 of an individual remaining after the deduction from those earnings of  
39 any amount required by law to be withheld. For the purposes of this

1 definition, "earnings" means compensation paid or payable for personal  
2 services, whether denominated as wages, salary, commission, bonuses, or  
3 otherwise, and, notwithstanding any other provision of law making the  
4 payments exempt from garnishment, attachment, or other process to  
5 satisfy a court-ordered legal financial obligation, specifically  
6 includes periodic payments pursuant to pension or retirement programs,  
7 or insurance policies of any type, but does not include payments made  
8 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
9 or Title 74 RCW.

10 ~~((18))~~ (19) "Drug offense" means:

11 (a) Any felony violation of chapter 69.50 RCW except possession of  
12 a controlled substance (RCW 69.50.401(d)) or forged prescription for a  
13 controlled substance (RCW 69.50.403);

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

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

20 ~~((19))~~ (20) "Escape" means:

21 (a) Escape in the first degree (RCW 9A.76.110), escape in the  
22 second degree (RCW 9A.76.120), willful failure to return from furlough  
23 (RCW 72.66.060), willful failure to return from work release (RCW  
24 72.65.070), or willful failure to be available for supervision by the  
25 department while in community custody (RCW 72.09.310); or

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

29 ~~((20))~~ (21) "Felony traffic offense" means:

30 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
31 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-  
32 and-run injury-accident (RCW 46.52.020(4)); or

33 (b) 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 felony  
35 traffic offense under (a) of this subsection.

36 ~~((21))~~ (22) "Fines" means the requirement that the offender pay  
37 a specific sum of money over a specific period of time to the court.

38 ~~((22))~~ (23) "First-time offender" means any person who is  
39 convicted of a felony (a) not classified as a violent offense or a sex

1 offense under this chapter, or (b) that is not the manufacture,  
2 delivery, or possession with intent to manufacture or deliver a  
3 controlled substance classified in Schedule I or II that is a narcotic  
4 drug or flunitrazepam classified in Schedule IV, nor the manufacture,  
5 delivery, or possession with intent to deliver methamphetamine, its  
6 salts, isomers, and salts of its isomers as defined in RCW  
7 69.50.206(d)(2), nor the selling for profit of any controlled substance  
8 or counterfeit substance classified in Schedule I, RCW 69.50.204,  
9 except leaves and flowering tops of marihuana, who previously has never  
10 been convicted of a felony in this state, federal court, or another  
11 state, and who has never participated in a program of deferred  
12 prosecution for a felony offense.

13 ~~((23))~~ (24) "Home detention" means a program of partial  
14 confinement available to offenders wherein the offender is confined in  
15 a private residence subject to electronic surveillance.

16 (25) "Most serious offense" means any of the following felonies or  
17 a felony attempt to commit any of the following felonies, as now  
18 existing or hereafter amended:

19 (a) Any felony defined under any law as a class A felony or  
20 criminal solicitation of or criminal conspiracy to commit a class A  
21 felony;

22 (b) Assault in the second degree;

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

24 (d) Child molestation in the second degree;

25 (e) Controlled substance homicide;

26 (f) Extortion in the first degree;

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

28 (h) Indecent liberties;

29 (i) Kidnapping in the second degree;

30 (j) Leading organized crime;

31 (k) Manslaughter in the first degree;

32 (l) Manslaughter in the second degree;

33 (m) Promoting prostitution in the first degree;

34 (n) Rape in the third degree;

35 (o) Robbery in the second degree;

36 (p) Sexual exploitation;

37 (q) Vehicular assault;

38 (r) Vehicular homicide, when proximately caused by the driving of  
39 any vehicle by any person while under the influence of intoxicating

1 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
2 any vehicle in a reckless manner;

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

5 (t) Any other felony with a deadly weapon verdict under RCW  
6 9.94A.125;

7 (u) Any felony offense in effect at any time prior to December 2,  
8 1993, that is comparable to a most serious offense under this  
9 subsection, or any federal or out-of-state conviction for an offense  
10 that under the laws of this state would be a felony classified as a  
11 most serious offense under this subsection;

12 (v)(i) A prior conviction for indecent liberties under RCW  
13 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.  
14 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
15 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
16 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

17 (ii) A prior conviction for indecent liberties under RCW  
18 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
19 if: (A) The crime was committed against a child under the age of  
20 fourteen; or (B) the relationship between the victim and perpetrator is  
21 included in the definition of indecent liberties under RCW  
22 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
23 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
24 through July 27, 1997.

25 (~~((24))~~) (26) "Nonviolent offense" means an offense which is not a  
26 violent offense.

27 (~~((25))~~) (27) "Offender" means a person who has committed a felony  
28 established by state law and is eighteen years of age or older or is  
29 less than eighteen years of age but whose case is under superior court  
30 jurisdiction under RCW 13.04.030 or has been transferred by the  
31 appropriate juvenile court to a criminal court pursuant to RCW  
32 13.40.110. Throughout this chapter, the terms "offender" and  
33 "defendant" are used interchangeably.

34 (~~((26))~~) (28) "Partial confinement" means confinement for no more  
35 than one year in a facility or institution operated or utilized under  
36 contract by the state or any other unit of government, or, if home  
37 detention or work crew has been ordered by the court, in an approved  
38 residence, for a substantial portion of each day with the balance of  
39 the day spent in the community. Partial confinement includes work

1 release, home detention, work crew, and a combination of work crew and  
2 home detention as defined in this section.

3 ~~((+27+))~~ (29) "Persistent offender" is an offender who:

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

6 (ii) Has, before the commission of the offense under (a) of this  
7 subsection, been convicted as an offender on at least two separate  
8 occasions, whether in this state or elsewhere, of felonies that under  
9 the laws of this state would be considered most serious offenses and  
10 would be included in the offender score under RCW 9.94A.360; provided  
11 that of the two or more previous convictions, at least one conviction  
12 must have occurred before the commission of any of the other most  
13 serious offenses for which the offender was previously convicted; or

14 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
15 of a child in the first degree, child molestation in the first degree,  
16 rape in the second degree, rape of a child in the second degree, or  
17 indecent liberties by forcible compulsion; (B) murder in the first  
18 degree, murder in the second degree, homicide by abuse, kidnapping in  
19 the first degree, kidnapping in the second degree, assault in the first  
20 degree, assault in the second degree, assault of a child in the first  
21 degree, or burglary in the first degree, with a finding of sexual  
22 motivation; or (C) an attempt to commit any crime listed in this  
23 subsection ~~((+27+))~~ (29)(b)(i); and

24 (ii) Has, before the commission of the offense under (b)(i) of this  
25 subsection, been convicted as an offender on at least one occasion,  
26 whether in this state or elsewhere, of an offense listed in (b)(i) of  
27 this subsection. A conviction for rape of a child in the first degree  
28 constitutes a conviction under subsection ~~((+27+))~~ (29)(b)(i) only when  
29 the offender was sixteen years of age or older when the offender  
30 committed the offense. A conviction for rape of a child in the second  
31 degree constitutes a conviction under subsection ~~((+27+))~~ (29)(b)(i)  
32 only when the offender was eighteen years of age or older when the  
33 offender committed the offense.

34 ~~((+28+))~~ (30) "Postrelease supervision" is that portion of an  
35 offender's community placement that is not community custody.

36 ~~((+29+))~~ (31) "Restitution" means the requirement that the offender  
37 pay a specific sum of money over a specific period of time to the court  
38 as payment of damages. The sum may include both public and private

1 costs. The imposition of a restitution order does not preclude civil  
2 redress.

3 ~~((+30+))~~ (32) "Risk assessment" means the application of an  
4 objective instrument supported by research and adopted by the  
5 department for the purpose of assessing an offender's risk of  
6 reoffense, taking into consideration the nature of the harm done by the  
7 offender, place and circumstances of the offender related to risk, the  
8 offender's relationship to any victim, and any information provided to  
9 the department by victims. The results of a risk assessment shall not  
10 be based on unconfirmed or unconfirmable allegations.

11 (33) "Serious traffic offense" means:

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

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

20 ~~((+31+))~~ (34) "Serious violent offense" is a subcategory of violent  
21 offense and means:

22 (a) Murder in the first degree, homicide by abuse, murder in the  
23 second degree, manslaughter in the first degree, assault in the first  
24 degree, kidnapping in the first degree, or rape in the first degree,  
25 assault of a child in the first degree, or an attempt, criminal  
26 solicitation, or criminal conspiracy to commit one of these felonies;  
27 or

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

31 ~~((+32+))~~ (35) "Sentence range" means the sentencing court's  
32 discretionary range in imposing a nonappealable sentence.

33 ~~((+33+))~~ (36) "Sex offense" means:

34 (a) A felony that is a violation of chapter 9A.44 RCW or RCW  
35 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a  
36 criminal attempt, criminal solicitation, or criminal conspiracy to  
37 commit such crimes;

38 (b) A felony with a finding of sexual motivation under RCW  
39 9.94A.127 or 13.40.135; or

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

4 (~~(34)~~) (37) "Sexual motivation" means that one of the purposes  
5 for which the defendant committed the crime was for the purpose of his  
6 or her sexual gratification.

7 (~~(35)~~) (38) "Total confinement" means confinement inside the  
8 physical boundaries of a facility or institution operated or utilized  
9 under contract by the state or any other unit of government for twenty-  
10 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

11 (~~(36)~~) (39) "Transition training" means written and verbal  
12 instructions and assistance provided by the department to the offender  
13 during the two weeks prior to the offender's successful completion of  
14 the work ethic camp program. The transition training shall include  
15 instructions in the offender's requirements and obligations during the  
16 offender's period of community custody.

17 (~~(37)~~) (40) "Victim" means any person who has sustained  
18 emotional, psychological, physical, or financial injury to person or  
19 property as a direct result of the crime charged.

20 (~~(38)~~) (41) "Violent offense" means:

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

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

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

1       (~~(39)~~) (42) "Work crew" means a program of partial confinement  
2 consisting of civic improvement tasks for the benefit of the community  
3 of not less than thirty-five hours per week that complies with RCW  
4 9.94A.135. The civic improvement tasks shall have minimal negative  
5 impact on existing private industries or the labor force in the county  
6 where the service or labor is performed. The civic improvement tasks  
7 shall not affect employment opportunities for people with developmental  
8 disabilities contracted through sheltered workshops as defined in RCW  
9 82.04.385. Only those offenders sentenced to a facility operated or  
10 utilized under contract by a county or the state, or sanctioned under  
11 RCW 9.94A.205, are eligible to participate on a work crew. Offenders  
12 sentenced for a sex offense as defined in subsection (~~(33)~~) (36) of  
13 this section are not eligible for the work crew program.

14       (~~(40)~~) (43) "Work ethic camp" means an alternative incarceration  
15 program designed to reduce recidivism and lower the cost of corrections  
16 by requiring offenders to complete a comprehensive array of real-world  
17 job and vocational experiences, character-building work ethics  
18 training, life management skills development, substance abuse  
19 rehabilitation, counseling, literacy training, and basic adult  
20 education.

21       (~~(41)~~) (44) "Work release" means a program of partial confinement  
22 available to offenders who are employed or engaged as a student in a  
23 regular course of study at school. Participation in work release shall  
24 be conditioned upon the offender attending work or school at regularly  
25 defined hours and abiding by the rules of the work release facility.

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

29       **Sec. 3.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are  
30 each reenacted and amended to read as follows:

31       (1) A sentencing guidelines commission is established as an agency  
32 of state government.

33       (2) The legislature finds that the commission, having accomplished  
34 its original statutory directive to implement this chapter, and having  
35 expertise in sentencing practice and policies, shall:

36       (a) Evaluate state sentencing policy, to include whether the  
37 sentencing ranges and standards are consistent with and further:

38       (i) The purposes of this chapter as defined in RCW 9.94A.010; and

1 (ii) The intent of the legislature to emphasize confinement for the  
2 violent offender and alternatives to confinement for the nonviolent  
3 offender.

4 The commission shall provide the governor and the legislature with  
5 its evaluation and recommendations under this subsection not later than  
6 December 1, 1996, and every two years thereafter;

7 (b) Recommend to the legislature revisions or modifications to the  
8 standard sentence ranges, state sentencing policy, prosecuting  
9 standards, and other standards. If implementation of the revisions or  
10 modifications would result in exceeding the capacity of correctional  
11 facilities, then the commission shall accompany its recommendation with  
12 an additional list of standard sentence ranges which are consistent  
13 with correction capacity;

14 (c) Study the existing criminal code and from time to time make  
15 recommendations to the legislature for modification;

16 (d)(i) Serve as a clearinghouse and information center for the  
17 collection, preparation, analysis, and dissemination of information on  
18 state and local adult and juvenile sentencing practices; (ii) develop  
19 and maintain a computerized adult and juvenile sentencing information  
20 system by individual superior court judge consisting of offender,  
21 offense, history, and sentence information entered from judgment and  
22 sentence forms for all adult felons; and (iii) conduct ongoing research  
23 regarding adult and juvenile sentencing guidelines, use of total  
24 confinement and alternatives to total confinement, plea bargaining, and  
25 other matters relating to the improvement of the adult criminal justice  
26 system and the juvenile justice system;

27 (e) Assume the powers and duties of the juvenile disposition  
28 standards commission after June 30, 1996;

29 (f) Evaluate the effectiveness of existing disposition standards  
30 and related statutes in implementing policies set forth in RCW  
31 13.40.010 generally, specifically review the guidelines relating to the  
32 confinement of minor and first offenders as well as the use of  
33 diversion, and review the application of current and proposed juvenile  
34 sentencing standards and guidelines for potential adverse impacts on  
35 the sentencing outcomes of racial and ethnic minority youth;

36 (g) Solicit the comments and suggestions of the juvenile justice  
37 community concerning disposition standards, and make recommendations to  
38 the legislature regarding revisions or modifications of the standards.  
39 The evaluations shall be submitted to the legislature on December 1 of

1 each odd-numbered year. The department of social and health services  
2 shall provide the commission with available data concerning the  
3 implementation of the disposition standards and related statutes and  
4 their effect on the performance of the department's responsibilities  
5 relating to juvenile offenders, and with recommendations for  
6 modification of the disposition standards. The office of the  
7 administrator for the courts shall provide the commission with  
8 available data on diversion and dispositions of juvenile offenders  
9 under chapter 13.40 RCW; and

10 (h) Not later than December 1, 1997, and at least every two years  
11 thereafter, based on available information, report to the governor and  
12 the legislature on:

13 (i) Racial disproportionality in juvenile and adult sentencing;

14 (ii) The capacity of state and local juvenile and adult facilities  
15 and resources; and

16 (iii) Recidivism information on adult and juvenile offenders.

17 (3) Each of the commission's recommended standard sentence ranges  
18 shall include one or more of the following: Total confinement, partial  
19 confinement, community supervision, community service, and a fine.

20 (4) The standard sentence ranges of total and partial confinement  
21 under this chapter are subject to the following limitations:

22 (a) If the maximum term in the range is one year or less, the  
23 minimum term in the range shall be no less than one-third of the  
24 maximum term in the range, except that if the maximum term in the range  
25 is ninety days or less, the minimum term may be less than one-third of  
26 the maximum;

27 (b) If the maximum term in the range is greater than one year, the  
28 minimum term in the range shall be no less than seventy-five percent of  
29 the maximum term in the range, except that for murder in the second  
30 degree in seriousness category XIII under RCW 9.94A.310, the minimum  
31 term in the range shall be no less than fifty percent of the maximum  
32 term in the range; and

33 (c) The maximum term of confinement in a range may not exceed the  
34 statutory maximum for the crime as provided in RCW 9A.20.021.

35 (5)(a) Not later than December 31, 1999, the commission shall  
36 propose to the legislature the initial community custody ranges to be  
37 included in sentences under RCW 9.94A.120(11) for crimes committed on  
38 or after July 1, 2000. Not later than December 31 of each year, the  
39 commission may propose modifications to the ranges. The ranges shall

1 be based on the principles in RCW 9.94A.010, and shall take into  
2 account the funds available to the department for community custody.  
3 The minimum term in each range shall not be less than one-half of the  
4 maximum term.

5 (b) The legislature may, by enactment of a legislative bill, adopt  
6 or modify the community custody ranges proposed by the commission. If  
7 the legislature fails to adopt or modify the initial ranges in its next  
8 regular session after they are proposed, the proposed ranges shall take  
9 effect without legislative approval for crimes committed on or after  
10 July 1, 2000.

11 When the sentencing guidelines commission proposes modifications to  
12 ranges pursuant to this subsection, the legislature may, by enactment  
13 of a bill, adopt or modify the ranges proposed by the commission for  
14 crimes committed on or after July 1 of the year after they were  
15 proposed. Unless the legislature adopts or modifies the commission's  
16 proposal in its next regular session, the proposed ranges shall not  
17 take effect.

18 (6) The commission shall exercise its duties under this section in  
19 conformity with chapter 34.05 RCW.

20 **Sec. 4.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read  
21 as follows:

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

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

33 The court shall, at the time of plea or conviction, order the  
34 department to complete a presentence report before imposing a sentence  
35 upon a defendant who has been convicted of a felony sexual offense.  
36 The department of corrections shall give priority to presentence  
37 investigations for sexual offenders. If the court determines that the  
38 defendant may be a mentally ill person as defined in RCW 71.24.025,

1 although the defendant has not established that at the time of the  
2 crime he or she lacked the capacity to commit the crime, was  
3 incompetent to commit the crime, or was insane at the time of the  
4 crime, the court shall order the department to complete a presentence  
5 report before imposing a sentence.

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

12 If the court is satisfied by a preponderance of the evidence that  
13 the defendant has a criminal history, the court shall specify the  
14 convictions it has found to exist. All of this information shall be  
15 part of the record. Copies of all risk assessment reports and  
16 presentence reports presented to the sentencing court and all written  
17 findings of facts and conclusions of law as to sentencing entered by  
18 the court shall be sent to the department by the clerk of the court at  
19 the conclusion of the sentencing and shall accompany the offender if  
20 the offender is committed to the custody of the department. Court  
21 clerks shall provide, without charge, certified copies of documents  
22 relating to criminal convictions requested by prosecuting attorneys.

23 **Sec. 5.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read  
24 as follows:

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

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

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

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

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

27 (5) In sentencing a first-time offender the court may waive the  
28 imposition of a sentence within the sentence range and impose a  
29 sentence which may include up to ninety days of confinement in a  
30 facility operated or utilized under contract by the county and a  
31 requirement that the offender refrain from committing new offenses.  
32 The sentence may also include up to ((two years)) one year of community  
33 ((supervision, which,)) custody. If treatment has been ordered, the  
34 period of community custody may include up to the period of treatment,  
35 but shall not exceed two years. In addition to crime-related  
36 prohibitions, conditions may include requirements that the offender  
37 perform any one or more of the following:

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

1 (b) Undergo available outpatient treatment for up to (~~two years~~)  
2 one year, or inpatient treatment not to exceed the standard range of  
3 confinement for that offense;

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

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

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

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

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

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

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

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

28 (b) If the midpoint of the standard range is greater than one year  
29 and the sentencing judge determines that the offender is eligible for  
30 this option and that the offender and the community will benefit from  
31 the use of the special drug offender sentencing alternative, the judge  
32 may waive imposition of a sentence within the standard range and impose  
33 a sentence that must include a period of total confinement in a state  
34 facility for one-half of the midpoint of the standard range. During  
35 incarceration in the state facility, offenders sentenced under this  
36 subsection shall undergo a comprehensive substance abuse assessment and  
37 receive, within available resources, treatment services appropriate for  
38 the offender. The treatment services shall be designed by the division  
39 of alcohol and substance abuse of the department of social and health

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

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

1 obligations which the offender has for the support of the offender and  
2 any dependents. These rules shall be developed in consultation with  
3 the administrator for the courts, the office of financial management,  
4 and the commission.

5 (7) If a sentence range has not been established for the  
6 defendant's crime, the court shall impose a determinate sentence which  
7 may include not more than one year of confinement((~~τ~~)); community  
8 service work; until July 1, 2000, a term of community supervision not  
9 to exceed one year((~~τ~~)) and on and after July 1, 2000, a term of  
10 community custody not to exceed one year, subject to conditions and  
11 sanctions as authorized in subsection (11)(b) and (c) of this section;  
12 and/or other legal financial obligations. The court may impose a  
13 sentence which provides more than one year of confinement if the court  
14 finds, considering the purpose of this chapter, that there are  
15 substantial and compelling reasons justifying an exceptional sentence.

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

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

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

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

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

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

39 (D) Anticipated length of treatment; and

1 (E) Recommended crime-related prohibitions.

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

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

17 (A) The court shall place the defendant on community custody for  
18 the length of the suspended sentence or three years, whichever is  
19 greater, and require the offender to comply with any conditions imposed  
20 by the department of corrections under subsection (~~(+14)~~) (15) of this  
21 section;

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

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

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

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

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

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

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

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

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

36 (v) If a violation of conditions occurs during community custody,  
37 the department shall either impose sanctions as provided for in RCW  
38 9.94A.205(2)(a) or refer the violation to the court and recommend

1 revocation of the suspended sentence as provided for in (a)(vi) of this  
2 subsection.

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

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

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

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

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

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

38 Except for an offender who has been convicted of a violation of RCW  
39 9A.44.040 or 9A.44.050, if the offender completes the treatment program

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

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

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

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

12 (iv) Undergo available outpatient treatment.

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

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

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

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

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

1 9.94A.125 that the defendant or an accomplice was armed with a deadly  
2 weapon at the time of commission, or any felony offense under chapter  
3 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,  
4 committed on or after July 1, 1988, but before the effective date of  
5 this section, the court shall in addition to the other terms of the  
6 sentence, sentence the offender to a one-year term of community  
7 placement beginning either upon completion of the term of confinement  
8 or at such time as the offender is transferred to community custody in  
9 lieu of earned ((early)) release in accordance with RCW 9.94A.150 (1)  
10 and (2). When the court sentences an offender under this subsection to  
11 the statutory maximum period of confinement then the community  
12 placement portion of the sentence shall consist entirely of such  
13 community custody to which the offender may become eligible, in  
14 accordance with RCW 9.94A.150 (1) and (2). Any period of community  
15 custody actually served shall be credited against the community  
16 placement portion of the sentence.

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

35 (b) When a court sentences a person to a term of total confinement  
36 to the custody of the department of corrections for an offense  
37 categorized as a sex offense committed on or after July 1, 1990, but  
38 before June 6, 1996, or a serious violent offense, vehicular homicide,  
39 or vehicular assault, committed on or after July 1, 1990, but before

1 July 1, 2000, the court shall in addition to other terms of the  
2 sentence, sentence the offender to community placement for two years or  
3 up to the period of earned ((early)) release awarded pursuant to RCW  
4 9.94A.150 (1) and (2), whichever is longer. The community placement  
5 shall begin either upon completion of the term of confinement or at  
6 such time as the offender is transferred to community custody in lieu  
7 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and  
8 (2). When the court sentences an offender under this subsection to the  
9 statutory maximum period of confinement then the community placement  
10 portion of the sentence shall consist entirely of the community custody  
11 to which the offender may become eligible, in accordance with RCW  
12 9.94A.150 (1) and (2). Any period of community custody actually served  
13 shall be credited against the community placement portion of the  
14 sentence. Unless a condition is waived by the court, the terms of  
15 community placement for offenders sentenced pursuant to this section  
16 shall include the following conditions:

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

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

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

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

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

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

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

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

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

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

1 (iv) The offender shall not consume alcohol;

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

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

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

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

23 (b) Unless a condition is waived by the court, the terms of  
24 community custody shall be the same as those provided for in subsection  
25 (9)(b) of this section and may include those provided for in subsection  
26 (9)(c) of this section. As part of any sentence that includes a term  
27 of community custody imposed under this subsection, the court shall  
28 also require the offender to comply with any conditions imposed by the  
29 department of corrections under subsection ((+14)) (15) of this  
30 section.

31 (c) At any time prior to the completion of a sex offender's term of  
32 community custody, if the court finds that public safety would be  
33 enhanced, the court may impose and enforce an order extending any or  
34 all of the conditions imposed pursuant to this section for a period up  
35 to the maximum allowable sentence for the crime as it is classified in  
36 chapter 9A.20 RCW, regardless of the expiration of the offender's term  
37 of community custody. If a violation of a condition extended under  
38 this subsection occurs after the expiration of the offender's term of  
39 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, a violent offense, any  
5 crime against a person under RCW 9.94A.440(2), or a felony offense  
6 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of  
7 this section, committed on or after July 1, 2000, the court shall in  
8 addition to the other terms of the sentence, sentence the offender to  
9 community custody for the community custody range or up to the period  
10 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),  
11 whichever is longer. The community custody shall begin either upon  
12 completion of the term of confinement or at such time as the offender  
13 is transferred to community custody in lieu of earned release in  
14 accordance with RCW 9.94A.150 (1) and (2).

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

36 (c) If an offender violates conditions imposed by the court or the  
37 department pursuant to this subsection during community custody, the  
38 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) If the court imposes a sentence requiring confinement of  
37 thirty days or less, the court may, in its discretion, specify that the  
38 sentence be served on consecutive or intermittent days. A sentence  
39 requiring more than thirty days of confinement shall be served on

1 consecutive days. Local jail administrators may schedule court-ordered  
2 intermittent sentences as space permits.

3 ~~((12))~~ (13) If a sentence imposed includes payment of a legal  
4 financial obligation, the sentence shall specify the total amount of  
5 the legal financial obligation owed, and shall require the offender to  
6 pay a specified monthly sum toward that legal financial obligation.  
7 Restitution to victims shall be paid prior to any other payments of  
8 monetary obligations. Any legal financial obligation that is imposed  
9 by the court may be collected by the department, which shall deliver  
10 the amount paid to the county clerk for credit. The offender's  
11 compliance with payment of legal financial obligations shall be  
12 supervised by the department for ten years following the entry of the  
13 judgment and sentence or ten years following the offender's release  
14 from total confinement. All monetary payments ordered shall be paid no  
15 later than ten years after the last date of release from confinement  
16 pursuant to a felony conviction or the date the sentence was entered  
17 unless the superior court extends the criminal judgment an additional  
18 ten years. If the legal financial obligations including crime victims'  
19 assessments are not paid during the initial ten-year period, the  
20 superior court may extend jurisdiction under the criminal judgment an  
21 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
22 9.94A.145. If jurisdiction under the criminal judgment is extended,  
23 the department is not responsible for supervision of the offender  
24 during the subsequent period. Independent of the department, the party  
25 or entity to whom the legal financial obligation is owed shall have the  
26 authority to utilize any other remedies available to the party or  
27 entity to collect the legal financial obligation. Nothing in this  
28 section makes the department, the state, or any of its employees,  
29 agents, or other persons acting on their behalf liable under any  
30 circumstances for the payment of these legal financial obligations. If  
31 an order includes restitution as one of the monetary assessments, the  
32 county clerk shall make disbursements to victims named in the order.

33 ~~((13))~~ (14) Except as provided under RCW 9.94A.140(1) and  
34 9.94A.142(1), a court may not impose a sentence providing for a term of  
35 confinement or community supervision ~~((or))~~, community placement, or  
36 community custody which exceeds the statutory maximum for the crime as  
37 provided in chapter 9A.20 RCW.

38 ~~((14))~~ (15) All offenders sentenced to terms involving community  
39 supervision, community service, community placement, community custody,

1 or legal financial obligation shall be under the supervision of the  
2 department of corrections and shall follow explicitly the instructions  
3 and conditions of the department of corrections. The department may  
4 require an offender to perform affirmative acts it deems appropriate to  
5 monitor compliance with the conditions of the sentence imposed.

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

11 (b) For offenders sentenced to terms involving community custody  
12 for crimes committed on or after June 6, 1996, the department may  
13 include, in addition to the instructions in (a) of this subsection, any  
14 appropriate conditions of supervision, including but not limited to,  
15 prohibiting the offender from having contact with any other specified  
16 individuals or specific class of individuals. For offenders sentenced  
17 to terms of community custody for crimes committed on or after July 1,  
18 2000, the department may additionally require the offender to  
19 participate in rehabilitative programs or otherwise perform affirmative  
20 conduct, and to obey all laws.

21 The conditions authorized under this subsection (~~((14))~~) (15)(b)  
22 may be imposed by the department prior to or during an offender's  
23 community custody term. If a violation of conditions imposed by the  
24 court or the department pursuant to subsection (10) of this section  
25 occurs during community custody, it shall be deemed a violation of  
26 community placement for the purposes of RCW 9.94A.207 and shall  
27 authorize the department to transfer an offender to a more restrictive  
28 confinement status as provided in RCW 9.94A.205. At any time prior to  
29 the completion of (~~(a-sex)~~) an offender's term of community custody,  
30 the department may recommend to the court that any or all of the  
31 conditions imposed by the court or the department pursuant to  
32 subsection (10) or (11) of this section be continued beyond the  
33 expiration of the offender's term of community custody as authorized in  
34 subsection (10)(c) or (11)(e) of this section.

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

1       (~~(15)~~) (16) All offenders sentenced to terms involving community  
2 supervision, community service, community custody, or community  
3 placement under the supervision of the department of corrections shall  
4 not own, use, or possess firearms or ammunition. Offenders who own,  
5 use, or are found to be in actual or constructive possession of  
6 firearms or ammunition shall be subject to the appropriate violation  
7 process and sanctions. "Constructive possession" as used in this  
8 subsection means the power and intent to control the firearm or  
9 ammunition. "Firearm" as used in this subsection means a weapon or  
10 device from which a projectile may be fired by an explosive such as  
11 gunpowder.

12       (~~(16)~~) (17) The sentencing court shall give the offender credit  
13 for all confinement time served before the sentencing if that  
14 confinement was solely in regard to the offense for which the offender  
15 is being sentenced.

16       (~~(17)~~) (18) A departure from the standards in RCW 9.94A.400 (1)  
17 and (2) governing whether sentences are to be served consecutively or  
18 concurrently is an exceptional sentence subject to the limitations in  
19 subsections (2) and (3) of this section, and may be appealed by the  
20 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

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

28       (~~(19)~~) (20) As a part of any sentence, the court may impose and  
29 enforce an order that relates directly to the circumstances of the  
30 crime for which the offender has been convicted, prohibiting the  
31 offender from having any contact with other specified individuals or a  
32 specific class of individuals for a period not to exceed the maximum  
33 allowable sentence for the crime, regardless of the expiration of the  
34 offender's term of community supervision or community placement.

35       (~~(20)~~) (21) The court may order an offender whose sentence  
36 includes community placement or community supervision to undergo a  
37 mental status evaluation and to participate in available outpatient  
38 mental health treatment, if the court finds that reasonable grounds  
39 exist to believe that the offender is a mentally ill person as defined

1 in RCW 71.24.025, and that this condition is likely to have influenced  
2 the offense. An order requiring mental status evaluation or treatment  
3 must be based on a presentence report and, if applicable, mental status  
4 evaluations that have been filed with the court to determine the  
5 offender's competency or eligibility for a defense of insanity. The  
6 court may order additional evaluations at a later date if deemed  
7 appropriate.

8 ~~((+21+))~~ (22) In any sentence of partial confinement, the court may  
9 require the defendant to serve the partial confinement in work release,  
10 in a program of home detention, on work crew, or in a combined program  
11 of work crew and home detention.

12 ~~((+22+))~~ (23) All court-ordered legal financial obligations  
13 collected by the department and remitted to the county clerk shall be  
14 credited and paid where restitution is ordered. Restitution shall be  
15 paid prior to any other payments of monetary obligations.

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

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

37 **Sec. 6.** RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are  
38 each reenacted and amended to read as follows:

1 (1) Whenever a person is convicted of a felony, the court may order  
2 the payment of a legal financial obligation as part of the sentence.  
3 The court must on either the judgment and sentence or on a subsequent  
4 order to pay, designate the total amount of a legal financial  
5 obligation and segregate this amount among the separate assessments  
6 made for restitution, costs, fines, and other assessments required by  
7 law. On the same order, the court is also to set a sum that the  
8 offender is required to pay on a monthly basis towards satisfying the  
9 legal financial obligation. If the court fails to set the offender  
10 monthly payment amount, the department shall set the amount. Upon  
11 receipt of an offender's monthly payment, after restitution is  
12 satisfied, the county clerk shall distribute the payment proportionally  
13 among all other fines, costs, and assessments imposed, unless otherwise  
14 ordered by the court.

15 (2) If the court determines that the offender, at the time of  
16 sentencing, has the means to pay for the cost of incarceration, the  
17 court may require the offender to pay for the cost of incarceration at  
18 a rate of fifty dollars per day of incarceration. Payment of other  
19 court-ordered financial obligations, including all legal financial  
20 obligations and costs of supervision shall take precedence over the  
21 payment of the cost of incarceration ordered by the court. All funds  
22 recovered from offenders for the cost of incarceration in the county  
23 jail shall be remitted to the county and the costs of incarceration in  
24 a prison shall be remitted to the department of corrections.

25 (3) The court may add to the judgment and sentence or subsequent  
26 order to pay a statement that a notice of payroll deduction is to be  
27 immediately issued. If the court chooses not to order the immediate  
28 issuance of a notice of payroll deduction at sentencing, the court  
29 shall add to the judgment and sentence or subsequent order to pay a  
30 statement that a notice of payroll deduction may be issued or other  
31 income-withholding action may be taken, without further notice to the  
32 offender if a monthly court-ordered legal financial obligation payment  
33 is not paid when due, and an amount equal to or greater than the amount  
34 payable for one month is owed.

35 If a judgment and sentence or subsequent order to pay does not  
36 include the statement that a notice of payroll deduction may be issued  
37 or other income-withholding action may be taken if a monthly legal  
38 financial obligation payment is past due, the department may serve a  
39 notice on the offender stating such requirements and authorizations.

1 Service shall be by personal service or any form of mail requiring a  
2 return receipt.

3 (4) All legal financial obligations that are ordered as a result of  
4 a conviction for a felony, may also be enforced in the same manner as  
5 a judgment in a civil action by the party or entity to whom the legal  
6 financial obligation is owed. Restitution collected through civil  
7 enforcement must be paid through the registry of the court and must be  
8 distributed proportionately according to each victim's loss when there  
9 is more than one victim. The judgment and sentence shall identify the  
10 party or entity to whom restitution is owed so that the state, party,  
11 or entity may enforce the judgment. If restitution is ordered pursuant  
12 to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and  
13 the victim's child born from the rape, the Washington state child  
14 support registry shall be identified as the party to whom payments must  
15 be made. Restitution obligations arising from the rape of a child in  
16 the first, second, or third degree that result in the pregnancy of the  
17 victim may be enforced for the time periods provided under RCW  
18 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations  
19 may be enforced at any time during the ten-year period following the  
20 offender's release from total confinement or within ten years of entry  
21 of the judgment and sentence, whichever period is longer. Prior to the  
22 expiration of the initial ten-year period, the superior court may  
23 extend the criminal judgment an additional ten years for payment of  
24 legal financial obligations including crime victims' assessments. If  
25 jurisdiction under the criminal judgment is extended, the department is  
26 not responsible for supervision of the offender during the subsequent  
27 period. Independent of the department, the party or entity to whom the  
28 legal financial obligation is owed shall have the authority to utilize  
29 any other remedies available to the party or entity to collect the  
30 legal financial obligation.

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

1 (6) After completing the investigation, the department shall make  
2 a report to the court on the amount of the monthly payment that the  
3 offender should be required to make towards a satisfied legal financial  
4 obligation.

5 (7) During the period of supervision, the department may make a  
6 recommendation to the court that the offender's monthly payment  
7 schedule be modified so as to reflect a change in financial  
8 circumstances. If the department sets the monthly payment amount, the  
9 department may modify the monthly payment amount without the matter  
10 being returned to the court. Also, during the period of supervision,  
11 the offender may be required at the request of the department to report  
12 to the department for the purposes of reviewing the appropriateness of  
13 the collection schedule for the legal financial obligation. During  
14 this reporting, the offender is required under oath to truthfully and  
15 honestly respond to all questions concerning earning capabilities and  
16 the location and nature of all property or financial assets. Also, the  
17 offender is required to bring any and all documents as requested by the  
18 department in order to prepare the collection schedule.

19 (8) After the judgment and sentence or payment order is entered,  
20 the department shall for any period of supervision be authorized to  
21 collect the legal financial obligation from the offender. Any amount  
22 collected by the department shall be remitted daily to the county clerk  
23 for the purposes of disbursements. The department is authorized to  
24 accept credit cards as payment for a legal financial obligation, and  
25 any costs incurred related to accepting credit card payments shall be  
26 the responsibility of the offender.

27 (9) The department or any obligee of the legal financial obligation  
28 may seek a mandatory wage assignment for the purposes of obtaining  
29 satisfaction for the legal financial obligation pursuant to RCW  
30 9.94A.2001.

31 (10) The requirement that the offender pay a monthly sum towards a  
32 legal financial obligation constitutes a condition or requirement of a  
33 sentence and the offender is subject to the penalties as provided in  
34 RCW 9.94A.200 for noncompliance.

35 (11) The county clerk shall provide the department with  
36 individualized monthly billings for each offender with an unsatisfied  
37 legal financial obligation and shall provide the department with notice  
38 of payments by such offenders no less frequently than weekly.

1       (12) The department may arrange for the collection of unpaid legal  
2 financial obligations through the county clerk, or through another  
3 entity if the clerk does not assume responsibility for collection. The  
4 costs for collection services shall be paid by the offender.

5       **Sec. 7.** RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read  
6 as follows:

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

15       (2) A term of ((~~supervision, including postrelease supervision~~))  
16 community custody ordered in a sentence pursuant to this chapter shall  
17 be tolled by any period of time during which the offender has absented  
18 himself or herself from supervision without prior approval of the  
19 entity under whose ((~~supervision~~)) community custody the offender has  
20 been placed.

21       (3) Any period of ((~~supervision~~)) community custody shall be tolled  
22 during any period of time the offender is in confinement for any  
23 reason. However, if an offender is detained pursuant to RCW 9.94A.207  
24 or 9.94A.195 and is later found not to have violated a condition or  
25 requirement of ((~~supervision~~)) community custody, time spent in  
26 confinement due to such detention shall not toll ((~~to {the}~~)) the  
27 period of ((~~supervision~~)) community custody.

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

32       **Sec. 8.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read  
33 as follows:

34       (1) If an ((~~inmate~~)) offender violates any condition or requirement  
35 of community custody, the department may transfer the ((~~inmate~~))  
36 offender to a more restrictive confinement status to serve up to the  
37 remaining portion of the sentence, less credit for any period actually

1 spent in community custody or in detention awaiting disposition of an  
2 alleged violation and subject to the limitations of subsection (2) of  
3 this section.

4 (2)(a) For a sex offender sentenced to a term of community custody  
5 under RCW 9.94A.120(8) who violates any condition of community custody,  
6 the department may impose a sanction of up to sixty days' confinement  
7 in a local correctional facility for each violation. If the department  
8 imposes a sanction, the department shall submit within seventy-two  
9 hours a report to the court and the prosecuting attorney outlining the  
10 violation or violations and the sanctions imposed.

11 (b) For a sex offender sentenced to a term of community custody  
12 under RCW 9.94A.120(10) who violates any condition of community custody  
13 after having completed his or her maximum term of total confinement,  
14 including time served on community custody in lieu of earned ((early))  
15 release, the department may impose a sanction of up to sixty days in a  
16 local correctional facility for each violation.

17 (c) For an offender sentenced to a term of community custody under  
18 RCW 9.94A.120 (5) through (7) or (11), or under RCW 9.94A.383, for a  
19 crime committed on or after July 1, 2000, who violates any condition  
20 of community custody after having completed his or her maximum term of  
21 total confinement, including time served on community custody in lieu  
22 of earned release, the department may impose a sanction of up to sixty  
23 days in total confinement for each violation. The department may  
24 impose sanctions such as work release, home detention with electronic  
25 monitoring, work crew, community service, inpatient treatment, daily  
26 reporting, curfew, educational or counseling sessions, supervision  
27 enhanced through electronic monitoring, or any other sanctions  
28 available in the community.

29 (d) For an offender sentenced to a term of community custody under  
30 RCW 9.94A.120(9)(a)(ii) who violates any condition of community custody  
31 after having completed his or her maximum term of total confinement,  
32 including time served on community custody in lieu of earned release,  
33 the department may impose a sanction of up to sixty days in total  
34 confinement for each violation. The department may impose sanctions  
35 such as work release, home detention with electronic monitoring, work  
36 crew, community service, inpatient treatment, daily reporting, curfew,  
37 educational or counseling sessions, supervision enhanced through  
38 electronic monitoring, or any other sanctions available in the  
39 community.

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

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

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

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

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

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

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

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

3       **Sec. 9.** RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read  
4 as follows:

5       (1) The secretary may issue warrants for the arrest of any offender  
6 who violates a condition of community placement or community custody.  
7 The arrest warrants shall authorize any law enforcement or peace  
8 officer or community corrections officer of this state or any other  
9 state where such offender may be located, to arrest the offender and  
10 place him or her in total confinement pending disposition of the  
11 alleged violation. The department shall compensate the local  
12 jurisdiction at the office of financial management's adjudicated rate,  
13 in accordance with RCW 70.48.440. A community corrections officer, if  
14 he or she has reasonable cause to believe an offender in community  
15 placement or community custody has violated a condition of community  
16 placement or community custody, may suspend the person's community  
17 placement or community custody status and arrest or cause the arrest  
18 and detention in total confinement of the offender, pending the  
19 determination of the secretary as to whether the violation has  
20 occurred. The community corrections officer shall report to the  
21 secretary all facts and circumstances and the reasons for the action of  
22 suspending community placement or community custody status. A  
23 violation of a condition of community placement or community custody  
24 shall be deemed a violation of the sentence for purposes of RCW  
25 9.94A.195. The authority granted to community corrections officers  
26 under this section shall be in addition to that set forth in RCW  
27 9.94A.195.

28       (2) Inmates, as defined in RCW 72.09.015, who have been transferred  
29 to community custody and who are detained in a local correctional  
30 facility are the financial responsibility of the department of  
31 corrections, except as provided in subsection (3) of this section. The  
32 community custody inmate shall be removed from the local correctional  
33 facility, except as provided in subsection (3) of this section, not  
34 later than eight days, excluding weekends and holidays, following  
35 admittance to the local correctional facility and notification that the  
36 inmate is available for movement to a state correctional institution.

37       (3) The department may negotiate with local correctional  
38 authorities for an additional period of detention; however, sex

1 offenders sanctioned for community custody violations under RCW  
2 9.94A.205(2) to a term of confinement shall remain in the local  
3 correctional facility for the complete term of the sanction. For  
4 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local  
5 correctional facility shall be financially responsible. For  
6 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department  
7 of corrections shall be financially responsible for that portion of the  
8 sanction served during the time in which the sex offender is on  
9 community custody in lieu of earned ((early)) release, and the local  
10 correctional facility shall be financially responsible for that portion  
11 of the sanction served by the sex offender after the time in which the  
12 sex offender is on community custody in lieu of earned ((early))  
13 release. The department, in consultation with the Washington  
14 association of sheriffs and police chiefs and those counties in which  
15 the sheriff does not operate a correctional facility, shall establish  
16 a methodology for determining the department's local correctional  
17 facilities bed utilization rate, for each county in calendar year 1998,  
18 for offenders being held for violations of conditions of community  
19 custody, community placement, or community supervision. For  
20 confinement sanctions imposed under RCW 9.94A.205(2) (c) or (d), the  
21 local correctional facility shall continue to be financially  
22 responsible to the extent of the calendar year 1998 bed utilization  
23 rate. If the department's use of bed space in local correctional  
24 facilities of any county for confinement sanctions imposed on offenders  
25 sentenced to a term of community custody under RCW 9.94A.120 (7) or  
26 (11) or 9.94A.383 exceeds the 1998 bed utilization rate for the county,  
27 the department shall compensate the county for the excess use at the  
28 per diem rate equal to the lowest rate charged by the county under its  
29 contract with a municipal government during the year in which the use  
30 occurs.

31 **Sec. 10.** RCW 9.94A.383 and 1988 c 143 s 23 are each amended to  
32 read as follows:

33 On all sentences of confinement for one year or less, the court may  
34 impose up to one year of community ((supervision)) custody, subject to  
35 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and  
36 (c). An offender shall be on community ((supervision)) custody as of  
37 the date of sentencing. However, during the time for which the  
38 offender is in total or partial confinement pursuant to the sentence or

1 a violation of the sentence, the period of community ((~~supervision~~))  
2 custody shall toll.

3 **Sec. 11.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read  
4 as follows:

5 (1) Decision not to prosecute.

6 STANDARD: A prosecuting attorney may decline to prosecute, even  
7 though technically sufficient evidence to prosecute exists, in  
8 situations where prosecution would serve no public purpose, would  
9 defeat the underlying purpose of the law in question or would result in  
10 decreased respect for the law.

11 GUIDELINE/COMMENTARY:

12 Examples

13 The following are examples of reasons not to prosecute which could  
14 satisfy the standard.

15 (a) Contrary to Legislative Intent - It may be proper to decline to  
16 charge where the application of criminal sanctions would be clearly  
17 contrary to the intent of the legislature in enacting the particular  
18 statute.

19 (b) Antiquated Statute - It may be proper to decline to charge  
20 where the statute in question is antiquated in that:

21 (i) It has not been enforced for many years; and

22 (ii) Most members of society act as if it were no longer in  
23 existence; and

24 (iii) It serves no deterrent or protective purpose in today's  
25 society; and

26 (iv) The statute has not been recently reconsidered by the  
27 legislature.

28 This reason is not to be construed as the basis for declining cases  
29 because the law in question is unpopular or because it is difficult to  
30 enforce.

31 (c) De Minimus Violation - It may be proper to decline to charge  
32 where the violation of law is only technical or insubstantial and where  
33 no public interest or deterrent purpose would be served by prosecution.

34 (d) Confinement on Other Charges - It may be proper to decline to  
35 charge because the accused has been sentenced on another charge to a  
36 lengthy period of confinement; and

37 (i) Conviction of the new offense would not merit any additional  
38 direct or collateral punishment;

1 (ii) The new offense is either a misdemeanor or a felony which is  
2 not particularly aggravated; and

3 (iii) Conviction of the new offense would not serve any significant  
4 deterrent purpose.

5 (e) Pending Conviction on Another Charge - It may be proper to  
6 decline to charge because the accused is facing a pending prosecution  
7 in the same or another county; and

8 (i) Conviction of the new offense would not merit any additional  
9 direct or collateral punishment;

10 (ii) Conviction in the pending prosecution is imminent;

11 (iii) The new offense is either a misdemeanor or a felony which is  
12 not particularly aggravated; and

13 (iv) Conviction of the new offense would not serve any significant  
14 deterrent purpose.

15 (f) High Disproportionate Cost of Prosecution - It may be proper to  
16 decline to charge where the cost of locating or transporting, or the  
17 burden on, prosecution witnesses is highly disproportionate to the  
18 importance of prosecuting the offense in question. This reason should  
19 be limited to minor cases and should not be relied upon in serious  
20 cases.

21 (g) Improper Motives of Complainant - It may be proper to decline  
22 charges because the motives of the complainant are improper and  
23 prosecution would serve no public purpose, would defeat the underlying  
24 purpose of the law in question or would result in decreased respect for  
25 the law.

26 (h) Immunity - It may be proper to decline to charge where immunity  
27 is to be given to an accused in order to prosecute another where the  
28 accused's information or testimony will reasonably lead to the  
29 conviction of others who are responsible for more serious criminal  
30 conduct or who represent a greater danger to the public interest.

31 (i) Victim Request - It may be proper to decline to charge because  
32 the victim requests that no criminal charges be filed and the case  
33 involves the following crimes or situations:

34 (i) Assault cases where the victim has suffered little or no  
35 injury;

36 (ii) Crimes against property, not involving violence, where no  
37 major loss was suffered;

38 (iii) Where doing so would not jeopardize the safety of society.

1 Care should be taken to insure that the victim's request is freely  
2 made and is not the product of threats or pressure by the accused.

3 The presence of these factors may also justify the decision to  
4 dismiss a prosecution which has been commenced.

5 Notification

6 The prosecutor is encouraged to notify the victim, when practical,  
7 and the law enforcement personnel, of the decision not to prosecute.

8 (2) Decision to prosecute.

9 (a) STANDARD:

10 Crimes against persons will be filed if sufficient admissible  
11 evidence exists, which, when considered with the most plausible,  
12 reasonably foreseeable defense that could be raised under the evidence,  
13 would justify conviction by a reasonable and objective fact-finder.  
14 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
15 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
16 9A.64.020 the prosecutor should avoid prefiling agreements or  
17 diversions intended to place the accused in a program of treatment or  
18 counseling, so that treatment, if determined to be beneficial, can be  
19 provided pursuant to RCW 9.94A.120(8).

20 Crimes against property/other crimes will be filed if the  
21 admissible evidence is of such convincing force as to make it probable  
22 that a reasonable and objective fact-finder would convict after hearing  
23 all the admissible evidence and the most plausible defense that could  
24 be raised.

25 See table below for the crimes within these categories.

26 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

27 CRIMES AGAINST PERSONS

28 Aggravated Murder

29 1st Degree Murder

30 2nd Degree Murder

31 1st Degree Kidnaping

32 1st Degree Assault

33 1st Degree Assault of a Child

34 1st Degree Rape

35 1st Degree Robbery

36 1st Degree Rape of a Child

37 1st Degree Arson

38 2nd Degree Kidnaping

1 2nd Degree Assault  
2 2nd Degree Assault of a Child  
3 2nd Degree Rape  
4 2nd Degree Robbery  
5 1st Degree Burglary  
6 1st Degree Manslaughter  
7 2nd Degree Manslaughter  
8 1st Degree Extortion  
9 Indecent Liberties  
10 Incest  
11 2nd Degree Rape of a Child  
12 Vehicular Homicide  
13 Vehicular Assault  
14 3rd Degree Rape  
15 3rd Degree Rape of a Child  
16 1st Degree Child Molestation  
17 2nd Degree Child Molestation  
18 3rd Degree Child Molestation  
19 2nd Degree Extortion  
20 1st Degree Promoting Prostitution  
21 Intimidating a Juror  
22 Communication with a Minor  
23 Intimidating a Witness  
24 Intimidating a Public Servant  
25 Bomb Threat (if against person)  
26 3rd Degree Assault  
27 3rd Degree Assault of a Child  
28 Unlawful Imprisonment  
29 Promoting a Suicide Attempt  
30 Riot (if against person)  
31 Stalking  
32 Custodial Assault  
33 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)  
34 and (c))  
35 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))  
36 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and  
37 (5))

1 CRIMES AGAINST PROPERTY/OTHER CRIMES  
2 2nd Degree Arson  
3 1st Degree Escape  
4 2nd Degree Burglary  
5 1st Degree Theft  
6 1st Degree Perjury  
7 1st Degree Introducing Contraband  
8 1st Degree Possession of Stolen Property  
9 Bribery  
10 Bribing a Witness  
11 Bribe received by a Witness  
12 Bomb Threat (if against property)  
13 1st Degree Malicious Mischief  
14 2nd Degree Theft  
15 2nd Degree Escape  
16 2nd Degree Introducing Contraband  
17 2nd Degree Possession of Stolen Property  
18 2nd Degree Malicious Mischief  
19 1st Degree Reckless Burning  
20 Taking a Motor Vehicle without Authorization  
21 Forgery  
22 2nd Degree Perjury  
23 2nd Degree Promoting Prostitution  
24 Tampering with a Witness  
25 Trading in Public Office  
26 Trading in Special Influence  
27 Receiving/Granting Unlawful Compensation  
28 Bigamy  
29 Eluding a Pursuing Police Vehicle  
30 Willful Failure to Return from Furlough  
31 Escape from Community Custody  
32 Riot (if against property)  
33 Thefts of Livestock

34 ALL OTHER UNCLASSIFIED FELONIES

35 Selection of Charges/Degree of Charge

36 ((+1)) (i) The prosecutor should file charges which adequately  
37 describe the nature of defendant's conduct. Other offenses may be  
38 charged only if they are necessary to ensure that the charges:

1       (~~(a)~~) (A) Will significantly enhance the strength of the state's  
2 case at trial; or

3       (~~(b)~~) (B) Will result in restitution to all victims.

4       (~~(2)~~) (ii) The prosecutor should not overcharge to obtain a  
5 guilty plea. Overcharging includes:

6       (~~(a)~~) (A) Charging a higher degree;

7       (~~(b)~~) (B) Charging additional counts.

8       This standard is intended to direct prosecutors to charge those  
9 crimes which demonstrate the nature and seriousness of a defendant's  
10 criminal conduct, but to decline to charge crimes which are not  
11 necessary to such an indication. Crimes which do not merge as a matter  
12 of law, but which arise from the same course of conduct, do not all  
13 have to be charged.

14       (b) GUIDELINES/COMMENTARY:

15       (i) Police Investigation

16       A prosecuting attorney is dependent upon law enforcement agencies  
17 to conduct the necessary factual investigation which must precede the  
18 decision to prosecute. The prosecuting attorney shall ensure that a  
19 thorough factual investigation has been conducted before a decision to  
20 prosecute is made. In ordinary circumstances the investigation should  
21 include the following:

22       (~~(1)~~) (A) The interviewing of all material witnesses, together  
23 with the obtaining of written statements whenever possible;

24       (~~(2)~~) (B) The completion of necessary laboratory tests; and

25       (~~(3)~~) (C) The obtaining, in accordance with constitutional  
26 requirements, of the suspect's version of the events.

27       If the initial investigation is incomplete, a prosecuting attorney  
28 should insist upon further investigation before a decision to prosecute  
29 is made, and specify what the investigation needs to include.

30       (ii) Exceptions

31       In certain situations, a prosecuting attorney may authorize filing  
32 of a criminal complaint before the investigation is complete if:

33       (~~(1)~~) (A) Probable cause exists to believe the suspect is guilty;  
34 and

35       (~~(2)~~) (B) The suspect presents a danger to the community or is  
36 likely to flee if not apprehended; or

37       (~~(3)~~) (C) The arrest of the suspect is necessary to complete the  
38 investigation of the crime.

1 In the event that the exception to the standard is applied, the  
2 prosecuting attorney shall obtain a commitment from the law enforcement  
3 agency involved to complete the investigation in a timely manner. If  
4 the subsequent investigation does not produce sufficient evidence to  
5 meet the normal charging standard, the complaint should be dismissed.

6 (iii) Investigation Techniques

7 The prosecutor should be fully advised of the investigatory  
8 techniques that were used in the case investigation including:

9 ~~((1))~~ (A) Polygraph testing;

10 ~~((2))~~ (B) Hypnosis;

11 ~~((3))~~ (C) Electronic surveillance;

12 ~~((4))~~ (D) Use of informants.

13 (iv) Pre-Filing Discussions with Defendant

14 Discussions with the defendant or his/her representative regarding  
15 the selection or disposition of charges may occur prior to the filing  
16 of charges, and potential agreements can be reached.

17 (v) Pre-Filing Discussions with Victim(s)

18 Discussions with the victim(s) or victims' representatives  
19 regarding the selection or disposition of charges may occur before the  
20 filing of charges. The discussions may be considered by the prosecutor  
21 in charging and disposition decisions, and should be considered before  
22 reaching any agreement with the defendant regarding these decisions.

23 NEW SECTION. Sec. 12. A new section is added to chapter 72.09 RCW  
24 to read as follows:

25 Except as specifically prohibited by other law, and for purposes of  
26 determining, modifying, or monitoring compliance with conditions of  
27 community custody, community placement, or community supervision as  
28 authorized under RCW 9.94A.120 and 9.94A.383, the department:

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

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

1        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 72.09 RCW  
2 to read as follows:

3        To the extent practicable, the department shall deploy community  
4 corrections staff on the basis of geographic areas in which offenders  
5 under the department's jurisdiction are located, and shall establish a  
6 systematic means of assessing risk to the safety of those communities.

7        NEW SECTION.    **Sec. 14.**    The secretary of corrections may adopt  
8 rules to implement sections 1 through 13 of this act.

9        NEW SECTION.    **Sec. 15.**    A new section is added to chapter 72.09 RCW  
10 to read as follows:

11        (1) The Washington state institute for public policy shall conduct  
12 a study of the effect of the use of community custody under this act.  
13 The study shall include the effect of this act on recidivism and other  
14 outcomes. In its study the institute shall consider:

15        (a) Recidivism, according to the definition adopted by the  
16 institute pursuant to section 59, chapter 338, Laws of 1997;

17        (b) The number and seriousness level of violations of conditions;

18        (c) The application of the graduated sanctions by the department;

19        (d) Unauthorized absences from supervision;

20        (e) Payment of legal financial obligations;

21        (f) Unlawful use of controlled substances;

22        (g) Use of alcohol when abstention or treatment for alcoholism is  
23 a condition of supervision;

24        (h) Effects on the number of offenders who are employed or  
25 participate in vocational rehabilitation;

26        (i) Participation in vocational and education programs; and

27        (j) Impact on the receipt of public assistance.

28        (2) By January 1, 2000, the institute shall report to the  
29 legislature on the design for the study. By January 1st of each year  
30 thereafter, the institute shall report to the legislature on the  
31 progress and findings of the study and make recommendations based on  
32 its findings. By January 1, 2010, the institute shall provide to the  
33 legislature a final report on the findings of the study.

34        (3) This section expires December 31, 2010.

35        NEW SECTION.    **Sec. 16.**    This act may be known and cited as the  
36 offender accountability act.

1        NEW SECTION.    **Sec. 17.**    Section 10 of this act takes effect July 1,  
2    2000, and applies only to offenses committed on or after July 1, 2000.

3        NEW SECTION.    **Sec. 18.**    If any provision of this act or its  
4    application to any person or circumstance is held invalid, the  
5    remainder of the act or the application of the provision to other  
6    persons or circumstances is not affected.

--- END ---