

2 ESHB 1780 - S COMM AMD

3 By Committee on Law & Justice

4 Adopted 4/19/91 - Voice Vote

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

7 "Sec. 1. RCW 9.94A.030 and 1990 c 3 s 602 are each amended to read
8 as follows:

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

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

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

19 (3) "Community corrections officer" means an employee of the
20 department who is responsible for carrying out specific duties in
21 supervision of sentenced offenders and monitoring of sentence
22 conditions.

23 (4) "Community custody" means that portion of an inmate's sentence
24 of confinement in lieu of earned early release time served in the
25 community subject to controls placed on the inmate's movement and
26 activities by the department of corrections.

27 (5) "Community placement" means that period during which the
28 offender is subject to the conditions of community custody and/or

1 postrelease supervision, which begins either upon completion of the
2 term of confinement (postrelease supervision) or at such time as the
3 offender is transferred to community custody in lieu of earned early
4 release. Community placement may consist of entirely community
5 custody, entirely postrelease supervision, or a combination of the two.

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

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

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

20 (9) "Conviction" means an adjudication of guilt pursuant to Titles
21 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
22 acceptance of a plea of guilty.

23 (10) "Court-ordered legal financial obligation" means a sum of
24 money that is ordered by a superior court of the state of Washington
25 for legal financial obligations which may include restitution to the
26 victim, statutorily imposed crime victims' compensation fees as
27 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
28 drug funds, court-appointed attorneys' fees, and costs of defense,
29 fines, and any other financial obligation that is assessed to the
30 offender as a result of a felony conviction.

1 (11) "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.

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

13 (b) "Criminal history" shall always include juvenile convictions
14 for sex offenses and shall also include a defendant's other prior
15 convictions in juvenile court if: (i) The conviction was for an offense
16 which is a felony or a serious traffic offense and is criminal history
17 as defined in RCW 13.40.020(6)(a); (ii) the defendant was fifteen years
18 of age or older at the time the offense was committed; and (iii) with
19 respect to prior juvenile class B and C felonies or serious traffic
20 offenses, the defendant was less than twenty-three years of age at the
21 time the offense for which he or she is being sentenced was committed.

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

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

1 (15) "Disposable earnings" means that part of the earnings of an
2 individual remaining after the deduction from those earnings of any
3 amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (16) "Drug offense" means:

14 (a) Any felony violation of chapter 69.50 RCW except possession of
15 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
16 controlled substance (RCW 69.50.403);

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

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

23 (17) "Escape" means:

24 (a) Escape in the first degree (RCW 9A.76.110), escape in the
25 second degree (RCW 9A.76.120), willful failure to return from furlough
26 (RCW 72.66.060), willful failure to return from work release (RCW
27 72.65.070), or willful failure to comply with any limitations on the
28 inmate's movements while in community custody (RCW 72.09.310); or

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

4 (18) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
6 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
7 and-run injury-accident (RCW 46.52.020(4)); or

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

11 (19) "Fines" means the requirement that the offender pay a specific
12 sum of money over a specific period of time to the court.

13 (20)(a) "First-time offender" means any person who is convicted of
14 a felony (i) not classified as a violent offense or a sex offense under
15 this chapter, or (ii) that is not the manufacture, delivery, or
16 possession with intent to manufacture or deliver a controlled substance
17 classified in schedule I or II that is a narcotic drug, and except as
18 provided in (b) of this subsection, who previously has never been
19 convicted of a felony in this state, federal court, or another state,
20 and who has never participated in a program of deferred prosecution for
21 a felony offense.

22 (b) For purposes of (a) of this subsection, a juvenile adjudication
23 for an offense committed before the age of fifteen years is not a
24 previous felony conviction except for adjudications of sex offenses.

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

27 (22) "Offender" means a person who has committed a felony
28 established by state law and is eighteen years of age or older or is
29 less than eighteen years of age but whose case has been transferred by
30 the 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 (23) "Partial confinement" means confinement for no more than one
4 year in a facility or institution operated or utilized under contract
5 by the state or any other unit of government, or, if home detention or
6 work crew has been ordered by the court, in (~~the residence of either~~
7 ~~the defendant or a member of the defendant's immediate family~~) an
8 approved residence, for a substantial portion of each day with the
9 balance of the day spent in the community. Partial confinement
10 includes work release (~~and~~), home detention, work crew, and a
11 combination of work crew and home detention as defined in this section.

12 (24) "Postrelease supervision" is that portion of an offender's
13 community placement that is not community custody.

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

18 (26) "Serious traffic offense" means:

19 (a) Driving while intoxicated (RCW 46.61.502), actual physical
20 control while intoxicated (RCW 46.61.504), reckless driving (RCW
21 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

25 (27) "Serious violent offense" is a subcategory of violent offense
26 and means:

27 (a) Murder in the first degree, homicide by abuse, murder in the
28 second degree, assault in the first degree, kidnapping in the first
29 degree, or rape in the first degree, or an attempt, criminal

1 solicitation, or criminal conspiracy to commit one of these felonies;
2 or

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

6 (28) "Sentence range" means the sentencing court's discretionary
7 range in imposing a nonappealable sentence.

8 (29) "Sex offense" means:

9 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
10 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal
11 attempt, criminal solicitation, or criminal conspiracy to commit such
12 crimes;

13 (b) A felony with a finding of sexual motivation under RCW
14 9.94A.127; or

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

18 (30) "Sexual motivation" means that one of the purposes for which
19 the defendant committed the crime was for the purpose of his or her
20 sexual gratification.

21 (31) "Total confinement" means confinement inside the physical
22 boundaries of a facility or institution operated or utilized under
23 contract by the state or any other unit of government for twenty-four
24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

25 (32) "Victim" means any person who has sustained emotional,
26 psychological, physical, or financial injury to person or property as
27 a direct result of the crime charged.

28 (33) "Violent offense" means:

29 (a) Any of the following felonies, as now existing or hereafter
30 amended: Any felony defined under any law as a class A felony or an

1 attempt to commit a class A felony, criminal solicitation of or
2 criminal conspiracy to commit a class A felony, manslaughter in the
3 first degree, manslaughter in the second degree, indecent liberties if
4 committed by forcible compulsion, kidnapping in the second degree,
5 arson in the second degree, assault in the second degree, extortion in
6 the first degree, robbery in the second degree, vehicular assault, and
7 vehicular homicide, when proximately caused by the driving of any
8 vehicle by any person while under the influence of intoxicating liquor
9 or any drug as defined by RCW 46.61.502, or by the operation of any
10 vehicle in a reckless manner;

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

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

17 (34) "Work crew" means a program of partial confinement consisting
18 of civic improvement tasks for the benefit of the community of not less
19 than thirty-five hours per week that complies with section 2 of this
20 act. The civic improvement tasks shall be performed on public property
21 or on private property owned or operated by nonprofit entities, except
22 that, for emergency purposes only, work crews may perform snow removal
23 on any private property. The civic improvement tasks shall have
24 minimal negative impact on existing private industries or the labor
25 force in the county where the service or labor is performed. The civic
26 improvement tasks shall not affect employment opportunities for people
27 with developmental disabilities contracted through sheltered workshops
28 as defined in RCW 82.04.385.

29 (35) "Work release" means a program of partial confinement
30 available to offenders who are employed or engaged as a student in a

1 regular course of study at school. Participation in work release shall
2 be conditioned upon the offender attending work or school at regularly
3 defined hours and abiding by the rules of the work release facility.

4 ~~((+35+))~~ (36) "Home detention" means a program of partial
5 confinement available to offenders wherein the offender is confined in
6 a private residence subject to electronic surveillance. Home detention
7 may not be imposed for offenders convicted of a violent offense, any
8 sex offense, any drug offense, reckless burning in the first or second
9 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
10 degree as defined in RCW 9A.36.031, unlawful imprisonment as defined in
11 RCW 9A.40.040, or harassment as defined in RCW 9A.46.020. Home
12 detention may be imposed for offenders convicted of possession of a
13 controlled substance (RCW 69.50.401(d)) or forged prescription for a
14 controlled substance (RCW 69.50.403) if the offender fulfills the
15 participation conditions set forth in this subsection and is monitored
16 for drug use by treatment alternatives to street crime (TASC) or a
17 comparable court or agency-referred program. Home detention may be
18 imposed for offenders convicted of burglary in the second degree as
19 defined in RCW 9A.52.030 or residential burglary conditioned upon the
20 offender: (a) Successfully completing twenty-one days in a work
21 release program, (b) having no convictions for burglary in the second
22 degree or residential burglary during the preceding two years and not
23 more than two prior convictions for burglary or residential burglary,
24 (c) having no convictions for a violent felony offense during the
25 preceding two years and not more than two prior convictions for a
26 violent felony offense, (d) having no prior charges of escape, and (e)
27 fulfilling the other conditions of the home detention program.

28 Participation in a home detention program shall be conditioned
29 upon: ~~((+a+))~~ (i) The offender obtaining or maintaining current
30 employment or attending a regular course of school study at regularly

1 defined hours, or the offender performing parental duties to offspring
2 or minors normally in the custody of the offender, ~~((b))~~ (ii) abiding
3 by the rules of the home detention program, and ~~((e))~~ (iii)
4 compliance with court-ordered legal financial obligations. The home
5 detention program may also be made available to offenders whose charges
6 and convictions do not otherwise disqualify them if medical or health-
7 related conditions, concerns or treatment would be better addressed
8 under the home detention program, or where the health and welfare of
9 the offender, other inmates, or staff would be jeopardized by the
10 offender's incarceration. Participation in the home detention program
11 for medical or health-related reasons is conditioned on the offender
12 abiding by the rules of the home detention program and complying with
13 court-ordered restitution."

14 "NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW
15 to read as follows:

16 Participation in a work crew is conditioned upon the offender's
17 acceptance into the program, abstinence from alcohol and controlled
18 substances as demonstrated by urinalysis and breathalyzer monitoring,
19 with the cost of monitoring to be paid by the offender, unless
20 indigent; and upon compliance with the rules of the program, which
21 rules shall include the requirements that the offender work to the best
22 of his or her abilities and that he or she provide the program with
23 accurate, verified residence information. Work crew may be imposed
24 simultaneously with electronic home detention.

25 Where work crew is imposed as part of a sentence of nine months or
26 more, the offender must serve a minimum of thirty days of total
27 confinement before being eligible for work crew.

28 An offender who has successfully completed four weeks of work crew
29 at thirty-five hours per week shall thereafter receive credit toward

1 the work crew sentence for hours worked at approved, verified
2 employment. Such employment credit may be earned for up to twenty-four
3 hours actual employment per week provided, however, that every such
4 offender shall continue active participation in work crews projects
5 according to a schedule approved by a work crew supervisor until the
6 work crew sentence has been served.

7 The hours served as part of a work crew sentence may include
8 substance abuse counseling and/or job skills training.

9 The civic improvement tasks performed by offenders on work crew
10 shall be unskilled labor for the benefit of the community as determined
11 by the head of the county executive branch or his or her designee.
12 Civic improvement tasks shall not be done on private property unless it
13 is owned or operated by a nonprofit entity, except that, for emergency
14 purposes only, work crews may perform snow removal on any private
15 property. The civic improvement tasks shall have minimal negative
16 impact on existing private industries or the labor force in the county
17 where the service or labor is performed. The civic improvement tasks
18 shall not affect employment opportunities for people with developmental
19 disabilities contracted through sheltered workshops as defined in RCW
20 82.04.385. In case any dispute arises as to a civic improvement task
21 having more than minimum negative impact on existing private industries
22 or labor force in the county where their service or labor is performed,
23 the matter shall be referred by an interested party, as defined in RCW
24 39.12.010(4), for arbitration to the director of the department of
25 labor and industries of the state.

26 Whenever an offender receives credit against a work crew sentence
27 for hours of approved, verified employment, the offender shall pay to
28 the department administering the program the monthly assessment of an
29 amount not less than ten dollars per month nor more than fifty dollars
30 per month. This assessment shall be considered payment of the costs of

1 providing the work crew program to an offender. The court may exempt
2 a person from the payment of all or any part of the assessment based
3 upon any of the following factors:

4 (1) The offender has diligently attempted but has been unable to
5 obtain employment that provided the offender sufficient income to make
6 such payment.

7 (2) The offender is a student in a school, college, university, or
8 a course of vocational or technical training designed to fit the
9 student for gainful employment.

10 (3) The offender has an employment handicap, as determined by an
11 examination acceptable to or ordered by the court.

12 (4) The offender is responsible for the support of dependents and
13 the payment of the assessment constitutes an undue hardship.

14 (5) Other extenuating circumstances as determined by the court."

15 "Sec. 3. RCW 9.94A.120 and 1990 c 3 s 705 are each amended to read
16 as follows:

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

19 (1) Except as authorized in subsections (2), (5), and (7) of this
20 section, the court shall impose a sentence within the sentence range
21 for the offense.

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

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

1 (4) An offender convicted of the crime of murder in the first
2 degree shall be sentenced to a term of total confinement not less than
3 twenty years. An offender convicted of the crime of assault in the
4 first degree where the offender used force or means likely to result in
5 death or intended to kill the victim shall be sentenced to a term of
6 total confinement not less than five years. An offender convicted of
7 the crime of rape in the first degree shall be sentenced to a term of
8 total confinement not less than five years, and shall not be eligible
9 for furlough, work release or other authorized leave of absence from
10 the correctional facility during such minimum five-year term except for
11 the purpose of commitment to an inpatient treatment facility. The
12 foregoing minimum terms of total confinement are mandatory and shall
13 not be varied or modified as provided in subsection (2) of this
14 section.

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

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

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

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

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

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

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

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

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

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

29 The examiner shall assess and report regarding the defendant's
30 amenability to treatment and relative risk to the community. A

1 proposed treatment plan shall be provided and shall include, at a
2 minimum:

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

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

6 (C) Monitoring plans, including any requirements regarding living
7 conditions, lifestyle requirements, and monitoring by family members
8 and others;

9 (D) Anticipated length of treatment; and

10 (E) Recommended crime-related prohibitions.

11 The court on its own motion may order, or on a motion by the state
12 shall order, a second examination regarding the offender's amenability
13 to treatment. The evaluator shall be selected by the party making the
14 motion. The defendant shall pay the cost of any second examination
15 ordered unless the court finds the defendant to be indigent in which
16 case the state shall pay the cost.

17 (ii) After receipt of the reports, the court shall consider whether
18 the offender and the community will benefit from use of this special
19 sexual offender sentencing alternative and consider the victim's
20 opinion whether the offender should receive a treatment disposition
21 under this subsection. If the court determines that this special sex
22 offender sentencing alternative is appropriate, the court shall then
23 impose a sentence within the sentence range. If this sentence is less
24 than eight years of confinement, the court may suspend the execution of
25 the sentence and impose the following conditions of suspension:

26 (A) The court shall place the defendant on community supervision
27 for the length of the suspended sentence or three years, whichever is
28 greater; and

29 (B) The court shall order treatment for any period up to three
30 years in duration. The court in its discretion shall order outpatient

1 sex offender treatment or inpatient sex offender treatment, if
2 available. A community mental health center may not be used for such
3 treatment unless it has an appropriate program designed for sex
4 offender treatment. The offender shall not change sex offender
5 treatment providers or treatment conditions without first notifying the
6 prosecutor, the community corrections officer, and the court, and shall
7 not change providers without court approval after a hearing if the
8 prosecutor or community corrections officer object to the change. In
9 addition, as conditions of the suspended sentence, the court may impose
10 other sentence conditions including up to six months of confinement,
11 not to exceed the sentence range of confinement for that offense,
12 crime-related prohibitions, and requirements that the offender perform
13 any one or more of the following:

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

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

18 (III) Report as directed to the court and a community corrections
19 officer;

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

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

25 (iii) The sex offender therapist shall submit quarterly reports on
26 the defendant's progress in treatment to the court and the parties.
27 The report shall reference the treatment plan and include at a minimum
28 the following: Dates of attendance, defendant's compliance with
29 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at
2 sentencing.

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

19 (v) The court may revoke the suspended sentence at any time during
20 the period of community supervision and order execution of the sentence
21 if: (A) The defendant violates the conditions of the suspended
22 sentence, or (B) the court finds that the defendant is failing to make
23 satisfactory progress in treatment. All confinement time served during
24 the period of community supervision shall be credited to the offender
25 if the suspended sentence is revoked.

26 (vi) After July 1, 1991, examinations and treatment ordered
27 pursuant to this subsection shall only be conducted by sex offender
28 treatment providers certified by the department of health pursuant to
29 chapter 18.155 RCW.

1 For purposes of this subsection, "victim" means any person who has
2 sustained emotional, psychological, physical, or financial injury to
3 person or property as a result of the crime charged. "Victim" also
4 means a parent or guardian of a victim who is a minor child unless the
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense
7 committed before July 1, 1987, and is sentenced to a term of
8 confinement of more than one year but less than six years, the
9 sentencing court may, on its own motion or on the motion of the
10 offender or the state, order the offender committed for up to thirty
11 days to the custody of the secretary of social and health services for
12 evaluation and report to the court on the offender's amenability to
13 treatment at these facilities. If the secretary of social and health
14 services cannot begin the evaluation within thirty days of the court's
15 order of commitment, the offender shall be transferred to the state for
16 confinement pending an opportunity to be evaluated at the appropriate
17 facility. The court shall review the reports and may order that the
18 term of confinement imposed be served in the sexual offender treatment
19 program at the location determined by the secretary of social and
20 health services or the secretary's designee, only if the report
21 indicates that the offender is amenable to the treatment program
22 provided at these facilities. The offender shall be transferred to the
23 state pending placement in the treatment program. Any offender who has
24 escaped from the treatment program shall be referred back to the
25 sentencing court.

26 If the offender does not comply with the conditions of the
27 treatment program, the secretary of social and health services may
28 refer the matter to the sentencing court. The sentencing court shall
29 commit the offender to the department of corrections to serve the
30 balance of the term of confinement.

1 If the offender successfully completes the treatment program before
2 the expiration of the term of confinement, the court may convert the
3 balance of confinement to community supervision and may place
4 conditions on the offender including crime-related prohibitions and
5 requirements that the offender perform any one or more of the
6 following:

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

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

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

13 (iv) Undergo available outpatient treatment.

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

18 After June 30, 1993, this subsection (b) shall cease to have
19 effect.

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

27 Except for an offender who has been convicted of a violation of RCW
28 9A.44.040 or 9A.44.050, if the offender completes the treatment program
29 before the expiration of his term of confinement, the department of
30 corrections may request the court to convert the balance of confinement

1 to community supervision and to place conditions on the offender
2 including crime-related prohibitions and requirements that the offender
3 perform any one or more of the following:

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

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

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

10 (iv) Undergo available outpatient treatment.

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

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

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

27 (8)(a) When a court sentences a person to a term of total
28 confinement to the custody of the department of corrections for an
29 offense categorized as a sex offense or a serious violent offense
30 committed after July 1, 1988, but before July 1, 1990, assault in the

1 second degree, any crime against a person where it is determined in
2 accordance with RCW 9.94A.125 that the defendant or an accomplice was
3 armed with a deadly weapon at the time of commission, or any felony
4 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
5 1988, the court shall in addition to the other terms of the sentence,
6 sentence the offender to a one-year term of community placement
7 beginning either upon completion of the term of confinement or at such
8 time as the offender is transferred to community custody in lieu of
9 earned early release in accordance with RCW 9.94A.150 (1) and (2).
10 When the court sentences an offender under this subsection to the
11 statutory maximum period of confinement then the community placement
12 portion of the sentence shall consist entirely of such community
13 custody to which the offender may become eligible, in accordance with
14 RCW 9.94A.150 (1) and (2). Any period of community custody actually
15 served shall be credited against the community placement portion of the
16 sentence.

17 (b) When a court sentences a person to a term of total confinement
18 to the custody of the department of corrections for an offense
19 categorized as a sex offense or serious violent offense committed on or
20 after July 1, 1990, the court shall in addition to other terms of the
21 sentence, sentence the offender to community placement for two years or
22 up to the period of earned early release awarded pursuant to RCW
23 9.94A.150 (1) and (2), whichever is longer. The community placement
24 shall begin either upon completion of the term of confinement or at
25 such time as the offender is transferred to community custody in lieu
26 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
27 When the court sentences an offender under this subsection to the
28 statutory maximum period of confinement then the community placement
29 portion of the sentence shall consist entirely of the community custody
30 to which the offender may become eligible, in accordance with RCW

1 9.94A.150 (1) and (2). Any period of community custody actually served
2 shall be credited against the community placement portion of the
3 sentence. Unless a condition is waived by the court, the terms of
4 community placement for offenders sentenced pursuant to this section
5 shall include the following conditions:

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

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

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

12 (iv) An offender in community custody shall not unlawfully possess
13 controlled substances; and

14 (v) The offender shall pay supervision fees as determined by the
15 department of corrections.

16 (c) The court may also order any of the following special
17 conditions:

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

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

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

24 (iv) The offender shall not consume alcohol;

25 (v) The residence location and living arrangements of a sex
26 offender shall be subject to the prior approval of the department of
27 corrections; or

28 (vi) The offender shall comply with any crime-related prohibitions.

29 (d) Prior to transfer to, or during, community placement, any
30 conditions of community placement may be removed or modified so as not

1 to be more restrictive by the sentencing court, upon recommendation of
2 the department of corrections.

3 (9) If the court imposes a sentence requiring confinement of thirty
4 days or less, the court may, in its discretion, specify that the
5 sentence be served on consecutive or intermittent days. A sentence
6 requiring more than thirty days of confinement shall be served on
7 consecutive days. Local jail administrators may schedule court-ordered
8 intermittent sentences as space permits.

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

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

5 (12) All offenders sentenced to terms involving community
6 supervision, community service, community placement, or legal financial
7 obligation shall be under the supervision of the secretary of the
8 department of corrections or such person as the secretary may designate
9 and shall follow explicitly the instructions of the secretary including
10 reporting as directed to a community corrections officer, remaining
11 within prescribed geographical boundaries, and notifying the community
12 corrections officer of any change in the offender's address or
13 employment.

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

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

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

1 (16) As a part of any sentence, the court may impose and enforce an
2 order that relates directly to the circumstances of the crime for which
3 the offender has been convicted, prohibiting the offender from having
4 any contact with other specified individuals or a specific class of
5 individuals for a period not to exceed the maximum allowable sentence
6 for the crime, regardless of the expiration of the offender's term of
7 community supervision or community placement.

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

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

16 "Sec. 4. RCW 9.94A.180 and 1988 c 154 s 4 are each amended to read
17 as follows:

18 (1) An offender sentenced to a term of partial confinement shall be
19 confined in the facility for at least eight hours per day or, if
20 -serving a work crew sentence shall comply with the conditions of that
21 sentence as set forth in RCW 9.94A.030(23) and section 2 of this act.
22 The offender shall be required as a condition of partial confinement to
23 report to the facility at designated times. An offender may be
24 required to comply with crime-related prohibitions during the period of
25 partial confinement.

26 (2) An offender in a county jail ordered to serve all or part of a
27 term of less than one year in work release, work crew, or a program of
28 home detention who violates the rules of the work release facility,
29 work crew, or program of home detention or fails to remain employed or

1 enrolled in school may be transferred to the appropriate county
2 detention facility without further court order but shall, upon request,
3 be notified of the right to request an administrative hearing on the
4 issue of whether or not the offender failed to comply with the order
5 and relevant conditions. Pending such hearing, or in the absence of a
6 request for the hearing, the offender shall serve the remainder of the
7 term of confinement as total confinement. This subsection shall not
8 affect transfer or placement of offenders committed to the state
9 department of corrections."

10 "Sec. 5. RCW 9.94A.190 and 1988 c 154 s 5 are each amended to read
11 as follows:

12 (1) A sentence that includes a term or terms of confinement
13 totaling more than one year shall be served in a facility or
14 institution operated, or utilized under contract, by the state. Except
15 as provided for in subsection (3) of this section, a sentence of not
16 more than one year of confinement shall be served in a facility
17 operated, licensed, or utilized under contract, by the county, or if
18 home detention or work crew has been ordered by the court, in the
19 residence of either the defendant or a member of the defendant's
20 immediate family.

21 (2) If a county uses a state partial confinement facility for the
22 partial confinement of a person sentenced to confinement for not more
23 than one year, the county shall reimburse the state for the use of the
24 facility as provided for in this subsection. The office of financial
25 management shall set the rate of reimbursement based upon the average
26 per diem cost per offender in the facility. The office of financial
27 management shall determine to what extent, if any, reimbursement shall
28 be reduced or eliminated because of funds provided by the legislature
29 to the department of corrections for the purpose of covering the cost

1 of county use of state partial confinement facilities. The office of
2 financial management shall reestablish reimbursement rates each even-
3 numbered year.

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

12 **"Sec. 6.** RCW 9A.76.010 and 1979 c 155 s 35 are each amended to
13 read as follows:

14 The following definitions are applicable in this chapter unless the
15 context otherwise requires:

16 (1) "Custody" means restraint pursuant to a lawful arrest or an
17 order of a court, or any period of service on a work crew: PROVIDED,
18 That custody pursuant to chapter 13.34 RCW and RCW 74.13.020 and
19 74.13.031 and chapter 13.32A RCW shall not be deemed custody for
20 purposes of this chapter;

21 (2) "Detention facility" means any place used for the confinement
22 of a person (a) arrested for, charged with or convicted of an offense,
23 or (b) charged with being or adjudicated to be a juvenile offender as
24 defined in RCW 13.40.020 as now existing or hereafter amended, or (c)
25 held for extradition or as a material witness, or (d) otherwise
26 confined pursuant to an order of a court, except an order under chapter
27 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough,
28 or other such facility or program;

1 (3) "Contraband" means any article or thing which a person confined
2 in a detention facility is prohibited from obtaining or possessing by
3 statute, rule, regulation, or order of a court."

4 **ESHB 1780** - S COMM AMD
5 By Committee on Law & Justice

6 Adopted 4/19/91 - Voice Vote
7

8 On page 1, line 1 of the title, after "offenders;" strike the
9 remainder of the title and insert "amending RCW 9.94A.030, 9.94A.120,
10 9.94A.180, 9.94A.190, and 9A.76.010; and adding a new section to
11 chapter 9.94A RCW."