

2 ESSB 6151 - S AMD 387

3 By Senators Hargrove, Long and Costa

4 ADOPTED 04/30/01

5 Strike everything after the enacting clause and insert the
6 following:

7 "PART I
8 GENERAL PROVISIONS

9 NEW SECTION. **Sec. 101.** (1) The legislature makes the following
10 findings:

11 (a) The effective management of high-risk sex offenders requires a
12 comprehensive approach that includes appropriate sentencing for sex
13 offenses and a plan to address both the immediate and long-term need to
14 establish secure community transition facilities throughout the state.

15 (b) The individualized treatment required for constitutional civil
16 commitment includes the realistic possibility of release to a less
17 restrictive alternative in appropriate cases. Most persons civilly
18 committed under chapter 71.09 RCW who become eligible for release to a
19 less restrictive alternative do not have housing. Because a lack of
20 housing may unduly restrict a person's ability to obtain an order to a
21 less restrictive alternative, the legislature recognizes that the state
22 must provide some housing facilities. Facilities to house persons
23 conditionally released to a less restrictive alternative under chapter
24 71.09 RCW are essential public facilities. Public protests and local
25 government moratoriums on zoning and permitting processes have
26 hampered the state's ability to comply with constitutional and
27 statutory requirements and with court orders to create housing for less
28 restrictive alternative placements. The legislature, therefore,
29 intends to provide statewide guidance and assistance in the siting of
30 secure community transition facilities for persons conditionally
31 released to less restrictive alternatives under chapter 71.09 RCW.

32 (c) Some high-risk sex offenders are most appropriately managed
33 through an indeterminate sentencing structure in which they will be
34 supervised and can be retained in or returned to a state correctional
35 institution until the statutory maximum sentence has expired. The

1 state does not currently have an indeterminate sentencing structure.
2 Consequently, the state must make changes to its sentencing structure
3 to effectively manage these high-risk sex offenders.

4 (2) Therefore, the legislature intends to:

5 (a) Manage high-risk sex offenders to the greatest extent possible
6 through the criminal justice system by establishing an indeterminate
7 sentencing structure for those offenders who present a high risk to the
8 community, based on their sex offense history;

9 (b) Ensure the continued operation and any necessary and authorized
10 expansion of state correctional facilities for sex offenders and other
11 offenders on McNeil Island;

12 (c) Ensure the prompt siting and timely operation of a secure
13 community transition facility on McNeil Island, ensure the continued
14 progress toward the construction and operation of the total confinement
15 facility already planned for McNeil Island, to further the treatment
16 and management of persons civilly committed under chapter 71.09 RCW,
17 and establish a framework for the establishment of additional secure
18 community transition facilities;

19 (d) Maximize public safety and enhance the potential for successful
20 treatment of sexually violent predators through the tightly managed use
21 of less restrictive alternatives in secure community transition
22 facilities;

23 (e) Maximize the safety of communities in which secure community
24 transition facilities are located and ensure public input into
25 decisions involving the siting and ongoing operation of these essential
26 public facilities; strengthening the safeguards in placement,
27 oversight, and monitoring of conditionally released persons; and
28 establishing minimum standards for the siting and operation of secure
29 community transition facilities; and

30 (f) Comply with federal court orders and require the siting of
31 secure community transition facilities and thereby preclude the
32 possibility that the department of social and health services would be
33 unable to site a facility due to local moratoriums and requirements.

34 **Sec. 102.** RCW 71.09.020 and 1995 c 216 s 1 are each amended to
35 read as follows:

36 Unless the context clearly requires otherwise, the definitions in
37 this section apply throughout this chapter.

1 (1) (~~("Sexually violent predator" means any person who has been~~
2 ~~convicted of or charged with a crime of sexual violence and who suffers~~
3 ~~from a mental abnormality or personality disorder which makes the~~
4 ~~person likely to engage in predatory acts of sexual violence if not~~
5 ~~confined in a secure facility.~~

6 (2) ~~"Mental abnormality" means a congenital or acquired condition~~
7 ~~affecting the emotional or volitional capacity which predisposes the~~
8 ~~person to the commission of criminal sexual acts in a degree~~
9 ~~constituting such person a menace to the health and safety of others.)~~

10 "Department" means the department of social and health services.

11 (2) "Less restrictive alternative" means court-ordered treatment in
12 a setting less restrictive than total confinement which satisfies the
13 conditions set forth in RCW 71.09.092.

14 (3) "Likely to engage in predatory acts of sexual violence if not
15 confined in a secure facility" means that the person more probably than
16 not will engage in such acts if released unconditionally from detention
17 on the sexually violent predator petition. Such likelihood must be
18 evidenced by a recent overt act if the person is not totally confined
19 at the time the petition is filed under RCW 71.09.030.

20 (4) "Mental abnormality" means a congenital or acquired condition
21 affecting the emotional or volitional capacity which predisposes the
22 person to the commission of criminal sexual acts in a degree
23 constituting such person a menace to the health and safety of others.

24 (5) "Predatory" means acts directed towards: (a) Strangers ((or));
25 (b) individuals with whom a relationship has been established or
26 promoted for the primary purpose of victimization; or (c) persons of
27 casual acquaintance with whom no substantial personal relationship
28 exists.

29 (~~(+5))~~ (6) "Recent overt act" means any act or threat that has
30 either caused harm of a sexually violent nature or creates a reasonable
31 apprehension of such harm in the mind of an objective person who knows
32 of the history and mental condition of the person engaging in the act.

33 (~~(+6))~~ (7) "Risk potential activity" or "risk potential facility"
34 means an activity or facility that provides a higher incidence of risk
35 to the public from persons conditionally released from the special
36 commitment center. Risk potential activities and facilities include:
37 Public and private schools, school bus stops, licensed day care and
38 licensed preschool facilities, public parks, publicly dedicated trails,

1 sports fields, playgrounds, recreational and community centers,
2 churches, synagogues, temples, mosques, and public libraries.

3 (8) "Secretary" means the secretary of social and health services
4 or the secretary's designee.

5 (9) "Secure facility" means a residential facility for persons
6 civilly confined under the provisions of this chapter that includes
7 security measures sufficient to protect the community. Such facilities
8 include total confinement facilities, secure community transition
9 facilities, and any residence used as a court-ordered placement under
10 RCW 71.09.096.

11 (10) "Secure community transition facility" means a residential
12 facility for persons civilly committed and conditionally released to a
13 less restrictive alternative under this chapter. A secure community
14 transition facility has supervision and security, and either provides
15 or ensures the provision of sex offender treatment services. Secure
16 community transition facilities include but are not limited to the
17 facility established under section 201 of this act and any
18 community-based facilities established under this chapter and operated
19 by the secretary or under contract with the secretary.

20 (11) "Sexually violent offense" means an act committed on, before,
21 or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as
22 rape in the first degree, rape in the second degree by forcible
23 compulsion, rape of a child in the first or second degree, statutory
24 rape in the first or second degree, indecent liberties by forcible
25 compulsion, indecent liberties against a child under age fourteen,
26 incest against a child under age fourteen, or child molestation in the
27 first or second degree; (b) a felony offense in effect at any time
28 prior to July 1, 1990, that is comparable to a sexually violent offense
29 as defined in (a) of this subsection, or any federal or out-of-state
30 conviction for a felony offense that under the laws of this state would
31 be a sexually violent offense as defined in this subsection; (c) an act
32 of murder in the first or second degree, assault in the first or second
33 degree, assault of a child in the first or second degree, kidnapping in
34 the first or second degree, burglary in the first degree, residential
35 burglary, or unlawful imprisonment, which act, either at the time of
36 sentencing for the offense or subsequently during civil commitment
37 proceedings pursuant to chapter 71.09 RCW, has been determined beyond
38 a reasonable doubt to have been sexually motivated, as that term is
39 defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28

1 RCW, that is an attempt, criminal solicitation, or criminal conspiracy
2 to commit one of the felonies designated in (a), (b), or (c) of this
3 subsection.

4 ~~((7) "Less restrictive alternative" means court-ordered treatment
5 in a setting less restrictive than total confinement.~~

6 ~~(8) "Secretary" means the secretary of social and health services
7 or his or her designee.))~~

8 (12) "Sexually violent predator" means any person who has been
9 convicted of or charged with a crime of sexual violence and who suffers
10 from a mental abnormality or personality disorder which makes the
11 person likely to engage in predatory acts of sexual violence if not
12 confined in a secure facility.

13 (13) "Total confinement facility" means a facility that provides
14 supervision and sex offender treatment services in a total confinement
15 setting. Total confinement facilities include the special commitment
16 center and any similar facility designated as a secure facility by the
17 secretary.

18 NEW SECTION. Sec. 103. The following acts or parts of acts are
19 each repealed.

20 (1)(a) 2001 c . . . s 1 (Substitute Senate Bill No. 5123, as
21 amended by the house of representatives);

22 (b) 2001 c . . . s 3 (Substitute Senate Bill No. 5123, as amended
23 by the house of representatives); and

24 (c) 2001 c . . . s 4 (Substitute Senate Bill No. 5123, as amended
25 by the house of representatives).

26 (2) This section is null and void if sections 358 and 359 of this
27 act are not enacted into law.

28 **PART II**
29 **SITING**

30 NEW SECTION. Sec. 201. A new section is added to chapter 71.09
31 RCW to read as follows:

32 (1) The secretary is authorized to site, construct, occupy, and
33 operate a secure community transition facility for persons authorized
34 to petition for court-ordered conditional release under RCW
35 71.09.090(1) and a special commitment center with up to four hundred
36 four beds as a total confinement facility under this chapter, on McNeil

1 Island subject to appropriated funding for those purposes. The secure
2 community transition facility shall be authorized for the number of
3 beds needed to ensure compliance with the orders of the superior courts
4 under this chapter and the federal district court for the western
5 district of Washington, but in no case more than nine occupied beds
6 before July 1, 2002, or thirty-six occupied beds thereafter.

7 (2) Notwithstanding RCW 36.70A.103 or any other law, this statute
8 preempts and supersedes local plans, development regulations,
9 permitting requirements, inspection requirements, and other laws as
10 necessary to enable the secretary to site, construct, occupy, and
11 operate a secure community transition facility and a total confinement
12 facility on McNeil Island.

13 (3) The provisions of this act do not limit the state's authority
14 to site any other essential public facility under RCW 36.70A.200 in
15 conformance with local comprehensive plans and development regulations
16 adopted pursuant to chapter 36.70A RCW.

17 (4) The number of residents at the secure community transition
18 facility established by this section shall not exceed thirty-six
19 persons.

20 (5) No additional secure community transition facilities designed
21 for more than three persons may be sited in a county where the special
22 commitment center and the secure community transition facility
23 established pursuant to this section are located.

24 NEW SECTION. **Sec. 202.** A new section is added to chapter 72.09
25 RCW to read as follows:

26 The secretary is authorized to operate a correctional facility on
27 McNeil Island for the confinement of sex offenders and other offenders
28 sentenced by the courts, and to make necessary repairs, renovations,
29 additions, and improvements to state property for that purpose,
30 notwithstanding any local comprehensive plans, development regulations,
31 permitting requirements, or other local laws. Operation of the
32 correctional facility and other state facilities authorized by this
33 section and other law includes access to adequate docking facilities on
34 state-owned tidelands at the town of Steilacoom.

35 NEW SECTION. **Sec. 203.** Beginning on the effective date of this
36 section, the state shall immediately enter into negotiations for a
37 mitigation agreement with the county in which the secure community

1 transition facility established pursuant to section 201 of this act is
2 located, and with each community in which the persons will reside or
3 regularly spend time in the community pursuant to court orders for
4 regular work or education, or to receive social services, or will
5 regularly be transported through to reach those communities. The
6 negotiations must be toward an agreement that will provide state
7 funding, as appropriated for this purpose, in an amount adequate to
8 mitigate anticipated or realized increased costs in law enforcement
9 resulting from any increased risks to public safety brought about by
10 the presence of sexually violent predators in those communities due to
11 the siting of the secure community transition facility established
12 pursuant to section 201 of this act.

13 NEW SECTION. **Sec. 204.** A new section is added to chapter 71.09
14 RCW to read as follows:

15 When a person civilly committed under this chapter is conditionally
16 released to a less restrictive alternative placement at a facility
17 owned or operated under contract with the state, any employer who hires
18 the person for a position or any educational institution that enrolls
19 the person for a program is eligible for an incentive grant from the
20 state up to five thousand dollars per year that the person remains
21 employed or enrolled on at least a half-time basis in a job or program
22 that meets requirements approved by the court. The provisions of this
23 section may not establish employer or educational institution liability
24 for the subsequent criminal acts of a conditionally released person for
25 the decision to hire or enroll that person. An employer or educational
26 institution that accepts an incentive grant under this section shall
27 not be civilly liable for the subsequent criminal acts of a
28 conditionally released person unless the employer's or educational
29 institution's conduct constitutes gross negligence or intentional
30 misconduct. An employer that hires a conditionally released person
31 must notify all other employees of the conditionally released person's
32 status. Notification for conditionally released persons who enroll in
33 an institution of higher education shall be made pursuant to the
34 provisions of RCW 9A.44.130 related to sex offenders enrolled in
35 institutions of higher education and RCW 4.24.550. This section
36 applies only to conditionally released persons whose court approved
37 treatment plan includes permission or a requirement for the person to
38 obtain education or employment and to employment positions or

1 educational programs that meet the requirements of the court-approved
2 treatment plan.

3 NEW SECTION. **Sec. 205.** On or before December 1, 2002, the
4 department of social and health services shall submit a report to the
5 appropriate committees of the legislature regarding policies for the
6 subsequent placement of sexually violent predators on court-ordered
7 conditional release residing in the secure community transition
8 facility established pursuant to section 201 of this act. The report
9 shall address the following:

10 (1) The anticipated number of persons who may be eligible for
11 conditional release to a setting less restrictive than the facility
12 established pursuant to section 201 of this act during the 2003-2005
13 and 2005-2007 biennia;

14 (2) The anticipated need, if any, for secure community transition
15 facilities smaller than the facility established pursuant to section
16 201 of this act;

17 (3) Policies that will be implemented to ensure that placement of
18 persons eligible in the future for conditional release to a setting
19 less restrictive than the facility established pursuant to section 201
20 of this act will be equitably distributed among the counties, and
21 within each county, among jurisdictions in the county.

22 NEW SECTION. **Sec. 206.** A new section is added to chapter 71.09
23 RCW to read as follows:

24 (1) The department shall make reasonable efforts to distribute the
25 impact of the employment, education, and social services needs of the
26 residents of the secure community transition facility established
27 pursuant to section 201 of this act among the adjoining counties and
28 not to concentrate the residents' use of resources in any one
29 community.

30 (2) The department shall provide the sheriff of a county in which
31 a resident of the secure community transition facility established
32 pursuant to section 201 of this act is regularly participating in
33 employment, education, or social services, or through which such a
34 person is regularly transported with a copy of the court's order of
35 conditional release.

1 NEW SECTION. **Sec. 207.** The department of social and health
2 services shall, by August 1, 2001, and prior to operating the secure
3 community transition facility established pursuant to section 201 of
4 this act, hold at least three public hearings in the affected
5 communities within the county where the facility is located.

6 The purpose of the public hearings is to seek input from county and
7 city officials, local law enforcement officials, and the public
8 regarding operations and security measures needed to adequately protect
9 the community from any increased risk to public safety brought about by
10 the presence of persons conditionally released from the special
11 commitment center in these communities due to the siting of the
12 facility. The department shall ensure that persons have a full
13 opportunity to speak to the issues to be addressed during each hearing.

14 NEW SECTION. **Sec. 208.** A new section is added to chapter 71.09
15 RCW to read as follows:

16 To the greatest extent possible, persons who were not residents of
17 the county in which both the special commitment center and the secure
18 community transition facility established pursuant to section 201 of
19 this act are located prior to the conviction for which they were
20 incarcerated at the time the petition for civil commitment was filed
21 may not be released to that county.

22 NEW SECTION. **Sec. 209.** A new section is added to chapter 71.09
23 RCW to read as follows:

24 When considering whether a person civilly committed under this
25 chapter and conditionally released to the secure community transition
26 facility established pursuant to section 201 of this act is appropriate
27 for release to a placement that is less restrictive than the facility
28 established pursuant to section 201 of this act, the court shall
29 consider whether the person has progressed in treatment to the point
30 that a significant change in the person's routine, including but not
31 limited to a change of employment, education, residence, or sex
32 offender treatment provider will not cause the person to regress to the
33 point that the person presents a greater risk to the community than can
34 reasonably be addressed in the proposed placement.

35 **Sec. 210.** RCW 36.70A.103 and 1991 sp.s. c 32 s 4 are each amended
36 to read as follows:

1 State agencies shall comply with the local comprehensive plans and
2 development regulations and amendments thereto adopted pursuant to this
3 chapter except as otherwise provided in sections 201 and 202 of this
4 act.

5 NEW SECTION. **Sec. 211.** The secretary of social and health
6 services shall coordinate with the secretary of corrections and the
7 appropriate local or state law enforcement agency or agencies to
8 establish a twenty-four-hour law enforcement presence on McNeil Island
9 before any person is admitted to the secure community transition
10 facility established under section 201 of this act. Law enforcement
11 shall coordinate with the emergency response team for McNeil Island to
12 provide planning and coordination in the event of an escape from the
13 special commitment center or the secure community transition facility.

14 In addition, or if no law enforcement agency will provide a law
15 enforcement presence on the island, not more than ten correctional
16 employees, as selected by the secretary of corrections, who are members
17 of the emergency response team for the McNeil Island correctional
18 facility, shall have the powers and duties of a general authority peace
19 officer while acting in a law enforcement capacity. If there is no law
20 enforcement agency to provide the law enforcement presence, those
21 correctional employees selected as peace officers shall provide a
22 twenty-four-hour presence and shall not have correctional duties at the
23 correctional facility in addition to the emergency response team while
24 acting in a law enforcement capacity.

25 NEW SECTION. **Sec. 212.** A new section is added to chapter 71.09
26 RCW to read as follows:

27 Security systems for the secure community transition facility
28 established pursuant to section 201 of this act shall include a fence
29 and provide the maximum protection appropriate in a civil facility for
30 persons in less than total confinement.

31 NEW SECTION. **Sec. 213.** A new section is added to chapter 71.09
32 RCW to read as follows:

33 The secure community transition facility established pursuant to
34 section 201 of this act shall meet the following minimum staffing
35 requirements:

1 (1) At any time the census of the facility is six or fewer
2 residents, a minimum staffing ratio of one staff per resident during
3 normal waking hours and two awake staff per three residents during
4 normal sleeping hours.

5 (2) By December 1, 2001, the department will provide a staffing
6 plan to the appropriate committees of the legislature that will cover
7 the growth of the facility to its full capacity.

8 (3) At any time the census of any secure community transition
9 facility is six or fewer residents, all staff shall be classified as
10 residential rehabilitation counselor II or have a classification that
11 indicates a higher level of skill, experience, and training. Before
12 being assigned to a secure community transition facility all staff
13 shall have training in sex offender issues, self-defense, and crisis
14 de-escalation skills in addition to departmental orientation and, as
15 appropriate management training. All staff with resident treatment or
16 care duties must participate in ongoing in-service training.

17 (4) All staff must pass a departmental background check and the
18 check is not subject to the limitations in chapter 9.96A RCW.

19 NEW SECTION. **Sec. 214.** A new section is added to chapter 71.09
20 RCW to read as follows:

21 (1) By July 1, 2001, the department must provide the appropriate
22 committees of the legislature with a transportation plan to address the
23 issues of coordinating the movement of residents of the secure
24 community transition facility established pursuant to section 201 of
25 this act between McNeil Island and the mainland with the movement of
26 others who must use the same docks or equipment within the funds
27 appropriated for this purpose.

28 (2) If the department does not provide a separate vessel for
29 transporting residents of the secure community transition facility
30 established in section 201 of this act between McNeil Island and the
31 mainland, the plan shall include at least the following components:

32 (a) The residents shall be separated from minors and vulnerable
33 adults, except vulnerable adults who have been found to be sexually
34 violent predators.

35 (b) The residents shall not be transported during times when
36 children are normally coming to and from the mainland for school.

1 (3) The department shall designate a separate waiting area at the
2 points of debarkation, and residents shall be required to remain in
3 this area while awaiting transportation.

4 NEW SECTION. **Sec. 215.** A new section is added to chapter 71.09
5 RCW to read as follows:

6 (1) The secretary shall develop a process with local governments
7 that allows each community in which a secure community transition
8 facility is located to establish operational advisory boards of at
9 least seven persons for the secure community transition facilities.
10 The department may conduct community awareness activities to publicize
11 this opportunity. The operational advisory boards developed under this
12 section shall be implemented following the decision to locate a secure
13 community transition facility in a particular community.

14 (2) The operational advisory boards may review and make
15 recommendations regarding the security and operations of the secure
16 community transition facility and conditions or modifications necessary
17 with relation to any person who the secretary proposes to place in the
18 secure community transition facility.

19 (3) The facility management must consider the recommendations of
20 the community advisory boards. Where the facility management does not
21 implement an operational advisory board recommendation, the management
22 must provide a written response to the operational advisory board
23 stating its reasons for its decision not to implement the
24 recommendation.

25 (4) The operational advisory boards, their members, and any agency
26 represented by a member shall not be liable in any cause of action as
27 a result of its recommendations unless the advisory board acts with
28 gross negligence or bad faith in making a recommendation.

29 (5) Members of a board shall be reimbursed for travel expenses as
30 provided in RCW 43.03.050 and 43.03.060.

31 NEW SECTION. **Sec. 216.** A new section is added to chapter 71.09
32 RCW to read as follows:

33 (1) The secretary shall adopt a violation reporting policy for
34 persons conditionally released to less restrictive alternative
35 placements. The policy shall require written documentation by the
36 department and service providers of all violations of conditions set by
37 the department, the department of corrections, or the court and

1 establish criteria for returning a violator to the special commitment
2 center or a secure community transition facility with a higher degree
3 of security. Any conditionally released person who commits a serious
4 violation of conditions shall be returned to the special commitment
5 center, unless arrested by a law enforcement officer, and the court
6 shall be notified immediately and shall initiate proceedings under RCW
7 71.09.098 to revoke or modify the less restrictive alternative
8 placement. Nothing in this section limits the authority of the
9 department to return a person to the special commitment center based on
10 a violation that is not a serious violation as defined in this section.
11 For the purposes of this section, "serious violation" includes but is
12 not limited to:

- 13 (a) The commission of any criminal offense;
- 14 (b) Any unlawful use or possession of a controlled substance; and
- 15 (c) Any violation of conditions targeted to address the person's
16 documented pattern of offense that increases the risk to public safety.

17 When a person is conditionally released to a less restrictive
18 alternative under this chapter and is under the supervision of the
19 department of corrections, notice of any violation of the person's
20 conditions of release must also be made to the department of
21 corrections.

22 (2) Whenever the secretary contracts with a service provider to
23 operate a secure community transition facility, the contract shall
24 include a requirement that the service provider must report to the
25 department of social and health services any known violation of
26 conditions committed by any resident of the secure community transition
27 facility.

28 (3) The secretary shall document in writing all violations,
29 penalties, actions by the department of social and health services to
30 remove persons from a secure community transition facility, and
31 contract terminations. The secretary shall give great weight to a
32 service provider's record of violations, penalties, actions by the
33 department of social and health services or the department of
34 corrections to remove persons from a secure community transition
35 facility, and contract terminations in determining whether to execute,
36 renew, or renegotiate a contract with a service provider.

37 NEW SECTION. **Sec. 217.** A new section is added to chapter 71.09
38 RCW to read as follows:

1 The secretary shall adopt rules that contain a schedule of monetary
2 penalties for contractors operating secure community transition
3 facilities, not to exceed the total compensation set forth in the
4 contract, and include provisions for termination of all contracts with
5 a service provider that has repeated or serious violations of section
6 216 of this act.

7 NEW SECTION. **Sec. 218.** A new section is added to chapter 71.09
8 RCW to read as follows:

9 (1) Unless otherwise ordered by the court:

10 (a) Residents of a secure community transition facility must wear
11 electronic monitoring devices at all times. To the extent that
12 electronic monitoring devices that employ global positioning system
13 technology are available and funds for this purpose are appropriated by
14 the legislature, the department shall use these devices; and

15 (b) At least one staff member, or other court-authorized and
16 department-approved person must escort each resident when the resident
17 leaves the secure community transition facility for appointments,
18 employment, or other approved activities. Escorting persons must
19 supervise the resident closely and maintain close proximity to the
20 resident.

21 (2) Staff members of the special commitment center and any other
22 total confinement facility and any secure community transition facility
23 must be trained in self-defense and appropriate crisis responses
24 including incident de-escalation. Prior to escorting a person outside
25 of a facility, staff members must also have training in the offense
26 pattern of the offender they are escorting.

27 (3) Any escort must carry a cellular telephone or a similar device
28 at all times when escorting a resident of a secure community transition
29 facility.

30 (4) The department shall require training in offender pattern,
31 self-defense, and incident response for all court-authorized escorts
32 who are not employed by the department or the department of
33 corrections.

34 NEW SECTION. **Sec. 219.** A new section is added to chapter 71.09
35 RCW to read as follows:

36 A conditional release from a total confinement facility to a less
37 restrictive alternative is a release that subjects the conditionally

1 released person to the registration requirements specified in RCW
2 9A.44.130 and to community notification under RCW 4.24.550.

3 When a person is conditionally released to the secure community
4 transition facility established pursuant to section 201 of this act,
5 the sheriff must provide each household on McNeil Island with the
6 community notification information provided for under RCW 4.24.550.

7 NEW SECTION. **Sec. 220.** (1) A joint select committee on the
8 equitable distribution of secure community transition facilities is
9 established.

10 (2) The task force shall consist of the following persons:

11 (a) One member from each of the two largest caucuses of the senate,
12 appointed by the president of the senate, at least one member being a
13 member of the senate human services and corrections committee;

14 (b) One member from each of the two largest caucuses of the house
15 of representatives, appointed by the speaker of the house of
16 representatives, at least one member being a member of the house
17 criminal justice and corrections committee;

18 (c) One member from the department of social and health services;

19 (d) One member from the Washington state association of counties;

20 (e) One member from the association of Washington cities;

21 (f) One member representing crime victims, appointed jointly by the
22 president of the senate and the speaker of the house of
23 representatives; and

24 (g) One person selected by the governor.

25 (3) The chair of the joint select committee shall be a legislative
26 member chosen by the joint select committee members.

27 (4) The joint select committee shall review and develop
28 recommendations for the equitable distribution of secure community
29 transition facilities, as defined in RCW 71.09.020, among counties, and
30 among jurisdictions within counties. The joint select committee shall
31 also review and make recommendations for any necessary revisions to the
32 criteria for secure community transition facilities.

33 (5) The joint select committee shall present a report of its
34 findings and recommendations to the governor and the appropriate
35 committees of the legislature, including any proposed legislation, not
36 later than November 15, 2001.

1 (6) The task force may, where feasible, consult with individuals
2 from the public and private sector in carrying out its duties under
3 this section.

4 (7) Nonlegislative members of the task force shall serve without
5 compensation, but shall be reimbursed for travel expenses as provided
6 in RCW 43.03.050 and 43.03.060. Legislative members of the task force
7 shall be reimbursed for travel expenses as provided in RCW 44.04.120.

8 (8) Staff of senate committee services and the office of program
9 research of the house of representatives shall provide support to the
10 task force.

11 (9) This section expires March 1, 2002.

12 NEW SECTION. **Sec. 221.** A new section is added to chapter 71.09
13 RCW to read as follows:

14 (1) Except with respect to the secure community transition facility
15 established pursuant to section 201 of this act, the secretary shall
16 adopt rules that balance the average response time of emergency
17 services to the general area of a proposed secure community transition
18 facility against the proximity of the proposed site to risk potential
19 activities and facilities in existence at the time the site is listed
20 for consideration.

21 (2) In balancing the competing criteria of proximity and response
22 time the rule shall endeavor to achieve an average law enforcement
23 response time not greater than five minutes and in no case shall the
24 rule permit location of a facility adjacent to, immediately across a
25 street or parking lot from, or within the line of sight of a risk
26 potential activity or facility in existence at the time a site is
27 listed for consideration. "Within the line of sight" means that it is
28 possible to reasonably visually distinguish and recognize individuals.

29 (3) The rule shall require that great weight be given to sites that
30 are the farthest removed from any risk potential activity.

31 (4) The rule shall specify how distance from the location is
32 measured and any variations in the measurement based on the size of the
33 property within which a proposed facility is to be located.

34 (5) The rule shall establish a method to analyze and compare the
35 criteria for each site in terms of public safety and security, site
36 characteristics, and program components. In making a decision
37 regarding a site following the analysis and comparison, the secretary
38 shall give priority to public safety and security considerations. The

1 analysis and comparison of the criteria are to be documented and made
2 available at the public hearings prescribed in section 225 of this act.

3 NEW SECTION. **Sec. 222.** By December 1, 2001, the secretary of the
4 department of social and health services shall determine and report to
5 the legislature whether there is a significant group of potential
6 locations that are outside of a five-minute law enforcement response
7 time zone that are more than two miles from any risk potential
8 activities and whether, in the secretary's judgment, the legislature
9 should require the rule to be revised to permit consideration of these
10 properties.

11 NEW SECTION. **Sec. 223.** A new section is added to chapter 71.09
12 RCW to read as follows:

13 The secretary shall establish criteria for the siting of secure
14 community transition facilities, other than the secure community
15 transition facility established pursuant to section 201 of this act,
16 which shall include at least the following minimum requirements:

17 (1) Any real property listed for consideration for the location of
18 or use as a secure community transition facility must meet all of the
19 following criteria:

20 (a) The proximity and response time criteria established under
21 section 221 of this act;

22 (b) The site or building is available for lease for the anticipated
23 use period or for purchase;

24 (c) Security monitoring services and appropriate back-up systems
25 are available and reliable;

26 (d) Appropriate mental health and sex offender treatment providers
27 must be available within a reasonable commute; and

28 (e) Appropriate permitting for a secure community transition
29 facility must be possible under the zoning code of the local
30 jurisdiction.

31 (2) For sites which meet the criteria of subsection (1) of this
32 section, the department shall analyze and compare the criteria in
33 subsections (3) through (5) of this section using the method
34 established in section 221 of this act.

35 (3) Public safety and security criteria shall include at least the
36 following:

1 (a) Whether limited visibility between the facility and adjacent
2 properties can be achieved prior to placement of any person;

3 (b) The distance from, and number of, risk potential activities and
4 facilities, as measured using the rules adopted under section 221 of
5 this act;

6 (c) The existence of or ability to establish barriers between the
7 site and the risk potential facilities and activities;

8 (d) Suitability of the buildings to be used for the secure
9 community transition facility with regard to existing or feasibly
10 modified features; and

11 (e) The availability of electronic monitoring that allows a
12 resident's location to be determined with specificity.

13 (4) Site characteristics criteria shall include at least the
14 following:

15 (a) Reasonableness of rental, lease, or sale terms including length
16 and renewability of a lease or rental agreement;

17 (b) Traffic and access patterns associated with the real property;

18 (c) Feasibility of complying with zoning requirements within the
19 necessary time frame; and

20 (d) A contractor or contractors are available to install, monitor,
21 and repair the necessary security and alarm systems.

22 (5) Program characteristics criteria shall include at least the
23 following:

24 (a) Reasonable proximity to available medical, mental health, sex
25 offender, and chemical dependency treatment providers and facilities;

26 (b) Suitability of the location for programming, staffing, and
27 support considerations;

28 (c) Proximity to employment, educational, vocational, and other
29 treatment plan components; and

30 (6) For purposes of this section "available" or "availability" of
31 qualified treatment providers includes provider qualifications and
32 willingness to provide services, average commute time, and cost of
33 services.

34 NEW SECTION. **Sec. 224.** A new section is added to chapter 71.09
35 RCW to read as follows:

36 Security systems for secure community transition facilities
37 designed to house five or fewer residents shall meet the following
38 minimum qualifications:

1 (1)(a) The security panel must be a commercial grade panel with
2 tamper-proof switches and a key-lock to prevent unauthorized access.

3 (b) There must be an emergency electrical supply system which shall
4 include a battery back-up system and a generator.

5 (2) The system must include personal panic devices for all staff.

6 (3) The security system must be capable of being monitored and
7 signaled either by telephone through either a land or cellular
8 telephone system or by private radio network in the event of a total
9 dial-tone failure or through equivalent technologies.

10 (4) The department shall issue photo-identification badges to all
11 staff which must be worn at all times.

12 NEW SECTION. **Sec. 225.** A new section is added to chapter 71.09
13 RCW to read as follows:

14 (1) Whenever the department operates, or the secretary enters into
15 a contract to operate, a secure community transition facility except
16 the secure community transition facility established pursuant to
17 section 201 of this act, the secure community transition facility may
18 be operated only after the public notification and opportunities for
19 review and comment as required by this section.

20 (2) The secretary shall establish a process for early and
21 continuous public participation in establishing or relocating secure
22 community transition facilities. The process shall include, at a
23 minimum, public meetings in the local communities affected, as well as
24 opportunities for written and oral comments, in the following manner:

25 (a) If there are more than three sites initially selected as
26 potential locations and the selection process by the secretary or a
27 service provider reduces the number of possible sites for a secure
28 community transition facility to no fewer than three, the secretary or
29 the chief operating officer of the service provider shall notify the
30 public of the possible siting and hold at least two public hearings in
31 each community where a secure community transition facility may be
32 sited.

33 (b) When the secretary or service provider has determined the
34 secure community transition facility's location, the secretary or the
35 chief operating officer of the service provider shall hold at least one
36 additional public hearing in the community where the secure community
37 transition facility will be sited.

1 (c) When the secretary has entered negotiations with a service
2 provider and only one site is under consideration, then at least two
3 public hearings shall be held.

4 (d) To provide adequate notice of, and opportunity for interested
5 persons to comment on, a proposed location, the secretary or the chief
6 operating officer of the service provider shall provide at least
7 fourteen days' advance notice of the meeting to all newspapers of
8 general circulation in the community, all radio and television stations
9 generally available to persons in the community, any school district in
10 which the secure community transition facility would be sited or whose
11 boundary is within two miles of a proposed secure community transition
12 facility, any library district in which the secure community transition
13 facility would be sited, local business or fraternal organizations that
14 request notification from the secretary or agency, and any person or
15 property owner within a one-half mile radius of the proposed secure
16 community transition facility. Before initiating this process, the
17 department of social and health services shall contact local government
18 planning agencies in the communities containing the proposed secure
19 community transition facility. The department of social and health
20 services shall coordinate with local government agencies to ensure that
21 opportunities are provided for effective citizen input and to reduce
22 the duplication of notice and meetings.

23 (3) This section applies only to secure community transition
24 facilities sited after the effective date of this section.

25 NEW SECTION. **Sec. 226.** A new section is added to chapter 36.70A
26 RCW to read as follows:

27 (1) The department of social and health services shall prepare a
28 projected list of counties in which secure community transition
29 facilities will need to be sited over the next six years and transmit
30 that to the office of financial management for inclusion on the list of
31 projected essential public facilities kept under RCW 36.70A.200. In
32 preparing the list the department must give great weight to the
33 equitable distribution criteria established by the joint select
34 committee under section 220 of this act.

35 (2) When a county is notified by the department of social and
36 health services of the projected need to site secure community
37 transition facilities, the county shall review and shall, if necessary,
38 take action to revise the countywide planning policies adopted under

1 RCW 36.70A.210 to address the siting of such facilities. The county
2 must include all cities in such review and must solicit the
3 participation of the department of social and health services regarding
4 policies, statutes, and rules applicable to the siting of secure
5 community transition facilities.

6 (3) Each county and city identified in the countywide planning
7 policies developed under subsection (2) of this section for projected
8 siting of secure community transition facilities within such county or
9 city shall make any necessary revisions to its comprehensive plan and
10 development regulations. The provisions of the comprehensive plan and
11 development regulations shall be consistent with the policies,
12 statutes, and rules applicable to the siting of secure community
13 transition facilities. Any amendments may be combined with the next
14 scheduled adoption of revisions, but in any event not later than the
15 date provided for comprehensive review and revision of plans pursuant
16 to RCW 36.70A.130(1).

17 (4) Nothing in this section precludes a local government from
18 requiring that a special use or a conditional use permit be obtained to
19 site a secure community transition facility that does not comply with
20 its comprehensive plan and development regulations, provided that the
21 comprehensive plan and development regulations are consistent with this
22 section. The local government shall establish timelines for processing
23 any required permits that are no longer than those established for
24 other comparable project permits under RCW 36.70B.080.

25 **Sec. 227.** RCW 36.70A.200 and 1998 c 171 s 3 are each amended to
26 read as follows:

27 (1) The comprehensive plan of each county and city that is planning
28 under this chapter shall include a process for identifying and siting
29 essential public facilities. Essential public facilities include those
30 facilities that are typically difficult to site, such as airports,
31 state education facilities and state or regional transportation
32 facilities as defined in RCW 47.06.140, state and local correctional
33 facilities, solid waste handling facilities, and in-patient facilities
34 including substance abuse facilities, mental health facilities, ((and))
35 group homes, and secure community transition facilities as defined in
36 RCW 71.09.020.

37 (2) The office of financial management shall maintain a list of
38 those essential state public facilities that are required or likely to

1 be built within the next six years. The office of financial management
2 may at any time add facilities to the list. No local comprehensive
3 plan or development regulation may preclude the siting of essential
4 public facilities.

5 NEW SECTION. **Sec. 228.** A new section is added to chapter 71.09
6 RCW to read as follows:

7 Nothing in this act shall operate to restrict a court's authority
8 to make less restrictive alternative placements to a committed person's
9 individual residence or to a setting less restrictive than the secure
10 community transition facility established pursuant to section 201 of
11 this act. A court-ordered less restrictive alternative placement to a
12 committed person's individual residence is not a less restrictive
13 alternative placement to a secure community transition facility.

14 **PART III**
15 **SENTENCING STRUCTURE**

16 **Sec. 301.** RCW 9.94A.030 and 2000 c 28 s 2 are each amended to read
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in
19 this section apply throughout this chapter.

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

22 (2) "Collect," or any derivative thereof, "collect and remit," or
23 "collect and deliver," when used with reference to the department,
24 means that the department, either directly or through a collection
25 agreement authorized by RCW 9.94A.145, is responsible for monitoring
26 and enforcing the offender's sentence with regard to the legal
27 financial obligation, receiving payment thereof from the offender, and,
28 consistent with current law, delivering daily the entire payment to the
29 superior court clerk without depositing it in a departmental account.

30 ~~((2))~~ (3) "Commission" means the sentencing guidelines
31 commission.

32 ~~((3))~~ (4) "Community corrections officer" means an employee of
33 the department who is responsible for carrying out specific duties in
34 supervision of sentenced offenders and monitoring of sentence
35 conditions.

1 (~~(4)~~) (5) "Community custody" means that portion of an offender's
2 sentence of confinement in lieu of earned release time or imposed
3 pursuant to RCW 9.94A.120(2)(b), 9.94A.650 through 9.94A.670,
4 9.94A.137, 9.94A.700 through 9.94A.715, or 9.94A.383, served in the
5 community subject to controls placed on the offender's movement and
6 activities by the department. For offenders placed on community
7 custody for crimes committed on or after July 1, 2000, the department
8 shall assess the offender's risk of reoffense and may establish and
9 modify conditions of community custody, in addition to those imposed by
10 the court, based upon the risk to community safety.

11 (~~(5)~~) (6) "Community custody range" means the minimum and maximum
12 period of community custody included as part of a sentence under RCW
13 9.94A.715, as established by the commission or the legislature under
14 RCW 9.94A.040, for crimes committed on or after July 1, 2000.

15 (~~(6)~~) (7) "Community placement" means that period during which
16 the offender is subject to the conditions of community custody and/or
17 postrelease supervision, which begins either upon completion of the
18 term of confinement (postrelease supervision) or at such time as the
19 offender is transferred to community custody in lieu of earned release.
20 Community placement may consist of entirely community custody, entirely
21 postrelease supervision, or a combination of the two.

22 (~~(7)~~) (8) "Community service" means compulsory service, without
23 compensation, performed for the benefit of the community by the
24 offender.

25 (~~(8)~~) (9) "Community supervision" means a period of time during
26 which a convicted offender is subject to crime-related prohibitions and
27 other sentence conditions imposed by a court pursuant to this chapter
28 or RCW 16.52.200(6) or 46.61.524. Where the court finds that any
29 offender has a chemical dependency that has contributed to his or her
30 offense, the conditions of supervision may, subject to available
31 resources, include treatment. For purposes of the interstate compact
32 for out-of-state supervision of parolees and probationers, RCW
33 9.95.270, community supervision is the functional equivalent of
34 probation and should be considered the same as probation by other
35 states.

36 (~~(9)~~) (10) "Confinement" means total or partial confinement.

37 (~~(10)~~) (11) "Conviction" means an adjudication of guilt pursuant
38 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
39 guilty, and acceptance of a plea of guilty.

1 (~~(11)~~) (12) "Crime-related prohibition" means an order of a court
2 prohibiting conduct that directly relates to the circumstances of the
3 crime for which the offender has been convicted, and shall not be
4 construed to mean orders directing an offender affirmatively to
5 participate in rehabilitative programs or to otherwise perform
6 affirmative conduct. However, affirmative acts necessary to monitor
7 compliance with the order of a court may be required by the department.

8 (~~(12)~~) (13) "Criminal history" means the list of a defendant's
9 prior convictions and juvenile adjudications, whether in this state, in
10 federal court, or elsewhere. The history shall include, where known,
11 for each conviction (a) whether the defendant has been placed on
12 probation and the length and terms thereof; and (b) whether the
13 defendant has been incarcerated and the length of incarceration.

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

18 (~~(14)~~) (15) "Day reporting" means a program of enhanced
19 supervision designed to monitor the offender's daily activities and
20 compliance with sentence conditions, and in which the offender is
21 required to report daily to a specific location designated by the
22 department or the sentencing court.

23 (~~(15)~~) (16) "Department" means the department of corrections.

24 (~~(16)~~) (17) "Determinate sentence" means a sentence that states
25 with exactitude the number of actual years, months, or days of total
26 confinement, of partial confinement, of community supervision, the
27 number of actual hours or days of community service work, or dollars or
28 terms of a legal financial obligation. The fact that an offender
29 through earned release can reduce the actual period of confinement
30 shall not affect the classification of the sentence as a determinate
31 sentence.

32 (~~(17)~~) (18) "Disposable earnings" means that part of the earnings
33 of an offender remaining after the deduction from those earnings of any
34 amount required by law to be withheld. For the purposes of this
35 definition, "earnings" means compensation paid or payable for personal
36 services, whether denominated as wages, salary, commission, bonuses, or
37 otherwise, and, notwithstanding any other provision of law making the
38 payments exempt from garnishment, attachment, or other process to
39 satisfy a court-ordered legal financial obligation, specifically

1 includes periodic payments pursuant to pension or retirement programs,
2 or insurance policies of any type, but does not include payments made
3 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
4 or Title 74 RCW.

5 ~~((18))~~ (19) "Drug offender sentencing alternative" is a
6 sentencing option available to persons convicted of a felony offense
7 other than a violent offense or a sex offense and who are eligible for
8 the option under RCW 9.94A.660.

9 ~~((19))~~ (20) "Drug offense" means:

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

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

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

19 ~~((20))~~ (21) "Earned release" means earned release from
20 confinement as provided in RCW 9.94A.150.

21 ~~((21))~~ (22) "Escape" means:

22 (a) Sexually violent predator escape (section 358 of this act),
23 escape in the first degree (RCW 9A.76.110), escape in the second degree
24 (RCW 9A.76.120), willful failure to return from furlough (RCW
25 72.66.060), willful failure to return from work release (RCW
26 72.65.070), or willful failure to be available for supervision by the
27 department while in community custody (RCW 72.09.310); 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 an escape
30 under (a) of this subsection.

31 ~~((22))~~ (23) "Felony traffic offense" means:

32 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
33 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
34 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (~~(23)~~) (24) "Fine" means a specific sum of money ordered by the
2 sentencing court to be paid by the offender to the court over a
3 specific period of time.

4 (~~(24)~~) (25) "First-time offender" means any person who has no
5 prior convictions for a felony and is eligible for the first-time
6 offender waiver under RCW 9.94A.650.

7 (~~(25)~~) (26) "Home detention" means a program of partial
8 confinement available to offenders wherein the offender is confined in
9 a private residence subject to electronic surveillance.

10 (~~(26)~~) (27) "Legal financial obligation" means a sum of money
11 that is ordered by a superior court of the state of Washington for
12 legal financial obligations which may include restitution to the
13 victim, statutorily imposed crime victims' compensation fees as
14 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
15 drug funds, court-appointed attorneys' fees, and costs of defense,
16 fines, and any other financial obligation that is assessed to the
17 offender as a result of a felony conviction. Upon conviction for
18 vehicular assault while under the influence of intoxicating liquor or
19 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
20 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
21 legal financial obligations may also include payment to a public agency
22 of the expense of an emergency response to the incident resulting in
23 the conviction, subject to RCW 38.52.430.

24 (~~(27)~~) (28) "Most serious offense" means any of the following
25 felonies or a felony attempt to commit any of the following felonies:

26 (a) Any felony defined under any law as a class A felony or
27 criminal solicitation of or criminal conspiracy to commit a class A
28 felony;

29 (b) Assault in the second degree;

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

31 (d) Child molestation in the second degree;

32 (e) Controlled substance homicide;

33 (f) Extortion in the first degree;

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

35 (h) Indecent liberties;

36 (i) Kidnapping in the second degree;

37 (j) Leading organized crime;

38 (k) Manslaughter in the first degree;

39 (l) Manslaughter in the second degree;

1 (m) Promoting prostitution in the first degree;
2 (n) Rape in the third degree;
3 (o) Robbery in the second degree;
4 (p) Sexual exploitation;
5 (q) Vehicular assault;
6 (r) Vehicular homicide, when proximately caused by the driving of
7 any vehicle by any person while under the influence of intoxicating
8 liquor or any drug as defined by RCW 46.61.502, or by the operation of
9 any vehicle in a reckless manner;
10 (s) Any other class B felony offense with a finding of sexual
11 motivation;
12 (t) Any other felony with a deadly weapon verdict under RCW
13 9.94A.125;
14 (u) Any felony offense in effect at any time prior to December 2,
15 1993, that is comparable to a most serious offense under this
16 subsection, or any federal or out-of-state conviction for an offense
17 that under the laws of this state would be a felony classified as a
18 most serious offense under this subsection;
19 (v)(i) A prior conviction for indecent liberties under RCW
20 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
21 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
22 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
23 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
24 (ii) A prior conviction for indecent liberties under RCW
25 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
26 if: (A) The crime was committed against a child under the age of
27 fourteen; or (B) the relationship between the victim and perpetrator is
28 included in the definition of indecent liberties under RCW
29 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
30 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
31 through July 27, 1997.
32 (~~(+28+)~~) (29) "Nonviolent offense" means an offense which is not a
33 violent offense.
34 (~~(+29+)~~) (30) "Offender" means a person who has committed a felony
35 established by state law and is eighteen years of age or older or is
36 less than eighteen years of age but whose case is under superior court
37 jurisdiction under RCW 13.04.030 or has been transferred by the
38 appropriate juvenile court to a criminal court pursuant to RCW

1 13.40.110. Throughout this chapter, the terms "offender" and
2 "defendant" are used interchangeably.

3 ~~((+30+))~~ (31) "Partial confinement" means confinement for no more
4 than one year in a facility or institution operated or utilized under
5 contract by the state or any other unit of government, or, if home
6 detention or work crew has been ordered by the court, in an approved
7 residence, for a substantial portion of each day with the balance of
8 the day spent in the community. Partial confinement includes work
9 release, home detention, work crew, and a combination of work crew and
10 home detention.

11 ~~((+31+))~~ (32) "Persistent offender" is an offender who:

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

14 (ii) Has, before the commission of the offense under (a) of this
15 subsection, been convicted as an offender on at least two separate
16 occasions, whether in this state or elsewhere, of felonies that under
17 the laws of this state would be considered most serious offenses and
18 would be included in the offender score under RCW 9.94A.360; provided
19 that of the two or more previous convictions, at least one conviction
20 must have occurred before the commission of any of the other most
21 serious offenses for which the offender was previously convicted; or

22 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
23 of a child in the first degree, child molestation in the first degree,
24 rape in the second degree, rape of a child in the second degree, or
25 indecent liberties by forcible compulsion; (B) any of the following
26 offenses with a finding of sexual motivation: Murder in the first
27 degree, murder in the second degree, homicide by abuse, kidnapping in
28 the first degree, kidnapping in the second degree, assault in the first
29 degree, assault in the second degree, assault of a child in the first
30 degree, or burglary in the first degree~~((, with a finding of sexual~~
31 ~~motivation))~~; or (C) an attempt to commit any crime listed in this
32 subsection ~~((+31+))~~ (32)(b)(i); and

33 (ii) Has, before the commission of the offense under (b)(i) of this
34 subsection, been convicted as an offender on at least one occasion,
35 whether in this state or elsewhere, of an offense listed in (b)(i) of
36 this subsection. A conviction for rape of a child in the first degree
37 constitutes a conviction under (b)(i) of this subsection only when the
38 offender was sixteen years of age or older when the offender committed
39 the offense. A conviction for rape of a child in the second degree

1 constitutes a conviction under (b)(i) of this subsection only when the
2 offender was eighteen years of age or older when the offender committed
3 the offense.

4 ~~((+32+))~~ (33) "Postrelease supervision" is that portion of an
5 offender's community placement that is not community custody.

6 ~~((+33+))~~ (34) "Predatory" means acts directed towards:

7 (a) Strangers;

8 (b) Individuals with whom a relationship has been established or
9 promoted for the primary purpose of victimization; or

10 (c) Persons of casual acquaintance with whom no substantial
11 relationship exists.

12 (35) "Restitution" means a specific sum of money ordered by the
13 sentencing court to be paid by the offender to the court over a
14 specified period of time as payment of damages. The sum may include
15 both public and private costs.

16 ~~((+34+))~~ (36) "Risk assessment" means the application of an
17 objective instrument supported by research and adopted by the
18 department for the purpose of assessing an offender's risk of
19 reoffense, taking into consideration the nature of the harm done by the
20 offender, place and circumstances of the offender related to risk, the
21 offender's relationship to any victim, and any information provided to
22 the department by victims. The results of a risk assessment shall not
23 be based on unconfirmed or unconfirmable allegations.

24 ~~((+35+))~~ (37) "Serious traffic offense" means:

25 (a) Driving while under the influence of intoxicating liquor or any
26 drug (RCW 46.61.502), actual physical control while under the influence
27 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
28 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
29 or

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

33 ~~((+36+))~~ (38) "Serious violent offense" is a subcategory of violent
34 offense and means:

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

36 (ii) Homicide by abuse;

37 (iii) Murder in the second degree;

38 (iv) Manslaughter in the first degree;

39 (v) Assault in the first degree;

1 (vi) Kidnapping in the first degree;
2 (vii) Rape in the first degree;
3 (viii) Assault of a child in the first degree; or
4 (ix) An attempt, criminal solicitation, or criminal conspiracy to
5 commit one of these felonies; or
6 (b) Any federal or out-of-state conviction for an offense that
7 under the laws of this state would be a felony classified as a serious
8 violent offense under (a) of this subsection.
9 (~~(37)~~) (39) "Sex offense" means:
10 (a) A felony that is a violation of:
11 (i) Chapter 9A.44 RCW other than RCW 9A.44.130(11);
12 (ii) RCW 9A.64.020;
13 (iii) RCW 9.68A.090; or
14 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
15 criminal solicitation, or criminal conspiracy to commit such crimes;
16 (b) Any conviction for a felony offense in effect at any time prior
17 to July 1, 1976, that is comparable to a felony classified as a sex
18 offense in (a) of this subsection;
19 (c) A felony with a finding of sexual motivation under RCW
20 9.94A.127 or 13.40.135; or
21 (d) Any federal or out-of-state conviction for an offense that
22 under the laws of this state would be a felony classified as a sex
23 offense under (a) of this subsection.
24 (~~(38)~~) (40) "Sexual motivation" means that one of the purposes
25 for which the defendant committed the crime was for the purpose of his
26 or her sexual gratification.
27 (~~(39)~~) (41) "Standard sentence range" means the sentencing
28 court's discretionary range in imposing a nonappealable sentence.
29 (~~(40)~~) (42) "Statutory maximum sentence" means the maximum length
30 of time for which an offender may be confined as punishment for a crime
31 as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining
32 the crime, or other statute defining the maximum penalty for a crime.
33 (~~(41)~~) (43) "Total confinement" means confinement inside the
34 physical boundaries of a facility or institution operated or utilized
35 under contract by the state or any other unit of government for twenty-
36 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.
37 (~~(42)~~) (44) "Transition training" means written and verbal
38 instructions and assistance provided by the department to the offender
39 during the two weeks prior to the offender's successful completion of

1 the work ethic camp program. The transition training shall include
2 instructions in the offender's requirements and obligations during the
3 offender's period of community custody.

4 (~~(43)~~) (45) "Victim" means any person who has sustained
5 emotional, psychological, physical, or financial injury to person or
6 property as a direct result of the crime charged.

7 (~~(44)~~) (46) "Violent offense" means:

8 (a) Any of the following felonies:

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

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

13 (iii) Manslaughter in the first degree;

14 (iv) Manslaughter in the second degree;

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

16 (vi) Kidnapping in the second degree;

17 (vii) Arson in the second degree;

18 (viii) Assault in the second degree;

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

20 (x) Extortion in the first degree;

21 (xi) Robbery in the second degree;

22 (xii) Drive-by shooting;

23 (xiii) Vehicular assault; and

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

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

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

34 (~~(45)~~) (47) "Work crew" means a program of partial confinement
35 consisting of civic improvement tasks for the benefit of the community
36 that complies with RCW 9.94A.135.

37 (~~(46)~~) (48) "Work ethic camp" means an alternative incarceration
38 program as provided in RCW 9.94A.137 designed to reduce recidivism and
39 lower the cost of corrections by requiring offenders to complete a

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

5 ~~((47))~~ (49) "Work release" means a program of partial confinement
6 available to offenders who are employed or engaged as a student in a
7 regular course of study at school.

8 **Sec. 302.** RCW 9.94A.715 and 2001 c 10 s 5 are each amended to read
9 as follows:

10 (1) When a court sentences a person to the custody of the
11 department for a sex offense not sentenced under section 303 of this
12 act, a violent offense, any crime against persons under RCW
13 9.94A.440(2), or a felony offense under chapter 69.50 or 69.52 RCW,
14 committed on or after July 1, 2000, the court shall in addition to the
15 other terms of the sentence, sentence the offender to community custody
16 for the community custody range established under RCW 9.94A.040 or up
17 to the period of earned release awarded pursuant to RCW 9.94A.150 (1)
18 and (2), whichever is longer. The community custody shall begin: (a)
19 Upon completion of the term of confinement; (b) at such time as the
20 offender is transferred to community custody in lieu of earned release
21 in accordance with RCW 9.94A.150 (1) and (2); or (c) with regard to
22 offenders sentenced under RCW 9.94A.660, upon failure to complete or
23 administrative termination from the special drug offender sentencing
24 alternative program.

25 (2)(a) Unless a condition is waived by the court, the conditions of
26 community custody shall include those provided for in RCW 9.94A.700(4).
27 The conditions may also include those provided for in RCW 9.94A.700(5).
28 The court may also order the offender to participate in rehabilitative
29 programs or otherwise perform affirmative conduct reasonably related to
30 the circumstances of the offense, the offender's risk of reoffending,
31 or the safety of the community, and the department shall enforce such
32 conditions pursuant to subsection (6) of this section.

33 (b) As part of any sentence that includes a term of community
34 custody imposed under this subsection, the court shall also require the
35 offender to comply with any conditions imposed by the department under
36 RCW 9.94A.720. The department shall assess the offender's risk of
37 reoffense and may establish and modify additional conditions of the
38 offender's community custody based upon the risk to community safety.

1 In addition, the department may require the offender to participate in
2 rehabilitative programs, or otherwise perform affirmative conduct, and
3 to obey all laws.

4 (c) The department may not impose conditions that are contrary to
5 those ordered by the court and may not contravene or decrease court
6 imposed conditions. The department shall notify the offender in
7 writing of any such conditions or modifications. In setting,
8 modifying, and enforcing conditions of community custody, the
9 department shall be deemed to be performing a quasi-judicial function.

10 (3) If an offender violates conditions imposed by the court or the
11 department pursuant to this section during community custody, the
12 department may transfer the offender to a more restrictive confinement
13 status and impose other available sanctions as provided in RCW
14 9.94A.205 and 9.94A.207.

15 (4) Except for terms of community custody under RCW 9.94A.670, the
16 department shall discharge the offender from community custody on a
17 date determined by the department, which the department may modify,
18 based on risk and performance of the offender, within the range or at
19 the end of the period of earned release, whichever is later.

20 (5) At any time prior to the completion or termination of a sex
21 offender's term of community custody, if the court finds that public
22 safety would be enhanced, the court may impose and enforce an order
23 extending any or all of the conditions imposed pursuant to this section
24 for a period up to the maximum allowable sentence for the crime as it
25 is classified in chapter 9A.20 RCW, regardless of the expiration of the
26 offender's term of community custody. If a violation of a condition
27 extended under this subsection occurs after the expiration of the
28 offender's term of community custody, it shall be deemed a violation of
29 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
30 contempt of court as provided for in RCW 7.21.040. If the court
31 extends a condition beyond the expiration of the term of community
32 custody, the department is not responsible for supervision of the
33 offender's compliance with the condition.

34 (6) Within the funds available for community custody, the
35 department shall determine conditions and duration of community custody
36 on the basis of risk to community safety, and shall supervise offenders
37 during community custody on the basis of risk to community safety and
38 conditions imposed by the court. The secretary shall adopt rules to
39 implement the provisions of this subsection.

1 (7) By the close of the next business day after receiving notice of
2 a condition imposed or modified by the department, an offender may
3 request an administrative review under rules adopted by the department.
4 The condition shall remain in effect unless the reviewing officer finds
5 that it is not reasonably related to any of the following: (a) The
6 crime of conviction; (b) the offender's risk of reoffending; or (c) the
7 safety of the community.

8 NEW SECTION. **Sec. 303.** A new section is added to chapter 9.94A
9 RCW to read as follows:

10 (1)(a) Except when (b) of this subsection applies, an offender who
11 is not a persistent offender shall be sentenced under this section if
12 the offender:

13 (i) Is convicted of:

14 (A) Rape in the first degree, rape in the second degree, rape of a
15 child in the first degree, child molestation in the first degree, rape
16 of a child in the second degree, or indecent liberties by forcible
17 compulsion;

18 (B) Any of the following offenses with a finding of sexual
19 motivation: Murder in the first degree, murder in the second degree,
20 homicide by abuse, kidnapping in the first degree, kidnapping in the
21 second degree, assault in the first degree, assault in the second
22 degree, assault of a child in the first degree, or burglary in the
23 first degree; or

24 (C) An attempt to commit any crime listed in this subsection
25 (1)(a)(i);
26 committed on or after the effective date of this section; or

27 (ii) Has a prior conviction for an offense listed in RCW
28 9.94A.030(32)(b), and is convicted of any sex offense, which the trier
29 of fact finds was predatory and which was committed after the effective
30 date of this section.

31 (b) An offender convicted of rape of a child in the first or second
32 degree who was seventeen years of age or younger at the time of the
33 offense shall not be sentenced under this section unless the trier of
34 fact finds that the offense was predatory or committed using forcible
35 compulsion.

36 For purposes of (a)(ii) of this subsection, failure to register is
37 not a sex offense.

1 (2) Upon a finding that the offender is subject to sentencing under
2 this section, the court shall impose a sentence to a maximum term
3 consisting of the statutory maximum sentence for the offense and a
4 minimum term either within the standard sentence range for the offense,
5 or outside the standard sentence range pursuant to RCW 9.94A.390, if
6 the offender is otherwise eligible for such a sentence.

7 (3) A person sentenced under subsection (2) of this section shall
8 serve the sentence in a facility or institution operated, or utilized
9 under contract, by the state.

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

16 (5)(a) Unless a condition is waived by the court, the conditions of
17 community custody shall include those provided for in RCW 9.94A.700(4).
18 The conditions may also include those provided for in RCW 9.94A.700(5).
19 The court may also order the offender to participate in rehabilitative
20 programs or otherwise perform affirmative conduct reasonably related to
21 the circumstances of the offense, the offender's risk of reoffending,
22 or the safety of the community, and the department and the board shall
23 enforce such conditions pursuant to sections 305, 308, and 309 of this
24 act.

25 (b) As part of any sentence under this section, the court shall
26 also require the offender to comply with any conditions imposed by the
27 board under sections 305 and 307 through 310 of this act.

28 NEW SECTION. **Sec. 304.** A new section is added to chapter 9.94A
29 RCW to read as follows:

30 (1)(a) The prosecuting attorney shall file a special allegation
31 that the offense was predatory in every criminal case in which a
32 defendant is charged with rape of a child in the first or second degree
33 and the defendant is seventeen years of age or younger, and in every
34 criminal case in which a defendant is charged with any sex offense when
35 the offender has a prior conviction for an offense listed in RCW
36 9.94A.030(32)(b), when sufficient admissible evidence exists, which,
37 when considered with the most plausible, reasonably foreseeable defense

1 that could be raised under the evidence, would justify a finding that
2 the offense was predatory by a reasonable and objective fact-finder.

3 (b) The prosecuting attorney may file a special allegation that the
4 offense was committed by forcible compulsion in every criminal case in
5 which a defendant is charged with rape of a child in the first or
6 second degree and the defendant is seventeen years of age or younger,
7 when sufficient admissible evidence exists, which, when considered with
8 the most plausible, reasonably foreseeable defense that could be raised
9 under the evidence, would justify a finding that the offense was
10 committed by forcible compulsion by a reasonable and objective fact-
11 finder.

12 (2) In a criminal case wherein a special allegation has been filed
13 pursuant to this section, the state shall prove beyond a reasonable
14 doubt that the offense was predatory or was committed by forcible
15 compulsion. The court shall make a finding of fact of whether or not
16 an offense was predatory or was committed by forcible compulsion, or if
17 a jury trial is had, the jury shall, if it finds the defendant guilty,
18 also find a special verdict as to whether or not the offense was
19 predatory or was committed by forcible compulsion.

20 (3) The prosecuting attorney shall not withdraw the special
21 allegation that an offense was predatory due to court congestion or
22 lack of prosecutorial resources. The prosecuting attorney may, with
23 the consent of the court, withdraw the special allegation if the
24 circumstances of the offense do not warrant lifetime parole or in the
25 interest of justice.

26 NEW SECTION. **Sec. 305.** A new section is added to chapter 9.94A
27 RCW to read as follows:

28 (1) When an offender is sentenced under section 303 of this act,
29 the department shall assess the offender's risk of recidivism and shall
30 recommend to the board any additional or modified conditions of the
31 offender's community custody based upon the risk to community safety.
32 In addition, the department shall make a recommendation with regard to,
33 and the board may require the offender to participate in,
34 rehabilitative programs, or otherwise perform affirmative conduct, and
35 obey all laws. The board must consider and may impose department-
36 recommended conditions.

37 (2) The department may not recommend and the board may not impose
38 conditions that are contrary to those ordered by the court and may not

1 contravene or decrease court-imposed conditions. The board shall
2 notify the offender in writing of any such conditions or modifications.

3 (3) In setting, modifying, and enforcing conditions of community
4 custody, the department shall be deemed to be performing a quasi-
5 judicial function.

6 (4) If an offender violates conditions imposed by the court, the
7 department, or the board during community custody, the board or the
8 department may transfer the offender to a more restrictive confinement
9 status and impose other available sanctions as provided in section 310
10 of this act.

11 (5) By the close of the next business day, after receiving notice
12 of a condition imposed by the board or the department, an offender may
13 request an administrative hearing under rules adopted by the board.
14 The condition shall remain in effect unless the hearing examiner finds
15 that it is not reasonably related to any of the following:

- 16 (a) The crime of conviction;
- 17 (b) The offender's risk of reoffending; or
- 18 (c) The safety of the community.

19 (6) An offender released by the board under section 307 of this act
20 shall be subject to the supervision of the department until the
21 expiration of the maximum term of the sentence. The department shall
22 monitor the offender's compliance with conditions of community custody
23 imposed by the court, department, or board, and promptly report any
24 violations to the board. Any violation of conditions of community
25 custody established or modified by the board shall be subject to the
26 provisions of sections 308 through 311 of this act.

27 (7) If the department finds that an emergency exists requiring the
28 immediate imposition of conditions of release in addition to those set
29 by the board under section 307 of this act and subsection (1) of this
30 section in order to prevent the offender from committing a crime, the
31 department may impose additional conditions. The department may not
32 impose conditions that are contrary to those set by the board or the
33 court and may not contravene or decrease court-imposed or board-imposed
34 conditions. Conditions imposed under this subsection shall take effect
35 immediately after notice to the offender by personal service, but shall
36 not remain in effect longer than seven working days unless approved by
37 the board under subsection (1) of this section within seven working
38 days.

1 NEW SECTION. **Sec. 306.** A new section is added to chapter 72.09
2 RCW to read as follows:

3 The department shall provide offenders sentenced under section 303
4 of this act with the opportunity for sex offender treatment during
5 incarceration.

6 NEW SECTION. **Sec. 307.** A new section is added to chapter 9.95 RCW
7 to read as follows:

8 (1)(a) Before the expiration of the minimum term, as part of the
9 end of sentence review process under RCW 72.09.340, 72.09.345, and
10 where appropriate, 72.09.370, the department shall conduct, and the
11 offender shall participate in, an examination of the offender,
12 incorporating methodologies that are recognized by experts in the
13 prediction of sexual dangerousness, and including a prediction of the
14 probability that the offender will engage in sex offenses if released.

15 (b) The board may contract for an additional, independent
16 examination, subject to the standards in this section.

17 (2) The board shall impose the conditions and instructions provided
18 for in RCW 9.94A.720. The board shall consider the department's
19 recommendations and may impose conditions in addition to those
20 recommended by the department. The board may impose or modify
21 conditions of community custody following notice to the offender.

22 (3) No later than ninety days before expiration of the minimum
23 term, but after the board receives the results from the end of sentence
24 review process and the recommendations for additional or modified
25 conditions of community custody from the department, the board shall
26 conduct a hearing to determine whether it is more likely than not that
27 the offender will engage in sex offenses if released on conditions to
28 be set by the board. The board may consider an offender's failure to
29 participate in an evaluation under subsection (1) of this section in
30 determining whether to release the offender. The board shall order the
31 offender released, under such affirmative and other conditions as the
32 board determines appropriate, unless the board determines by a
33 preponderance of the evidence that, despite such conditions, it is more
34 likely than not that the offender will commit sex offenses if released.
35 If the board does not order the offender released, the board shall
36 establish a new minimum term, not to exceed an additional two years.

1 NEW SECTION. Sec. 308. A new section is added to chapter 9.95 RCW
2 to read as follows:

3 (1) Whenever the board or a community corrections officer of this
4 state has reason to believe an offender released under section 307 of
5 this act has violated a condition of community custody or the laws of
6 this state, any community corrections officer may arrest or cause the
7 arrest and detention of the offender pending a determination by the
8 board whether sanctions should be imposed or the offender's community
9 custody should be revoked. The community corrections officer shall
10 report all facts and circumstances surrounding the alleged violation to
11 the board, with recommendations.

12 (2) If the board or the department causes the arrest or detention
13 of an offender for a violation that does not amount to a new crime and
14 the offender is arrested or detained by local law enforcement or in a
15 local jail, the board or department, whichever caused the arrest or
16 detention, shall be financially responsible for local costs. Jail bed
17 costs shall be allocated at the rate established under RCW
18 9.94A.207(3).

19 NEW SECTION. Sec. 309. A new section is added to chapter 9.95 RCW
20 to read as follows:

21 Any offender released under section 307 of this act who is arrested
22 and detained in physical custody by the authority of a community
23 corrections officer, or upon the written order of the board, shall not
24 be released from custody on bail or personal recognizance, except upon
25 approval of the board and the issuance by the board of an order
26 reinstating the offender's release on the same or modified conditions.
27 All chiefs of police, marshals of cities and towns, sheriffs of
28 counties, and all police, prison, and peace officers and constables
29 shall execute any such order in the same manner as any ordinary
30 criminal process.

31 NEW SECTION. Sec. 310. A new section is added to chapter 9.95 RCW
32 to read as follows:

33 (1) If an offender released by the board under section 307 of this
34 act violates any condition or requirement of community custody, the
35 board may transfer the offender to a more restrictive confinement
36 status to serve up to the remaining portion of the sentence, less
37 credit for any period actually spent in community custody or in

1 detention awaiting disposition of an alleged violation and subject to
2 the limitations of subsection (2) of this section.

3 (2) Following the hearing specified in subsection (3) of this
4 section, the board may impose sanctions such as work release, home
5 detention with electronic monitoring, work crew, community service,
6 inpatient treatment, daily reporting, curfew, educational or counseling
7 sessions, supervision enhanced through electronic monitoring, or any
8 other sanctions available in the community, or may suspend or revoke
9 the release to community custody whenever an offender released by the
10 board under section 307 of this act violates any condition or
11 requirement of community custody.

12 (3) If an offender released by the board under section 307 of this
13 act is accused of violating any condition or requirement of community
14 custody, he or she is entitled to a hearing before the board prior to
15 the imposition of sanctions. The hearing shall be considered as
16 offender disciplinary proceedings and shall not be subject to chapter
17 34.05 RCW. The board shall develop hearing procedures and a structure
18 of graduated sanctions consistent with the hearing procedures and
19 graduated sanctions developed pursuant to RCW 9.94A.205. The board may
20 suspend the offender's release to community custody and confine the
21 offender in a correctional institution owned, operated by, or operated
22 under contract with the state prior to the hearing unless the offender
23 has been arrested and confined for a new criminal offense.

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

26 (a) Hearings shall be conducted by members of the board unless the
27 board enters into an agreement with the department to use the hearing
28 officers established under RCW 9.94A.205;

29 (b) The board shall provide the offender with written notice of the
30 violation, the evidence relied upon, and the reasons the particular
31 sanction was imposed. The notice shall include a statement of the
32 rights specified in this subsection, and the offender's right to file
33 a personal restraint petition under court rules after the final
34 decision of the board;

35 (c) The hearing shall be held unless waived by the offender, and
36 shall be electronically recorded. For offenders not in total
37 confinement, the hearing shall be held within fifteen working days, but
38 not less than twenty-four hours after notice of the violation. For
39 offenders in total confinement, the hearing shall be held within five

1 working days, but not less than twenty-four hours after notice of the
2 violation;

3 (d) The offender shall have the right to: (i) Be present at the
4 hearing; (ii) have the assistance of a person qualified to assist the
5 offender in the hearing, appointed by the hearing examiner if the
6 offender has a language or communications barrier; (iii) testify or
7 remain silent; (iv) call witnesses and present documentary evidence;
8 (v) question witnesses who appear and testify; and (vi) be represented
9 by counsel if revocation of the release to community custody is a
10 possible sanction for the violation; and

11 (e) The sanction shall take effect if affirmed by the hearing
12 examiner. Within seven days after the hearing examiner's decision, the
13 offender may appeal the decision to a panel of three reviewing
14 examiners designated by the chair of the board or by the chair's
15 designee. The sanction shall be reversed or modified if a majority of
16 the panel finds that the sanction was not reasonably related to any of
17 the following: (i) The crime of conviction; (ii) the violation
18 committed; (iii) the offender's risk of reoffending; or (iv) the safety
19 of the community.

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

22 NEW SECTION. **Sec. 311.** A new section is added to chapter 9.95 RCW
23 to read as follows:

24 In the event the board suspends release status of an offender
25 released under section 307 of this act by reason of an alleged
26 violation of a condition of release, or pending disposition of a new
27 criminal charge, the board may nullify the suspension order and
28 reinstate release under previous conditions or any new conditions the
29 board determines advisable. Before the board may nullify a suspension
30 order and reinstate release, it shall determine that the best interests
31 of society and the offender shall be served by such reinstatement
32 rather than return to confinement.

33 **Sec. 312.** RCW 9.94A.060 and 1996 c 232 s 3 are each amended to
34 read as follows:

35 (1) The commission consists of twenty voting members, one of whom
36 the governor shall designate as chairperson. With the exception of ex

1 officio voting members, the voting members of the commission shall be
2 appointed by the governor, subject to confirmation by the senate.

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

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

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

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

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

14 (e) Two prosecuting attorneys;

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

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

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

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

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

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

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

26 In making the appointments, the governor shall endeavor to assure
27 that the commission membership includes adequate representation and
28 expertise relating to both the adult criminal justice system and the
29 juvenile justice system. In making the appointments, the governor
30 shall seek the recommendations of Washington prosecutors in respect to
31 the prosecuting attorney members, of the Washington state bar
32 association in respect to the defense attorney members, of the
33 association of superior court judges in respect to the members who are
34 judges, of the Washington association of sheriffs and police chiefs in
35 respect to the member who is a law enforcement officer, of the
36 Washington state association of counties in respect to the member who
37 is a county official, of the association of Washington cities in
38 respect to the member who is a city official, of the office of crime
39 victims advocacy and other organizations of crime victims in respect to

1 the member who is a victim of crime or a crime victims' advocate, and
2 of the Washington association of juvenile court administrators in
3 respect to the member who is an administrator of juvenile court
4 services.

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

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

12 (4) The speaker of the house of representatives and the president
13 of the senate may each appoint two nonvoting members to the commission,
14 one from each of the two largest caucuses in each house. The members
15 so appointed shall serve two-year terms, or until they cease to be
16 members of the house from which they were appointed, whichever occurs
17 first.

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

23 **Sec. 313.** RCW 9.94A.120 and 2001 c 10 s 2 are each amended to read
24 as follows:

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

27 (2)(a) The court shall impose a sentence as provided in the
28 following sections and as applicable in the case:

29 (i) Unless another term of confinement applies, the court shall
30 impose a sentence within the standard sentence range established in RCW
31 9.94A.310;

32 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

33 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

34 (iv) RCW 9.94A.383, relating to community custody for offenders
35 whose term of confinement is one year or less;

36 (v) RCW 9.94A.560, relating to persistent offenders;

37 (vi) RCW 9.94A.590, relating to mandatory minimum terms;

38 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

1 (viii) RCW 9.94A.660, relating to the drug offender sentencing
2 alternative;

3 (ix) RCW 9.94A.670, relating to the special sex offender sentencing
4 alternative;

5 (x) Section 303 of this act, relating to certain sex offenses;

6 (xi) RCW 9.94A.390, relating to exceptional sentences;

7 (~~(xi)~~) (xii) RCW 9.94A.400, relating to consecutive and
8 concurrent sentences.

9 (b) If a standard sentence range has not been established for the
10 offender's crime, the court shall impose a determinate sentence which
11 may include not more than one year of confinement; community service
12 work; until July 1, 2000, a term of community supervision not to exceed
13 one year and on and after July 1, 2000, a term of community custody not
14 to exceed one year, subject to conditions and sanctions as authorized
15 in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations.
16 The court may impose a sentence which provides more than one year of
17 confinement if the court finds reasons justifying an exceptional
18 sentence as provided in RCW 9.94A.390.

19 (3) If the court imposes a sentence requiring confinement of thirty
20 days or less, the court may, in its discretion, specify that the
21 sentence be served on consecutive or intermittent days. A sentence
22 requiring more than thirty days of confinement shall be served on
23 consecutive days. Local jail administrators may schedule court-ordered
24 intermittent sentences as space permits.

25 (4) If a sentence imposed includes payment of a legal financial
26 obligation, it shall be imposed as provided in RCW 9.94A.140,
27 9.94A.142, and 9.94A.145.

28 (5) Except as provided under RCW 9.94A.140(4) and 9.94A.142(4), a
29 court may not impose a sentence providing for a term of confinement or
30 community supervision, community placement, or community custody which
31 exceeds the statutory maximum for the crime as provided in chapter
32 9A.20 RCW.

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

37 (7) The court shall order restitution as provided in RCW 9.94A.140
38 and 9.94A.142.

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

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

15 (10) In any sentence of partial confinement, the court may require
16 the offender to serve the partial confinement in work release, in a
17 program of home detention, on work crew, or in a combined program of
18 work crew and home detention.

19 (11) In sentencing an offender convicted of a crime of domestic
20 violence, as defined in RCW 10.99.020, if the offender has a minor
21 child, or if the victim of the offense for which the offender was
22 convicted has a minor child, the court may, as part of any term of
23 community supervision, community placement, or community custody, order
24 the offender to participate in a domestic violence perpetrator program
25 approved under RCW 26.50.150.

26 **Sec. 314.** RCW 9.94A.190 and 2000 c 28 s 4 are each amended to read
27 as follows:

28 (1) A sentence that includes a term or terms of confinement
29 totaling more than one year shall be served in a facility or
30 institution operated, or utilized under contract, by the state. Except
31 as provided in subsection (3) or (5) of this section, a sentence of not
32 more than one year of confinement shall be served in a facility
33 operated, licensed, or utilized under contract, by the county, or if
34 home detention or work crew has been ordered by the court, in the
35 residence of either the offender or a member of the offender's
36 immediate family.

37 (2) If a county uses a state partial confinement facility for the
38 partial confinement of a person sentenced to confinement for not more

1 than one year, the county shall reimburse the state for the use of the
2 facility as provided in this subsection. The office of financial
3 management shall set the rate of reimbursement based upon the average
4 per diem cost per offender in the facility. The office of financial
5 management shall determine to what extent, if any, reimbursement shall
6 be reduced or eliminated because of funds provided by the legislature
7 to the department for the purpose of covering the cost of county use of
8 state partial confinement facilities. The office of financial
9 management shall reestablish reimbursement rates each even-numbered
10 year.

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

19 (4) Notwithstanding any other provision of this section, a sentence
20 imposed pursuant to RCW 9.94A.660 which has a standard sentence range
21 of over one year, regardless of length, shall be served in a facility
22 or institution operated, or utilized under contract, by the state.

23 (5) Sentences imposed pursuant to section 303 of this act shall be
24 served in a facility or institution operated, or utilized under
25 contract, by the state.

26 **Sec. 315.** RCW 9.94A.390 and 2000 c 28 s 8 are each amended to read
27 as follows:

28 The court may impose a sentence outside the standard sentence range
29 for an offense if it finds, considering the purpose of this chapter,
30 that there are substantial and compelling reasons justifying an
31 exceptional sentence. Whenever a sentence outside the standard
32 sentence range is imposed, the court shall set forth the reasons for
33 its decision in written findings of fact and conclusions of law. A
34 sentence outside the standard sentence range shall be a determinate
35 sentence unless it is imposed on an offender sentenced under section
36 303 of this act. An exceptional sentence imposed on an offender
37 sentenced under section 303 of this act shall be to a minimum term set

1 by the court and a maximum term equal to the statutory maximum sentence
2 for the offense of conviction under chapter 9A.20 RCW.

3 If the sentencing court finds that an exceptional sentence outside
4 the standard sentence range should be imposed, the sentence is subject
5 to review only as provided for in RCW 9.94A.210(4).

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

11 The following are illustrative factors which the court may consider
12 in the exercise of its discretion to impose an exceptional sentence.
13 The following are illustrative only and are not intended to be
14 exclusive reasons for exceptional sentences.

15 (1) Mitigating Circumstances

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

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

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

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

26 (e) The defendant's capacity to appreciate the wrongfulness of his
27 or her conduct, or to conform his or her conduct to the requirements of
28 the law, was significantly impaired. Voluntary use of drugs or alcohol
29 is excluded.

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

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

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

39 (2) Aggravating Circumstances

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

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

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

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

11 (i) The current offense involved multiple victims or multiple
12 incidents per victim;

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

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

17 (iv) The defendant used his or her position of trust, confidence,
18 or fiduciary responsibility to facilitate the commission of the current
19 offense.

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

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

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

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

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

35 (v) The current offense involved a high degree of sophistication or
36 planning, occurred over a lengthy period of time, or involved a broad
37 geographic area of disbursement; or

38 (vi) The offender used his or her position or status to facilitate
39 the commission of the current offense, including positions of trust,

1 confidence or fiduciary responsibility (e.g., pharmacist, physician, or
2 other medical professional).

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

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

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

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

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

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

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

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

24 (k) The offense resulted in the pregnancy of a child victim of
25 rape.

26 (l) The defendant knew that the victim of the current offense was
27 a youth who was not residing with a legal custodian and the defendant
28 established or promoted the relationship for the primary purpose of
29 victimization.

30 **Sec. 316.** RCW 9.94A.590 and 2000 c 28 s 7 are each amended to read
31 as follows:

32 (1) The following minimum terms of total confinement are mandatory
33 and shall not be varied or modified under RCW 9.94A.390:

34 (a) An offender convicted of the crime of murder in the first
35 degree shall be sentenced to a term of total confinement not less than
36 twenty years.

37 (b) An offender convicted of the crime of assault in the first
38 degree or assault of a child in the first degree where the offender

1 used force or means likely to result in death or intended to kill the
2 victim shall be sentenced to a term of total confinement not less than
3 five years.

4 (c) An offender convicted of the crime of rape in the first degree
5 shall be sentenced to a term of total confinement not less than five
6 years.

7 (d) An offender convicted of the crime of sexually violent predator
8 escape shall be sentenced to a minimum term of total confinement not
9 less than sixty months.

10 (2) During such minimum terms of total confinement, no offender
11 subject to the provisions of this section is eligible for community
12 custody, earned release time, furlough, home detention, partial
13 confinement, work crew, work release, or any other form of early
14 release authorized under RCW 9.94A.150, or any other form of authorized
15 leave of absence from the correctional facility while not in the direct
16 custody of a corrections officer. The provisions of this subsection
17 shall not apply: (a) In the case of an offender in need of emergency
18 medical treatment; (b) for the purpose of commitment to an inpatient
19 treatment facility in the case of an offender convicted of the crime of
20 rape in the first degree; or (c) for an extraordinary medical placement
21 when authorized under RCW 9.94A.150(4).

22 NEW SECTION. Sec. 317. A new section is added to chapter 9.95 RCW
23 to read as follows:

24 (1) "Board" means the indeterminate sentence review board.

25 (2) "Community custody" means that portion of an offender's
26 sentence subject to controls including crime-related prohibitions and
27 affirmative conditions from the court, the board, or the department of
28 corrections based on risk to community safety, that is served under
29 supervision in the community, and which may be modified or revoked for
30 violations of release conditions.

31 (3) "Crime-related prohibition" has the meaning defined in RCW
32 9.94A.030.

33 (4) "Department" means the department of corrections.

34 (5) "Parole" means that portion of a person's sentence for a crime
35 committed before July 1, 1984, served on conditional release in the
36 community subject to board controls and revocation and under
37 supervision of the department.

1 (6) "Secretary" means the secretary of the department of
2 corrections or his or her designee.

3 **Sec. 318.** RCW 9.95.005 and 1986 c 224 s 4 are each amended to read
4 as follows:

5 The board shall meet at ~~((the penitentiary and the reformatory))~~
6 major state correctional institutions at such times as may be necessary
7 for a full and complete study of the cases of all convicted persons
8 whose durations of confinement are to be determined by it ~~((or))~~i whose
9 community custody supervision is under the board's authorityi or whose
10 applications for parole come before it. Other times and places of
11 meetings may also be fixed by the board.

12 The superintendents of the different institutions shall provide
13 suitable quarters for the board and assistants while in the discharge
14 of their duties.

15 **Sec. 319.** RCW 9.95.010 and 1955 c 133 s 2 are each amended to read
16 as follows:

17 When a person, whose crime was committed before July 1, 1984, is
18 convicted of any felony, except treason, murder in the first degree, or
19 carnal knowledge of a child under ten years, and a new trial is not
20 granted, the court shall sentence such person to the penitentiary, or,
21 if the law allows and the court sees fit to exercise such discretion,
22 to the reformatory, and shall fix the maximum term of such person's
23 sentence only.

24 The maximum term to be fixed by the court shall be the maximum
25 provided by law for the crime of which such person was convicted, if
26 the law provides for a maximum term. If the law does not provide a
27 maximum term for the crime of which such person was convicted the court
28 shall fix such maximum term, which may be for any number of years up to
29 and including life imprisonment but in any case where the maximum term
30 is fixed by the court it shall be fixed at not less than twenty years.

31 **Sec. 320.** RCW 9.95.011 and 1993 c 144 s 3 are each amended to read
32 as follows:

33 (1) When the court commits a convicted person to the department of
34 corrections on or after July 1, 1986, for an offense committed before
35 July 1, 1984, the court shall, at the time of sentencing or revocation
36 of probation, fix the minimum term. The term so fixed shall not exceed

1 the maximum sentence provided by law for the offense of which the
2 person is convicted.

3 The court shall attempt to set the minimum term reasonably
4 consistent with the purposes, standards, and sentencing ranges adopted
5 under RCW 9.94A.040, but the court is subject to the same limitations
6 as those placed on the board under RCW 9.92.090, 9.95.040 (1) through
7 (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The
8 court's minimum term decision is subject to review to the same extent
9 as a minimum term decision by the parole board before July 1, 1986.

10 Thereafter, the expiration of the minimum term set by the court
11 minus any time credits earned under RCW 9.95.070 and 9.95.110
12 constitutes the parole eligibility review date, at which time the board
13 may consider the convicted person for parole under RCW 9.95.100 and
14 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the
15 board's authority to reduce or increase the minimum term, once set by
16 the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080,
17 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

18 (2) Not less than ninety days prior to the expiration of the
19 minimum term of a person sentenced under section 303 of this act, for
20 a sex offense committed on or after July 1, 2001, less any time credits
21 permitted by statute, the board shall review the person for conditional
22 release to community custody as provided in section 307 of this act.
23 If the board does not release the person, it shall set a new minimum
24 term not to exceed an additional two years. The board shall review the
25 person again not less than ninety days prior to the expiration of the
26 new minimum term.

27 **Sec. 321.** RCW 9.95.017 and 1986 c 224 s 11 are each amended to
28 read as follows:

29 (1) The board shall cause to be prepared criteria for duration of
30 confinement, release on parole, and length of parole for persons
31 committed to prison for crimes committed before July 1, 1984.

32 The proposed criteria should take into consideration RCW
33 9.95.009(2). Before submission to the governor, the board shall
34 solicit comments and review on their proposed criteria for parole
35 release. These proposed criteria shall be submitted for consideration
36 by the 1987 legislature.

37 (2) Persons committed to the department of corrections and who are
38 under the authority of the board for crimes committed on or after July

1 1, 2001, are subject to the provisions for duration of confinement,
2 release to community custody, and length of community custody
3 established in sections 303 through 311 of this act.

4 **Sec. 322.** RCW 9.95.020 and 1955 c 133 s 3 are each amended to read
5 as follows:

6 If the sentence of a person so convicted is not suspended by the
7 court, the superintendent of (~~the penitentiary or the superintendent~~
8 ~~of the reformatory~~) a major state correctional institution shall
9 receive such person, if committed to his or her institution, and
10 imprison (~~him~~) the person until released under the provisions of this
11 chapter, under section 307 of this act, upon the completion of the
12 statutory maximum sentence, or through the action of the governor.

13 **Sec. 323.** RCW 9.95.032 and 1984 c 114 s 3 are each amended to read
14 as follows:

15 Such statement shall be signed by the prosecuting attorney and
16 approved by the judge by whom the judgment was rendered and shall be
17 delivered to the sheriff, traveling guard, department of corrections
18 personnel, or other officer executing the sentence, and a copy of such
19 statement shall be furnished to the defendant or his or her attorney.
20 Such officer shall deliver the statement, at the time of the prisoner's
21 commitment, to the superintendent of the institution to which such
22 prisoner has been (~~sentenced and~~) committed. The superintendent
23 shall make such statement available for use by the board (~~of prison~~
24 ~~terms and paroles~~)).

25 **Sec. 324.** RCW 9.95.052 and 1986 c 224 s 10 are each amended to
26 read as follows:

27 At any time after the board (or the court after July 1, 1986) has
28 determined the minimum term of confinement of any person subject to
29 confinement in a state correctional institution for a crime committed
30 before July 1, 1984, the board may request the superintendent of such
31 correctional institution to conduct a full review of such person's
32 prospects for rehabilitation and report to the board the facts of such
33 review and the resulting findings. Upon the basis of such report and
34 such other information and investigation that the board deems
35 appropriate, the board may redetermine and refix such convicted

1 person's minimum term of confinement whether the term was set by the
2 board or the court.

3 The board shall not reduce a person's minimum term of confinement
4 unless the board has received from the department of corrections all
5 institutional conduct reports relating to the person.

6 **Sec. 325.** RCW 9.95.055 and 1992 c 7 s 25 are each amended to read
7 as follows:

8 The indeterminate sentence review board is hereby granted
9 authority, in the event of a declaration by the governor that a war
10 emergency exists, including a general mobilization, and for the
11 duration thereof only, to reduce downward the minimum term, as set by
12 the board, of any inmate under the jurisdiction of the board confined
13 in a state correctional facility, who will be accepted by and inducted
14 into the armed services: PROVIDED, That a reduction downward shall not
15 be made under this section for those inmates who are confined for
16 treason, murder in the first degree or carnal knowledge of a female
17 child under ten years: AND PROVIDED FURTHER, That no such inmate shall
18 be released under this section who is (~~found to be a sexual psychopath~~
19 ~~under the provisions of and as defined by chapter 71.12 RCW~~) being
20 considered for civil commitment as a sexually violent predator under
21 chapter 71.09 RCW or was sentenced under section 303 of this act for a
22 crime committed on or after July 1, 2001.

23 **Sec. 326.** RCW 9.95.064 and 1989 c 276 s 4 are each amended to read
24 as follows:

25 (1) In order to minimize the trauma to the victim, the court may
26 attach conditions on release of (~~a defendant~~) an offender under RCW
27 9.95.062, convicted of a crime committed before July 1, 1984, regarding
28 the whereabouts of the defendant, contact with the victim, or other
29 conditions.

30 (2) Offenders released under section 307 of this act are subject to
31 crime-related prohibitions and affirmative conditions established by
32 the court, the department of corrections, or the board pursuant to RCW
33 9.94A.715 and sections 303 through 311 of this act.

34 **Sec. 327.** RCW 9.95.070 and 1999 c 143 s 19 are each amended to
35 read as follows:

1 (1) Every prisoner, convicted of a crime committed before July 1,
2 1984, who has a favorable record of conduct at the penitentiary or the
3 reformatory, and who performs in a faithful, diligent, industrious,
4 orderly and peaceable manner the work, duties, and tasks assigned to
5 him or her to the satisfaction of the superintendent of the
6 penitentiary or reformatory, and in whose behalf the superintendent of
7 the penitentiary or reformatory files a report certifying that his or
8 her conduct and work have been meritorious and recommending allowance
9 of time credits to him or her, shall upon, but not until, the adoption
10 of such recommendation by the indeterminate sentence review board, be
11 allowed time credit reductions from the term of imprisonment fixed by
12 the board.

13 (2) Offenders sentenced under section 303 of this act for a crime
14 committed on or after July 1, 2001, are subject to the earned release
15 provisions for sex offenders established in RCW 9.94A.150.

16 **Sec. 328.** RCW 9.95.080 and 1992 c 7 s 26 are each amended to read
17 as follows:

18 In case any ~~((convicted))~~ person convicted of a crime committed
19 before July 1, 1984, and under the jurisdiction of the indeterminate
20 sentence review board undergoing sentence in a state correctional
21 ~~((facility))~~ institution commits any infractions of the rules and
22 regulations of the institution, the board may revoke any order
23 theretofore made determining the length of time such convicted person
24 shall be imprisoned, including the forfeiture of all or a portion of
25 credits earned or to be earned, pursuant to the provisions of RCW
26 9.95.110, and make a new order determining the length of time the
27 person shall serve, not exceeding the maximum penalty provided by law
28 for the crime for which the person was convicted, or the maximum fixed
29 by the court. Such revocation and redetermination shall not be had
30 except upon a hearing before the indeterminate sentence review board.
31 At such hearing the convicted person shall be present and entitled to
32 be heard and may present evidence and witnesses in his or her behalf.

33 **Sec. 329.** RCW 9.95.090 and 1999 c 143 s 20 are each amended to
34 read as follows:

35 (1) The board shall require of every able bodied ~~((convicted person~~
36 imprisoned in the penitentiary or the reformatory)) offender confined
37 in a state correctional institution for a crime committed before July

1 1, 1984, as many hours of faithful labor in each and every day during
2 his or her term of imprisonment as shall be prescribed by the rules and
3 regulations of the institution in which he or she is confined.

4 (2) Offenders sentenced under section 303 of this act for crimes
5 committed on or after July 1, 2001, shall perform work or other
6 programming as required by the department of corrections during their
7 term of confinement.

8 **Sec. 330.** RCW 9.95.100 and 1955 c 133 s 11 are each amended to
9 read as follows:

10 Any (~~convicted~~) person convicted of a felony committed before
11 July 1, 1984, and undergoing sentence in (~~the penitentiary or the~~
12 reformatory)) a state correctional institution, not sooner released
13 under the provisions of this chapter, shall, in accordance with the
14 provisions of law, be discharged from custody on serving the maximum
15 punishment provided by law for the offense of which such person was
16 convicted, or the maximum term fixed by the court where the law does
17 not provide for a maximum term. The board shall not, however, until
18 his or her maximum term expires, release a prisoner, unless in its
19 opinion his or her rehabilitation has been complete and he or she is a
20 fit subject for release.

21 **Sec. 331.** RCW 9.95.110 and 1999 c 143 s 21 are each amended to
22 read as follows:

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

31 The board may establish rules and regulations under which (~~a~~
32 ~~convicted person~~) an offender may be allowed to leave the confines of
33 (~~the penitentiary or the reformatory~~) a state correctional
34 institution on parole, and may return such person to the confines of
35 the institution from which he or she was paroled, at its discretion.

36 (2) The board may permit an offender convicted of a crime committed
37 on or after July 1, 2001, and sentenced under section 303 of this act,

1 to leave a state correctional institution on community custody
2 according to the provisions of sections 303 through 311 of this act.
3 The person may be returned to the institution following a violation of
4 his or her conditions of release to community custody pursuant to the
5 hearing provisions of section 310 of this act.

6 **Sec. 332.** RCW 9.95.115 and 1989 c 259 s 3 are each amended to read
7 as follows:

8 The indeterminate sentence review board is hereby granted authority
9 to parole any person sentenced to the custody of the department of
10 corrections, under a mandatory life sentence for a crime committed
11 ~~((prior to))~~ before July 1, 1984, except those persons sentenced to
12 life without the possibility of parole. No such person shall be
13 granted parole unless the person has been continuously confined therein
14 for a period of twenty consecutive years less earned good time:
15 PROVIDED, That no such person shall be released under parole who is
16 ~~((found to be a sexual psychopath under the provisions of and as~~
17 ~~defined by chapter 71.06 RCW))~~ subject to civil commitment as a
18 sexually violent predator under chapter 71.09 RCW.

19 **Sec. 333.** RCW 9.95.120 and 1999 c 143 s 22 are each amended to
20 read as follows:

21 Whenever the board or a ~~((probation and parole))~~ community
22 corrections officer of this state has reason to believe a ~~((convicted))~~
23 person convicted of a crime committed before July 1, 1984, has breached
24 a condition of his or her parole or violated the law of any state where
25 he or she may then be or the rules and regulations of the board, any
26 ~~((probation and parole))~~ community corrections officer of this state
27 may arrest or cause the arrest and detention and suspension of parole
28 of such convicted person pending a determination by the board whether
29 the parole of such convicted person shall be revoked. All facts and
30 circumstances surrounding the violation by such convicted person shall
31 be reported to the board by the ~~((probation and parole))~~ community
32 corrections officer, with recommendations. The board, after
33 consultation with the secretary of corrections, shall make all rules
34 and regulations concerning procedural matters, which shall include the
35 time when state ~~((probation and parole))~~ community corrections officers
36 shall file with the board reports required by this section, procedures
37 pertaining thereto and the filing of such information as may be

1 necessary to enable the board to perform its functions under this
2 section. On the basis of the report by the (~~probation and parole~~)
3 community corrections officer, or at any time upon its own discretion,
4 the board may revise or modify the conditions of parole or order the
5 suspension of parole by the issuance of a written order bearing its
6 seal, which order shall be sufficient warrant for all peace officers to
7 take into custody any convicted person who may be on parole and retain
8 such person in their custody until arrangements can be made by the
9 board for his or her return to a state correctional institution for
10 convicted felons. Any such revision or modification of the conditions
11 of parole or the order suspending parole shall be personally served
12 upon the parolee.

13 Any parolee arrested and detained in physical custody by the
14 authority of a state (~~probation and parole~~) community corrections
15 officer, or upon the written order of the board, shall not be released
16 from custody on bail or personal recognizance, except upon approval of
17 the board and the issuance by the board of an order of reinstatement on
18 parole on the same or modified conditions of parole.

19 All chiefs of police, marshals of cities and towns, sheriffs of
20 counties, and all police, prison, and peace officers and constables
21 shall execute any such order in the same manner as any ordinary
22 criminal process.

23 Whenever a paroled prisoner is accused of a violation of his or her
24 parole, other than the commission of, and conviction for, a felony or
25 misdemeanor under the laws of this state or the laws of any state where
26 he or she may then be, he or she shall be entitled to a fair and
27 impartial hearing of such charges within thirty days from the time that
28 he or she is served with charges of the violation of conditions of
29 (~~his~~) parole after his or her arrest and detention. The hearing
30 shall be held before one or more members of the board at a place or
31 places, within this state, reasonably near the site of the alleged
32 violation or violations of parole.

33 In the event that the board suspends a parole by reason of an
34 alleged parole violation or in the event that a parole is suspended
35 pending the disposition of a new criminal charge, the board shall have
36 the power to nullify the order of suspension and reinstate the
37 individual to parole under previous conditions or any new conditions
38 that the board may determine advisable. Before the board shall nullify
39 an order of suspension and reinstate a parole they shall have

1 determined that the best interests of society and the individual shall
2 best be served by such reinstatement rather than a return to a penal
3 institution.

4 **Sec. 334.** RCW 9.95.121 and 1981 c 136 s 38 are each amended to
5 read as follows:

6 (1) For offenders convicted of crimes committed before July 1,
7 1984, within fifteen days from the date of notice to the department of
8 corrections of the arrest and detention of the alleged parole violator,
9 he or she shall be personally served by a state ((probation and
10 parole)) community corrections officer with a copy of the factual
11 allegations of the violation of the conditions of parole, and, at the
12 same time shall be advised of his or her right to an on-site parole
13 revocation hearing and of his or her rights and privileges as provided
14 in RCW 9.95.120 through 9.95.126. The alleged parole violator, after
15 service of the allegations of violations of the conditions of parole
16 and the advice of rights may waive the on-site parole revocation
17 hearing as provided in RCW 9.95.120, and admit one or more of the
18 alleged violations of the conditions of parole. If the board accepts
19 the waiver it shall either, (1) reinstate the parolee on parole under
20 the same or modified conditions, or (2) revoke the parole of the
21 parolee and enter an order of parole revocation and return to state
22 custody. A determination of a new minimum sentence shall be made
23 within thirty days of return to state custody which shall not exceed
24 the maximum sentence as provided by law for the crime of which the
25 parolee was originally convicted or the maximum fixed by the court.

26 If the waiver made by the parolee is rejected by the board it shall
27 hold an on-site parole revocation hearing under the provisions of RCW
28 9.95.120 through 9.95.126.

29 (2) Offenders sentenced under section 303 of this act are subject
30 to the violation hearing process established in section 310 of this
31 act.

32 **Sec. 335.** RCW 9.95.122 and 1999 c 143 s 23 are each amended to
33 read as follows:

34 (1) At any on-site parole revocation hearing for a person convicted
35 of a crime committed before July 1, 1984, the alleged parole violator
36 shall be entitled to be represented by an attorney of his or her own
37 choosing and at his or her own expense, except, upon the presentation

1 of satisfactory evidence of indigency and the request for the
2 appointment of an attorney by the alleged parole violator, the board
3 may cause the appointment of an attorney to represent the alleged
4 parole violator to be paid for at state expense, and, in addition, the
5 board may assume all or such other expenses in the presentation of
6 evidence on behalf of the alleged parole violator as it may have
7 authorized: PROVIDED, That funds are available for the payment of
8 attorneys' fees and expenses. Attorneys for the representation of
9 alleged parole violators in on-site hearings shall be appointed by the
10 superior courts for the counties wherein the on-site parole revocation
11 hearing is to be held and such attorneys shall be compensated in such
12 manner and in such amount as shall be fixed in a schedule of fees
13 adopted by rule of the board.

14 (2) The rights of offenders sentenced under section 303 of this act
15 are defined in section 310 of this act.

16 **Sec. 336.** RCW 9.95.123 and 1999 c 143 s 24 are each amended to
17 read as follows:

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

1 shall enter an order directing the witness to appear before the court
2 at a time and place to be fixed in such order and then and there to
3 show cause why he or she has not responded to the subpoena or has
4 refused to testify. A copy of the order shall be served upon the
5 witness. If it appears to the court that the subpoena was properly
6 issued and that the particular questions which the witness refuses to
7 answer are reasonable and relevant, the court shall enter an order that
8 the witness appear at the time and place fixed in the order and testify
9 or produce the required papers, and on failing to obey ((said)) the
10 order, the witness shall be dealt with as for contempt of court.

11 **Sec. 337.** RCW 9.95.124 and 1999 c 143 s 25 are each amended to
12 read as follows:

13 At all on-site parole revocation hearings for offenders convicted
14 of crimes committed before July 1, 1984, the ((probation and parole))
15 community corrections officers of the department of corrections, having
16 made the allegations of the violations of the conditions of parole, may
17 be represented by the attorney general. The attorney general may make
18 independent recommendations to the board about whether the violations
19 constitute sufficient cause for the revocation of the parole and the
20 return of the parolee to a state correctional institution for convicted
21 felons. The hearings shall be open to the public unless the board for
22 specifically stated reasons closes the hearing in whole or in part.
23 The hearings shall be recorded either manually or by a mechanical
24 recording device. An alleged parole violator may be requested to
25 testify and any such testimony shall not be used against him or her in
26 any criminal prosecution. The board shall adopt rules governing the
27 formal and informal procedures authorized by this chapter and make
28 rules of practice before the board in on-site parole revocation
29 hearings, together with forms and instructions.

30 **Sec. 338.** RCW 9.95.125 and 1993 c 140 s 2 are each amended to read
31 as follows:

32 After the on-site parole revocation hearing for a person convicted
33 of a crime committed before July 1, 1984, has been concluded, the
34 members of the board having heard the matter shall enter their decision
35 of record within ten days, and make findings and conclusions upon the
36 allegations of the violations of the conditions of parole. If the
37 member, or members having heard the matter, should conclude that the

1 allegations of violation of the conditions of parole have not been
2 proven by a preponderance of the evidence, or, those which have been
3 proven by a preponderance of the evidence are not sufficient cause for
4 the revocation of parole, then the parolee shall be reinstated on
5 parole on the same or modified conditions of parole. For parole
6 violations not resulting in new convictions, modified conditions of
7 parole may include sanctions according to an administrative sanction
8 grid. If the member or members having heard the matter should conclude
9 that the allegations of violation of the conditions of parole have been
10 proven by a preponderance of the evidence and constitute sufficient
11 cause for the revocation of parole, then such member or members shall
12 enter an order of parole revocation and return the parole violator to
13 state custody. Within thirty days of the return of such parole
14 violator to a state correctional institution (~~((for convicted felons))~~)
15 the board shall enter an order determining a new minimum term not
16 exceeding the maximum penalty provided by law for the crime for which
17 the parole violator was originally convicted or the maximum fixed by
18 the court.

19 **Sec. 339.** RCW 9.95.126 and 1969 c 98 s 8 are each amended to read
20 as follows:

21 All officers and employees of the state, counties, cities and
22 political subdivisions of this state shall cooperate with the board
23 (~~((of prison terms and paroles))~~) in making available suitable facilities
24 for conducting parole or community custody revocation hearings.

25 **Sec. 340.** RCW 9.95.130 and 1993 c 140 s 3 are each amended to read
26 as follows:

27 From and after the suspension, cancellation, or revocation of the
28 parole of any (~~((convicted person))~~) offender convicted of a crime
29 committed before July 1, 1984, and until his or her return to custody
30 the (~~((convicted person))~~) offender shall be deemed an escapee and a
31 fugitive from justice. The indeterminate sentence review board may
32 deny credit against the maximum sentence any time during which he or
33 she is an escapee and fugitive from justice.

34 **Sec. 341.** RCW 9.95.140 and 1992 c 7 s 27 are each amended to read
35 as follows:

1 (1) The (~~indeterminate sentence review~~) board shall cause a
2 complete record to be kept of every prisoner under the jurisdiction of
3 the board released on parole or community custody. Such records shall
4 be organized in accordance with the most modern methods of filing and
5 indexing so that there will be always immediately available complete
6 information about each such prisoner. Subject to information sharing
7 provisions related to mentally ill offenders, the end of sentence
8 review committee, and the department of corrections, the board may make
9 rules as to the privacy of such records and their use by others than
10 the board and its staff. (~~In determining the rules regarding~~
11 ~~dissemination of information regarding convicted~~) Sex offenders
12 convicted of crimes committed before July 1, 1984, who are under the
13 board's jurisdiction(7) shall be subject to the determinations of the
14 end of sentence review committee regarding risk level and subject to
15 sex offender registration and community notification. The board
16 (~~shall consider the provisions of section 116, chapter 3, Laws of 1990~~
17 ~~and RCW 4.24.550 and~~) shall be immune from liability for the release
18 of information concerning sex offenders as provided in RCW 4.24.550.

19 The superintendents of state correctional facilities and all
20 officers and employees thereof and all other public officials shall at
21 all times cooperate with the board and furnish to the board, its
22 officers, and employees such information as may be necessary to enable
23 it to perform its functions, and such superintendents and other
24 employees shall at all times give the members of the board, its
25 officers, and employees free access to all prisoners confined in the
26 state correctional facilities.

27 (2) Offenders sentenced under section 303 of this act shall be
28 subject to the determinations of the end of sentence review committee
29 regarding risk level and subject to sex offender registration and
30 community notification.

31 (3) The end of sentence review committee shall make law enforcement
32 notifications for offenders under board jurisdiction on the same basis
33 that it notifies law enforcement regarding offenders sentenced under
34 chapter 9.94A RCW for crimes committed after July 1, 1984.

35 **Sec. 342.** RCW 9.95.190 and 1992 c 7 s 28 are each amended to read
36 as follows:

37 The provisions of RCW 9.95.010 through 9.95.170, inclusive, shall
38 apply to all convicted persons serving time in a state correctional

1 facility for crimes committed before July 1, 1984, to the end that at
2 all times the same provisions relating to sentences, imprisonments, and
3 paroles of prisoners shall apply to all inmates thereof.

4 **Sec. 343.** RCW 9.95.250 and 1981 c 136 s 43 are each amended to
5 read as follows:

6 In order to carry out the provisions of this chapter 9.95 RCW the
7 parole officers working under the supervision of the secretary of
8 corrections shall be known as (~~probation and parole~~) community
9 corrections officers.

10 **Sec. 344.** RCW 9.95.280 and 1999 c 143 s 31 are each amended to
11 read as follows:

12 The board may deputize any person (regularly employed by another
13 state) to act as an officer and agent of this state in effecting the
14 return of any person convicted of a crime committed before July 1,
15 1984, who has violated the terms and conditions of parole or probation
16 as granted by this state. In any matter relating to the return of such
17 a person, any agent so deputized shall have all the powers of a police
18 officer of this state.

19 **Sec. 345.** RCW 9.95.290 and 1955 c 183 s 2 are each amended to read
20 as follows:

21 Any deputization pursuant to this statute with regard to an
22 offender convicted of a crime committed before July 1, 1984, shall be
23 in writing and any person authorized to act as an agent of this state
24 pursuant hereto shall carry formal evidence of his or her deputization
25 and shall produce the same upon demand.

26 **Sec. 346.** RCW 9.95.300 and 1999 c 143 s 32 are each amended to
27 read as follows:

28 The board may enter into contracts with similar officials of any
29 other state or states for the purpose of sharing an equitable portion
30 of the cost of effecting the return of any person who has violated the
31 terms and conditions of parole (~~or~~), probation, or community custody
32 as granted by this state.

33 **Sec. 347.** RCW 9.95.310 and 1986 c 125 s 1 are each amended to read
34 as follows:

1 The purpose of RCW 9.95.310 through 9.95.370 is to provide
2 necessary assistance, other than assistance which is authorized to be
3 provided under the vocational rehabilitation laws, Title 28A RCW, under
4 the public assistance laws, Title 74 RCW or the (~~department of~~)
5 employment security department or other state agency, for parolees,
6 inmates assigned to work/training release facilities, discharged
7 prisoners and persons convicted of a felony committed before July 1,
8 1984, and granted probation in need and whose capacity to earn a living
9 under these circumstances is impaired; and to help such persons attain
10 self-care and/or self-support for rehabilitation and restoration to
11 independence as useful citizens as rapidly as possible thereby reducing
12 the number of returnees to the institutions of this state to the
13 benefit of such person and society as a whole.

14 **Sec. 348.** RCW 9.95.320 and 1986 c 125 s 2 are each amended to read
15 as follows:

16 The secretary of corrections or his or her designee may provide to
17 any parolee, inmate assigned to a work/training release facility,
18 discharged prisoner and persons convicted of a felony committed before
19 July 1, 1984, and granted probation in need and without necessary
20 means, from any funds legally available therefor, such reasonable sums
21 as he or she deems necessary for the subsistence of such person and his
22 or her family until such person has become gainfully employed. Such
23 aid may be made under such terms and conditions, and through local
24 parole or probation officers if necessary, as the secretary of
25 corrections or his or her designee may require and shall be
26 supplementary to any moneys which may be provided under public
27 assistance or from any other source.

28 **Sec. 349.** RCW 9.95.340 and 1986 c 125 s 3 are each amended to read
29 as follows:

30 Any funds in the hands of the department of corrections, or which
31 may come into its hands, which belong to discharged prisoners, inmates
32 assigned to work/training release facilities, parolees or persons
33 convicted of a felony and granted probation who absconded, or whose
34 whereabouts are unknown, shall be deposited in the community services
35 revolving fund. Said funds shall be used to defray the expenses of
36 clothing and other necessities and for transporting discharged
37 prisoners, inmates assigned to work/training release facilities,

1 parolees and persons convicted of a felony and granted probation who
2 are without means to secure the same. All payments disbursed from
3 these funds shall be repaid, whenever possible, by discharged
4 prisoners, inmates assigned to work/training release facilities,
5 parolees and persons convicted of a felony and granted probation for
6 whose benefit they are made. Whenever any money belonging to such
7 persons is so paid into the revolving fund, it shall be repaid to them
8 in accordance with law if a claim therefor is filed with the department
9 of corrections within five years of deposit into said fund and upon a
10 clear showing of a legal right of such claimant to such money. This
11 section applies to persons convicted of a felony committed before July
12 1, 1984.

13 **Sec. 350.** RCW 9.95.350 and 1986 c 125 s 4 are each amended to read
14 as follows:

15 All money or other property paid or delivered to a (~~probation or~~
16 ~~parole~~) community corrections officer or employee of the department of
17 corrections by or for the benefit of any discharged prisoner, inmate
18 assigned to a work/training release facility, parolee or persons
19 convicted of a felony and granted probation shall be immediately
20 transmitted to the department of corrections and it shall enter the
21 same upon its books to his or her credit. Such money or other property
22 shall be used only under the direction of the department of
23 corrections.

24 If such person absconds, the money shall be deposited in the
25 revolving fund created by RCW 9.95.360, and any other property, if not
26 called for within one year, shall be sold by the department of
27 corrections and the proceeds credited to the revolving fund.

28 If any person, files a claim within five years after the deposit or
29 crediting of such funds, and satisfies the department of corrections
30 that he or she is entitled thereto, the department may make a finding
31 to that effect and may make payment to the claimant in the amount to
32 which he or she is entitled.

33 This section applies to persons convicted of a felony committed
34 before July 1, 1984.

35 **Sec. 351.** RCW 9.95.360 and 1986 c 125 s 5 are each amended to read
36 as follows:

1 The department of corrections shall create, maintain, and
2 administer outside the state treasury a permanent revolving fund to be
3 known as the "community services revolving fund" into which shall be
4 deposited all moneys received by it under RCW 9.95.310 through 9.95.370
5 and any appropriation made for the purposes of RCW 9.95.310 through
6 9.95.370. All expenditures from this revolving fund shall be made by
7 check or voucher signed by the secretary of corrections or his or her
8 designee. The community services revolving fund shall be deposited by
9 the department of corrections in such banks or financial institutions
10 as it may select which shall give to the department a surety bond
11 executed by a surety company authorized to do business in this state,
12 or collateral eligible as security for deposit of state funds in at
13 least the full amount of deposit.

14 This section applies to persons convicted of a felony committed
15 before July 1, 1984.

16 **Sec. 352.** RCW 9.95.370 and 1981 c 136 s 50 are each amended to
17 read as follows:

18 The secretary of corrections or his or her designee shall enter
19 into a written agreement with every person receiving funds under RCW
20 9.95.310 through 9.95.370 that such person will repay such funds under
21 the terms and conditions in said agreement. No person shall receive
22 funds until such an agreement is validly made. This section applies to
23 persons convicted of a felony committed before July 1, 1984.

24 **Sec. 353.** RCW 9.95.900 and 1981 c 137 s 32 are each amended to
25 read as follows:

26 (1) Except as provided in subsection (2) of this section, the
27 following sections of law do not apply to any felony offense committed
28 on or after July 1, 1984: RCW ((9.95.003, 9.95.005, 9.95.007,))
29 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, ((9.95.020, 9.95.030,
30 9.95.031, 9.95.032,)) 9.95.040, 9.95.045, 9.95.047, 9.95.052,
31 ((9.95.070,)) 9.95.080, ((9.95.090,)) 9.95.100, ((9.95.110,)) 9.95.115,
32 9.95.116, 9.95.120, ((9.95.121, 9.95.122, 9.95.123,)) 9.95.124,
33 9.95.125, ((9.95.126,)) 9.95.130, ((9.95.140, 9.95.150, 9.95.160,
34 9.95.170,)) 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212,
35 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265,
36 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350,
37 ((and)) 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

1 (2) The following sections apply to any felony offense committed
2 before July 1, 1984, and to any offense sentenced under section 303 of
3 this act and committed on or after July 1, 2001: RCW 9.95.003,
4 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055,
5 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110,
6 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160,
7 9.95.170, 9.95.300, and 9.96.050.

8 **Sec. 354.** RCW 9A.28.020 and 1994 c 271 s 101 are each amended to
9 read as follows:

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

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

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

18 (a) Class A felony when the crime attempted is murder in the first
19 degree, murder in the second degree, (~~(or)~~) arson in the first degree,
20 child molestation in the first degree, indecent liberties by forcible
21 compulsion, rape in the first degree, rape in the second degree, rape
22 of a child in the first degree, or rape of a child in the second
23 degree;

24 (b) Class B felony when the crime attempted is a class A felony
25 other than (~~(murder in the first degree, murder in the second degree,~~
26 ~~or arson in the first degree)) an offense listed in (a) of this
27 subsection;~~

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

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

30 (e) Misdemeanor when the crime attempted is a gross misdemeanor or
31 misdemeanor.

32 **Sec. 355.** RCW 9A.36.021 and 1997 c 196 s 2 are each amended to
33 read as follows:

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

36 (a) Intentionally assaults another and thereby recklessly inflicts
37 substantial bodily harm; or

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

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

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

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

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

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

14 **Sec. 356.** RCW 9A.40.030 and 1975 1st ex.s. c 260 s 9A.40.030 are
15 each amended to read as follows:

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

19 (2) In any prosecution for kidnapping in the second degree, it is
20 a defense if established by the defendant by a preponderance of the
21 evidence that (a) the abduction does not include the use of or intent
22 to use or threat to use deadly force, and (b) the actor is a relative
23 of the person abducted, and (c) the actor's sole intent is to assume
24 custody of that person. Nothing contained in this paragraph shall
25 constitute a defense to a prosecution for, or preclude a conviction of,
26 any other crime.

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

30 **Sec. 357.** RCW 9A.44.100 and 1997 c 392 s 515 are each amended to
31 read as follows:

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

35 (a) By forcible compulsion;

1 (b) When the other person is incapable of consent by reason of
2 being mentally defective, mentally incapacitated, or physically
3 helpless;

4 (c) When the victim is developmentally disabled and the perpetrator
5 is a person who is not married to the victim and who has supervisory
6 authority over the victim;

7 (d) When the perpetrator is a health care provider, the victim is
8 a client or patient, and the sexual contact occurs during a treatment
9 session, consultation, interview, or examination. It is an affirmative
10 defense that the defendant must prove by a preponderance of the
11 evidence that the client or patient consented to the sexual contact
12 with the knowledge that the sexual contact was not for the purpose of
13 treatment;

14 (e) When the victim is a resident of a facility for mentally
15 disordered or chemically dependent persons and the perpetrator is a
16 person who is not married to the victim and has supervisory authority
17 over the victim; or

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

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

23 NEW SECTION. Sec. 358. A new section is added to chapter 9A.76
24 RCW to read as follows:

25 (1) A person is guilty of sexually violent predator escape if:

26 (a) Having been found to be a sexually violent predator and
27 confined to the special commitment center or another secure facility
28 under court order, the person escapes from the secure facility;

29 (b) Having been found to be a sexually violent predator and being
30 under an order of conditional release, the person leaves or remains
31 absent from the state of Washington without prior court authorization;
32 or

33 (c) Having been found to be a sexually violent predator and being
34 under an order of conditional release, the person: (i) Without
35 authorization, leaves or remains absent from his or her residence,
36 place of employment, educational institution, or authorized outing;
37 (ii) tampers with his or her electronic monitoring device or removes it
38 without authorization; or (iii) escapes from his or her escort.

1 (2) Sexually violent predator escape is a class A felony with a
2 minimum sentence of sixty months, and shall be sentenced under section
3 303 of this act.

4 **Sec. 359.** RCW 9.94A.320 and 2000 c 225 s 5, 2000 c 119 s 17, and
5 2000 c 66 s 2 are each reenacted and amended to read as follows:

6 TABLE 2

7 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

8 XVI	Aggravated Murder 1 (RCW 10.95.020)
9 XV	Homicide by abuse (RCW 9A.32.055)
10	Malicious explosion 1 (RCW 70.74.280(1))
11	Murder 1 (RCW 9A.32.030)
12 XIV	Murder 2 (RCW 9A.32.050)
13 XIII	Malicious explosion 2 (RCW 70.74.280(2))
14	Malicious placement of an explosive 1 (RCW
15	70.74.270(1))
16 XII	Assault 1 (RCW 9A.36.011)
17	Assault of a Child 1 (RCW 9A.36.120)
18	Malicious placement of an imitation device
19	1 (RCW 70.74.272(1)(a))
20	Rape 1 (RCW 9A.44.040)
21	Rape of a Child 1 (RCW 9A.44.073)
22 XI	Manslaughter 1 (RCW 9A.32.060)
23	Rape 2 (RCW 9A.44.050)
24	Rape of a Child 2 (RCW 9A.44.076)
25 X	Child Molestation 1 (RCW 9A.44.083)
26	Indecent Liberties (with forcible
27	compulsion) (RCW 9A.44.100(1)(a))
28	Kidnapping 1 (RCW 9A.40.020)
29	Leading Organized Crime (RCW
30	9A.82.060(1)(a))
31	Malicious explosion 3 (RCW 70.74.280(3))
32	Manufacture of methamphetamine (RCW
33	69.50.401(a)(1)(ii))

1 Over 18 and deliver heroin,
2 methamphetamine, a narcotic from
3 Schedule I or II, or flunitrazepam
4 from Schedule IV to someone under 18
5 (RCW 69.50.406)
6 Sexually Violent Predator Escape (section
7 358 of this act)

8 IX Assault of a Child 2 (RCW 9A.36.130)
9 Controlled Substance Homicide (RCW
10 69.50.415)
11 Explosive devices prohibited (RCW
12 70.74.180)
13 Homicide by Watercraft, by being under the
14 influence of intoxicating liquor or
15 any drug (RCW 79A.60.050)
16 Inciting Criminal Profiteering (RCW
17 9A.82.060(1)(b))
18 Malicious placement of an explosive 2 (RCW
19 70.74.270(2))
20 Over 18 and deliver narcotic from Schedule
21 III, IV, or V or a nonnarcotic, except
22 flunitrazepam or methamphetamine, from
23 Schedule I-V to someone under 18 and 3
24 years junior (RCW 69.50.406)
25 Robbery 1 (RCW 9A.56.200)
26 Sexual Exploitation (RCW 9.68A.040)
27 Vehicular Homicide, by being under the
28 influence of intoxicating liquor or
29 any drug (RCW 46.61.520)

30 VIII Arson 1 (RCW 9A.48.020)
31 Deliver or possess with intent to deliver
32 methamphetamine (RCW
33 69.50.401(a)(1)(ii))
34 Hit and Run--Death (RCW 46.52.020(4)(a))
35 Homicide by Watercraft, by the operation of
36 any vessel in a reckless manner (RCW
37 79A.60.050)
38 Manslaughter 2 (RCW 9A.32.070)

1 Manufacture, deliver, or possess with
2 intent to deliver amphetamine (RCW
3 69.50.401(a)(1)(ii))
4 Manufacture, deliver, or possess with
5 intent to deliver heroin or cocaine
6 (RCW 69.50.401(a)(1)(i))
7 Possession of Ephedrine, Pseudoephedrine,
8 or Anhydrous Ammonia with intent to
9 manufacture methamphetamine (RCW
10 69.50.440)
11 Promoting Prostitution 1 (RCW 9A.88.070)
12 Selling for profit (controlled or
13 counterfeit) any controlled substance
14 (RCW 69.50.410)
15 Theft of Anhydrous Ammonia (RCW 69.55.010)
16 Vehicular Homicide, by the operation of any
17 vehicle in a reckless manner (RCW
18 46.61.520)

19 VII Burglary 1 (RCW 9A.52.020)
20 Child Molestation 2 (RCW 9A.44.086)
21 Dealing in depictions of minor engaged in
22 sexually explicit conduct (RCW
23 9.68A.050)
24 Drive-by Shooting (RCW 9A.36.045)
25 Homicide by Watercraft, by disregard for
26 the safety of others (RCW 79A.60.050)
27 Indecent Liberties (without forcible
28 compulsion) (RCW 9A.44.100(1) (b) and
29 (c))
30 Introducing Contraband 1 (RCW 9A.76.140)
31 Involving a minor in drug dealing (RCW
32 69.50.401(f))
33 Malicious placement of an explosive 3 (RCW
34 70.74.270(3))
35 Sending, bringing into state depictions of
36 minor engaged in sexually explicit
37 conduct (RCW 9.68A.060)
38 Unlawful Possession of a Firearm in the
39 first degree (RCW 9.41.040(1)(a))

1 Use of a Machine Gun in Commission of a
2 Felony (RCW 9.41.225)
3 Vehicular Homicide, by disregard for the
4 safety of others (RCW 46.61.520)

5 VI Bail Jumping with Murder 1 (RCW
6 9A.76.170(2)(a))
7 Bribery (RCW 9A.68.010)
8 Incest 1 (RCW 9A.64.020(1))
9 Intimidating a Judge (RCW 9A.72.160)
10 Intimidating a Juror/Witness (RCW
11 9A.72.110, 9A.72.130)
12 Malicious placement of an imitation device
13 2 (RCW 70.74.272(1)(b))
14 Manufacture, deliver, or possess with
15 intent to deliver narcotics from
16 Schedule I or II (except heroin or
17 cocaine) or flunitrazepam from
18 Schedule IV (RCW 69.50.401(a)(1)(i))
19 Rape of a Child 3 (RCW 9A.44.079)
20 Theft of a Firearm (RCW 9A.56.300)
21 Unlawful Storage of Anhydrous Ammonia (RCW
22 69.55.020)

23 V Abandonment of dependent person 1 (RCW
24 9A.42.060)
25 Advancing money or property for
26 extortionate extension of credit (RCW
27 9A.82.030)
28 Bail Jumping with class A Felony (RCW
29 9A.76.170(2)(b))
30 Child Molestation 3 (RCW 9A.44.089)
31 Criminal Mistreatment 1 (RCW 9A.42.020)
32 Custodial Sexual Misconduct 1 (RCW
33 9A.44.160)
34 Delivery of imitation controlled substance
35 by person eighteen or over to person
36 under eighteen (RCW 69.52.030(2))
37 Domestic Violence Court Order Violation
38 (RCW 10.99.040, 10.99.050, 26.09.300,

1 26.10.220, 26.26.138, 26.50.110,
2 26.52.070, or 74.34.145)
3 Extortion 1 (RCW 9A.56.120)
4 Extortionate Extension of Credit (RCW
5 9A.82.020)
6 Extortionate Means to Collect Extensions of
7 Credit (RCW 9A.82.040)
8 Incest 2 (RCW 9A.64.020(2))
9 Kidnapping 2 (RCW 9A.40.030)
10 Perjury 1 (RCW 9A.72.020)
11 Persistent prison misbehavior (RCW
12 9.94.070)
13 Possession of a Stolen Firearm (RCW
14 9A.56.310)
15 Rape 3 (RCW 9A.44.060)
16 Rendering Criminal Assistance 1 (RCW
17 9A.76.070)
18 Sexual Misconduct with a Minor 1 (RCW
19 9A.44.093)
20 Sexually Violating Human Remains (RCW
21 9A.44.105)
22 Stalking (RCW 9A.46.110)

23 IV Arson 2 (RCW 9A.48.030)
24 Assault 2 (RCW 9A.36.021)
25 Assault by Watercraft (RCW 79A.60.060)
26 Bribing a Witness/Bribe Received by Witness
27 (RCW 9A.72.090, 9A.72.100)
28 Commercial Bribery (RCW 9A.68.060)
29 Counterfeiting (RCW 9.16.035(4))
30 Escape 1 (RCW 9A.76.110)
31 Hit and Run--Injury (RCW 46.52.020(4)(b))
32 Hit and Run with Vessel--Injury Accident
33 (RCW 79A.60.200(3))
34 Indecent Exposure to Person Under Age
35 Fourteen (subsequent sex offense) (RCW
36 9A.88.010)
37 Influencing Outcome of Sporting Event (RCW
38 9A.82.070)

1 Knowingly Trafficking in Stolen Property
2 (RCW 9A.82.050(2))
3 Malicious Harassment (RCW 9A.36.080)
4 Manufacture, deliver, or possess with
5 intent to deliver narcotics from
6 Schedule III, IV, or V or nonnarcotics
7 from Schedule I-V (except marijuana,
8 amphetamine, methamphetamines, or
9 flunitrazepam) (RCW 69.50.401(a)(1)
10 (iii) through (v))
11 Residential Burglary (RCW 9A.52.025)
12 Robbery 2 (RCW 9A.56.210)
13 Theft of Livestock 1 (RCW 9A.56.080)
14 Threats to Bomb (RCW 9.61.160)
15 Use of Proceeds of Criminal Profiteering
16 (RCW 9A.82.080 (1) and (2))
17 Vehicular Assault (RCW 46.61.522)
18 Willful Failure to Return from Furlough
19 (RCW 72.66.060)

20 III Abandonment of dependent person 2 (RCW
21 9A.42.070)
22 Assault 3 (RCW 9A.36.031)
23 Assault of a Child 3 (RCW 9A.36.140)
24 Bail Jumping with class B or C Felony (RCW
25 9A.76.170(2)(c))
26 Burglary 2 (RCW 9A.52.030)
27 Communication with a Minor for Immoral
28 Purposes (RCW 9.68A.090)
29 Criminal Gang Intimidation (RCW 9A.46.120)
30 Criminal Mistreatment 2 (RCW 9A.42.030)
31 Custodial Assault (RCW 9A.36.100)
32 Delivery of a material in lieu of a
33 controlled substance (RCW
34 69.50.401(c))
35 Escape 2 (RCW 9A.76.120)
36 Extortion 2 (RCW 9A.56.130)
37 Harassment (RCW 9A.46.020)
38 Intimidating a Public Servant (RCW
39 9A.76.180)

1 Introducing Contraband 2 (RCW 9A.76.150)
2 Maintaining a Dwelling or Place for
3 Controlled Substances (RCW
4 69.50.402(a)(6))
5 Malicious Injury to Railroad Property (RCW
6 81.60.070)
7 Manufacture, deliver, or possess with
8 intent to deliver marijuana (RCW
9 69.50.401(a)(1)(iii))
10 Manufacture, distribute, or possess with
11 intent to distribute an imitation
12 controlled substance (RCW
13 69.52.030(1))
14 Patronizing a Juvenile Prostitute (RCW
15 9.68A.100)
16 Perjury 2 (RCW 9A.72.030)
17 Possession of Incendiary Device (RCW
18 9.40.120)
19 Possession of Machine Gun or Short-Barreled
20 Shotgun or Rifle (RCW 9.41.190)
21 Promoting Prostitution 2 (RCW 9A.88.080)
22 Recklessly Trafficking in Stolen Property
23 (RCW 9A.82.050(1))
24 Securities Act violation (RCW 21.20.400)
25 Tampering with a Witness (RCW 9A.72.120)
26 Telephone Harassment (subsequent conviction
27 or threat of death) (RCW 9.61.230)
28 Theft of Livestock 2 (RCW 9A.56.080)
29 Unlawful Imprisonment (RCW 9A.40.040)
30 Unlawful possession of firearm in the
31 second degree (RCW 9.41.040(1)(b))
32 Unlawful Use of Building for Drug Purposes
33 (RCW 69.53.010)
34 Willful Failure to Return from Work Release
35 (RCW 72.65.070)
36 II Computer Trespass 1 (RCW 9A.52.110)
37 Counterfeiting (RCW 9.16.035(3))

1 Create, deliver, or possess a counterfeit
2 controlled substance (RCW
3 69.50.401(b))
4 Escape from Community Custody (RCW
5 72.09.310)
6 Health Care False Claims (RCW 48.80.030)
7 Malicious Mischief 1 (RCW 9A.48.070)
8 Possession of controlled substance that is
9 either heroin or narcotics from
10 Schedule I or II or flunitrazepam from
11 Schedule IV (RCW 69.50.401(d))
12 Possession of phencyclidine (PCP) (RCW
13 69.50.401(d))
14 Possession of Stolen Property 1 (RCW
15 9A.56.150)
16 Theft 1 (RCW 9A.56.030)
17 Theft of Rental, Leased, or Lease-purchased
18 Property (valued at one thousand five
19 hundred dollars or more) (RCW
20 9A.56.096(4))
21 Trafficking in Insurance Claims (RCW
22 48.30A.015)
23 Unlawful Practice of Law (RCW 2.48.180)
24 Unlicensed Practice of a Profession or
25 Business (RCW 18.130.190(7))
26 I Attempting to Elude a Pursuing Police
27 Vehicle (RCW 46.61.024)
28 False Verification for Welfare (RCW
29 74.08.055)
30 Forged Prescription (RCW 69.41.020)
31 Forged Prescription for a Controlled
32 Substance (RCW 69.50.403)
33 Forgery (RCW 9A.60.020)
34 Malicious Mischief 2 (RCW 9A.48.080)
35 Possess Controlled Substance that is a
36 Narcotic from Schedule III, IV, or V
37 or Non-narcotic from Schedule I-V
38 (except phencyclidine or
39 flunitrazepam) (RCW 69.50.401(d))

1 Possession of Stolen Property 2 (RCW
2 9A.56.160)
3 Reckless Burning 1 (RCW 9A.48.040)
4 Taking Motor Vehicle Without Permission
5 (RCW 9A.56.070)
6 Theft 2 (RCW 9A.56.040)
7 Theft of Rental, Leased, or Lease-purchased
8 Property (valued at two hundred fifty
9 dollars or more but less than one
10 thousand five hundred dollars) (RCW
11 9A.56.096(4))
12 Unlawful Issuance of Checks or Drafts (RCW
13 9A.56.060)
14 Unlawful Use of Food Stamps (RCW 9.91.140
15 (2) and (3))
16 Vehicle Prowl 1 (RCW 9A.52.095)

17 **Sec. 360.** RCW 72.09.370 and 1999 c 214 s 2 are each amended to
18 read as follows:

19 (1) The secretary shall identify offenders in confinement or
20 partial confinement who: (a) Are reasonably believed to be dangerous
21 to themselves or others; and (b) have a mental disorder. In
22 determining an offender's dangerousness, the secretary shall consider
23 behavior known to the department and factors, based on research, that
24 are linked to an increased risk for dangerousness of mentally ill
25 offenders and shall include consideration of an offender's chemical
26 dependency or abuse.

27 (2) Prior to release of an offender identified under this section,
28 a team consisting of representatives of the department of corrections,
29 the division of mental health, and, as necessary, the indeterminate
30 sentence review board, other divisions or administrations within the
31 department of social and health services, specifically including the
32 division of alcohol and substance abuse and the division of
33 developmental disabilities, the appropriate regional support network,
34 and the providers, as appropriate, shall develop a plan, as determined
35 necessary by the team, for delivery of treatment and support services
36 to the offender upon release. The team may include a school district
37 representative for offenders under the age of twenty-one. The team
38 shall consult with the offender's counsel, if any, and, as appropriate,

1 the offender's family and community. The team shall notify the crime
2 victim/witness program, which shall provide notice to all people
3 registered to receive notice under RCW 9.94A.155 of the proposed
4 release plan developed by the team. Victims, witnesses, and other
5 interested people notified by the department may provide information
6 and comments to the department on potential safety risk to specific
7 individuals or classes of individuals posed by the specific offender.
8 The team may recommend: (a) That the offender be evaluated by the
9 county designated mental health professional, as defined in chapter
10 71.05 RCW; (b) department-supervised community treatment; or (c)
11 voluntary community mental health or chemical dependency or abuse
12 treatment.

13 (3) Prior to release of an offender identified under this section,
14 the team shall determine whether or not an evaluation by a county
15 designated mental health professional is needed. If an evaluation is
16 recommended, the supporting documentation shall be immediately
17 forwarded to the appropriate county designated mental health
18 professional. The supporting documentation shall include the
19 offender's criminal history, history of judicially required or
20 administratively ordered involuntary antipsychotic medication while in
21 confinement, and any known history of involuntary civil commitment.

22 (4) If an evaluation by a county designated mental health
23 professional is recommended by the team, such evaluation shall occur
24 not more than ten days, nor less than five days, prior to release.

25 (5) A second evaluation by a county designated mental health
26 professional shall occur on the day of release if requested by the
27 team, based upon new information or a change in the offender's mental
28 condition, and the initial evaluation did not result in an emergency
29 detention or a summons under chapter 71.05 RCW.

30 (6) If the county designated mental health professional determines
31 an emergency detention under chapter 71.05 RCW is necessary, the
32 department shall release the offender only to a state hospital or to a
33 consenting evaluation and treatment facility. The department shall
34 arrange transportation of the offender to the hospital or facility.

35 (7) If the county designated mental health professional believes
36 that a less restrictive alternative treatment is appropriate, he or she
37 shall seek a summons, pursuant to the provisions of chapter 71.05 RCW,
38 to require the offender to appear at an evaluation and treatment
39 facility. If a summons is issued, the offender shall remain within the

1 corrections facility until completion of his or her term of confinement
2 and be transported, by corrections personnel on the day of completion,
3 directly to the identified evaluation and treatment facility.

4 (8) The secretary shall adopt rules to implement this section.

5 NEW SECTION. **Sec. 361.** A new section is added to chapter 9.95 RCW
6 to read as follows:

7 The indeterminate sentence review board, in fulfilling its duties
8 under the provisions of this act, shall be considered a parole board as
9 that concept was treated in law under the state's indeterminate
10 sentencing statutes.

11 **PART IV**

12 **TECHNICAL PROVISIONS**

13 NEW SECTION. **Sec. 401.** The following acts or parts of acts are
14 each repealed:

15 (1) RCW 9.95.0011 (Indeterminate sentence review board--Report--
16 Recommendation of governor) and 1997 c 350 s 1, 1989 c 259 s 4, & 1986
17 c 224 s 12; and

18 (2) RCW 9.95.145 (Sex offenders--Release of information--
19 Classification of offenders) and 1997 c 364 s 5 & 1990 c 3 s 127.

20 NEW SECTION. **Sec. 402.** The secretary of corrections, the
21 secretary of social and health services, and the indeterminate sentence
22 review board may adopt rules to implement this act.

23 NEW SECTION. **Sec. 403.** (1) Sections 301 through 361 of this act
24 shall not affect the validity of any sentence imposed under any other
25 law for any offense committed before, on, or after the effective date
26 of this section.

27 (2) Sections 301 through 361 of this act shall apply to offenses
28 committed on or after the effective date of this section.

29 NEW SECTION. **Sec. 404.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

(4) Specifies that release to an LRA is a release that subjects the person to sex offender registration under RCW 9A.44.130 and community notification under RCW 4.24.550 and requires the sheriff to provide each household on McNeil Island with community notification information for persons released to the secure community transition facility on McNeil Island.

(5) Provides a copy of the court's conditional release order to the sheriff in counties where the conditionally released person will be regularly transported through, or participating in work, education, or social services.

(6) Requires electronic monitoring based on global positioning system technology where available, subject to funding by the legislature.

(7) Establishes a Joint Select Committee to define "equitable distribution" and make suggestions on any needed refinements to 5845 criteria for 1-3 bed facilities with a report due to the Governor and the appropriate members of the legislature by Nov. 15.

(8) DSHS must give "great weight" to equitable distribution criteria established by the Joint Select Committee in formulating where future secure community transition facilities will be established.

(9) Amends the sentencing provisions not to require a finding of predatory or forcible compulsion for any two-strike offense.

(10) Makes technical and clarifying changes.

--- END ---