

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2262

Chapter 45, Laws of 1992

52nd Legislature
1992 Regular Session

SEX OFFENDERS--COMMUNITY PROTECTION ACT AMENDMENTS

EFFECTIVE DATE: 3/26/92

Passed by the House March 7, 1992
Yeas 96 Nays 0

JOE KING
**Speaker of the
House of Representatives**

Passed by the Senate March 5, 1992
Yeas 49 Nays 0

JOEL PRITCHARD
President of the Senate

Approved March 26, 1992

BOOTH GARDNER
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is ENGROSSED SUBSTITUTE HOUSE BILL 2262 as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

March 26, 1992 - 11:33 a.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2262

AS AMENDED BY THE SENATE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Appelwick, Padden, Wineberry, Riley, Tate, Wang, Roland, Winsley, Paris, May, Bowman, Orr and Van Luven; by request of Department of Corrections, Dept. of Social and Health Services and Indeterminate Sentence Review Board)

Read first time 01/15/92.

1 AN ACT Relating to refinements of the community protection act of
2 1990; amending RCW 9.94A.151, 9.94A.155, 71.09.030, 13.40.160, and
3 71.09.090; reenacting and amending RCW 9.94A.120; adding a new section
4 to chapter 71.09 RCW; creating a new section; and declaring an
5 emergency.

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

7 **Sec. 1.** RCW 9.94A.151 and 1990 c 3 s 122 are each amended to read
8 as follows:

9 (1)(a) When it appears that a person who has been convicted of a
10 sexually violent offense may meet the criteria of a sexually violent
11 predator as defined in RCW 71.09.020(1), the agency with jurisdiction
12 over the person shall refer the person in writing to the prosecuting
13 attorney of the county where that person was convicted, three months
14 ((before)) prior to the anticipated release from total confinement ((of

1 a person convicted of a sex offense as defined in RCW 9.94A.030 that
2 was committed between June 30, 1984, and July 1, 1988, the department
3 shall notify in writing the prosecuting attorney of the county where
4 the person was convicted. (The department)).

5 (b) The agency shall inform the prosecutor of the following:

6 ((1)) (i) The person's name, identifying factors, anticipated
7 future residence, and offense history; and

8 (ii) Documentation of institutional adjustment and any treatment
9 received.

10 (2) (~~A brief narrative describing the person's conduct during~~
11 ~~confinement and any treatment received; and~~

12 (3) ~~Whether the department recommends that a civil commitment~~
13 ~~petition be filed under RCW 71.09.030.)~~ This section applies to acts
14 committed before, on, or after the effective date of this act.

15 (3) The ((department)) agency with jurisdiction, its employees, and
16 officials shall be immune from liability for any good-faith conduct
17 under this section.

18 (4) As used in this section, "agency with jurisdiction" means that
19 agency with the authority to direct the release of a person serving a
20 sentence or term of confinement and includes the department of
21 corrections, the indeterminate sentence review board, and the
22 department of social and health services.

23 **Sec. 2.** RCW 9.94A.155 and 1990 c 3 s 121 are each amended to read
24 as follows:

25 (1) At the earliest possible date, and in no event later than ten
26 days before release except in the event of escape or emergency
27 furloughs as defined in RCW 72.66.010, the department of corrections
28 shall send written notice of parole, release, community placement, work
29 release placement, furlough, or escape about a specific inmate

1 convicted of a violent offense or a sex offense as defined by RCW
2 9.94A.030, to ~~((all of))~~ the following:

3 (a) The chief of police of the city, if any, in which the inmate
4 will reside or in which placement will be made in a work release
5 program; and

6 (b) The sheriff of the county in which the inmate will reside or in
7 which placement will be made in a work release program.

8 The sheriff of the county where the offender was convicted shall be
9 notified if the department does not know where the offender will
10 reside. The department shall notify the state patrol of the release of
11 all sex offenders, and that information shall be placed in the
12 Washington crime information center for dissemination to all law
13 enforcement.

14 (2) The same notice as required by subsection (1) of this section
15 shall be sent to the following if such notice has been requested in
16 writing about a specific inmate convicted of a violent offense or a sex
17 offense as defined by RCW 9.94A.030:

18 (a) The victim of the crime for which the inmate was convicted or
19 the victim's next of kin if the crime was a homicide;

20 (b) Any witnesses who testified against the inmate in any court
21 proceedings involving the violent offense; and

22 (c) Any person specified in writing by the prosecuting attorney.
23 Information regarding victims, next of kin, or witnesses requesting the
24 notice, information regarding any other person specified in writing by
25 the prosecuting attorney to receive the notice, and the notice are
26 confidential and shall not be available to the inmate.

27 (3) If an inmate convicted of a violent offense or a sex offense as
28 defined by RCW 9.94A.030 escapes from a correctional facility, the
29 department of corrections shall immediately notify, by the most
30 reasonable and expedient means available, the chief of police of the

1 city and the sheriff of the county in which the inmate resided
2 immediately before the inmate's arrest and conviction. If previously
3 requested, the department shall also notify the witnesses and the
4 victim of the crime for which the inmate was convicted or the victim's
5 next of kin if the crime was a homicide. If the inmate is recaptured,
6 the department shall send notice to the persons designated in this
7 subsection as soon as possible but in no event later than two working
8 days after the department learns of such recapture.

9 (4) If the victim, the victim's next of kin, or any witness is
10 under the age of sixteen, the notice required by this section shall be
11 sent to the parents or legal guardian of the child.

12 (5) The department of corrections shall send the notices required
13 by this chapter to the last address provided to the department by the
14 requesting party. The requesting party shall furnish the department
15 with a current address.

16 (6) For purposes of this section the following terms have the
17 following meanings:

18 (a) "Violent offense" means a violent offense under RCW 9.94A.030;

19 (b) "Next of kin" means a person's spouse, parents, siblings and
20 children.

21 (7) Nothing in this section shall impose any liability upon a chief
22 of police of a city or sheriff of a county for failing to request in
23 writing a notice as provided in subsection (1) of this section.

24 NEW SECTION. **Sec. 3.** A new section is added to chapter 71.09 RCW
25 to read as follows:

26 (1)(a) When it appears that a person may meet the criteria of a
27 sexually violent predator as defined in RCW 71.09.020(1), the agency
28 with jurisdiction shall refer the person in writing to the prosecuting

1 attorney of the county where that person was charged, three months
2 prior to:

3 (i) The anticipated release from total confinement of a person who
4 has been convicted of a sexually violent offense;

5 (ii) The anticipated release from total confinement of a person
6 found to have committed a sexually violent offense as a juvenile;

7 (iii) Release of a person who has been charged with a sexually
8 violent offense and who has been determined to be incompetent to stand
9 trial pursuant to RCW 10.77.090(3); or

10 (iv) Release of a person who has been found not guilty by reason of
11 insanity of a sexually violent offense pursuant to RCW 10.77.020(3).

12 (b) The agency shall inform the prosecutor of the following:

13 (i) The person's name, identifying factors, anticipated future
14 residence, and offense history; and

15 (ii) Documentation of institutional adjustment and any treatment
16 received.

17 (2) This section applies to acts committed before, on, or after the
18 effective date of this act.

19 (3) The agency, its employees, and officials shall be immune from
20 liability for any good-faith conduct under this section.

21 (4) As used in this section, "agency with jurisdiction" means that
22 agency with the authority to direct the release of a person serving a
23 sentence or term of confinement and includes the department of
24 corrections, the indeterminate sentence review board, and the
25 department of social and health services.

26 **Sec. 4.** RCW 71.09.030 and 1990 1st ex.s. c 12 s 3 are each amended
27 to read as follows:

28 When it appears that: (1) The ~~((sentence))~~ term of total
29 confinement of a person who has been convicted of a sexually violent

1 offense is about to expire, or has expired on, before, or after July 1,
2 1990; (2) the term of total confinement of a person found to have
3 committed a sexually violent offense as a juvenile is about to expire,
4 or has expired on, before, or after July 1, 1990; (3) a person who has
5 been charged with a sexually violent offense and who has been
6 determined to be incompetent to stand trial is about to be released, or
7 has been released on, before, or after July 1, 1990, pursuant to RCW
8 10.77.090(3); or (4) a person who has been found not guilty by reason
9 of insanity of a sexually violent offense is about to be released, or
10 has been released on, before, or after July 1, 1990, pursuant to RCW
11 10.77.020(3); and it appears that the person may be a sexually violent
12 predator, the prosecuting attorney of the county where the person was
13 convicted or charged or the attorney general if requested by the
14 prosecuting attorney may file a petition alleging that the person is a
15 "sexually violent predator" and stating sufficient facts to support
16 such allegation.

17 **Sec. 5.** RCW 9.94A.120 and 1991 c 221 s 2, 1991 c 181 s 3, and 1991
18 c 104 s 3 are each reenacted and amended to read as follows:

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

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

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

28 (3) Whenever a sentence outside the standard range is imposed, the
29 court shall set forth the reasons for its decision in written findings

1 of fact and conclusions of law. A sentence outside the standard range
2 shall be a determinate sentence.

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

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

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

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

1 (c) Pursue a prescribed, secular course of study or vocational
2 training;

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

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

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

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

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

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

1 The examiner shall assess and report regarding the defendant's
2 amenability to treatment and relative risk to the community. A
3 proposed treatment plan shall be provided and shall include, at a
4 minimum:

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

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

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

11 (D) Anticipated length of treatment; and

12 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

20 (III) Report as directed to the court and a community corrections
21 officer;

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

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

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

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

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

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

27 (vi) Except as provided in (a)(vii) of this subsection, after July
28 1, 1991, examinations and treatment ordered pursuant to this subsection
29 shall only be conducted by sex offender treatment providers certified
30 by the department of health pursuant to chapter 18.155 RCW.

1 (vii) A sex offender therapist who examines or treats a sex
2 offender pursuant to this subsection (7) does not have to be certified
3 by the department of health pursuant to chapter 18.155 RCW if the court
4 finds that: (A) The offender has already moved to another state or
5 plans to move to another state for reasons other than circumventing the
6 certification requirements; (B) no certified providers are available
7 for treatment within a reasonable geographical distance of the
8 offender's home; and (C) the evaluation and treatment plan comply with
9 this subsection (7) and the rules adopted by the department of health.

10 For purposes of this subsection, "victim" means any person who has
11 sustained emotional, psychological, physical, or financial injury to
12 person or property as a result of the crime charged. "Victim" also
13 means a parent or guardian of a victim who is a minor child unless the
14 parent or guardian is the perpetrator of the offense.

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

1 provided at these facilities. The offender shall be transferred to the
2 state pending placement in the treatment program. Any offender who has
3 escaped from the treatment program shall be referred back to the
4 sentencing court.

5 If the offender does not comply with the conditions of the
6 treatment program, the secretary of social and health services may
7 refer the matter to the sentencing court. The sentencing court shall
8 commit the offender to the department of corrections to serve the
9 balance of the term of confinement.

10 If the offender successfully completes the treatment program before
11 the expiration of the term of confinement, the court may convert the
12 balance of confinement to community supervision and may place
13 conditions on the offender including crime-related prohibitions and
14 requirements that the offender perform any one or more of the
15 following:

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

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

20 (iii) Report as directed to the court and a community corrections
21 officer;

22 (iv) Undergo available outpatient treatment.

23 If the offender violates any of the terms of community supervision,
24 the court may order the offender to serve out the balance of the
25 community supervision term in confinement in the custody of the
26 department of corrections.

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

29 (c) When an offender commits any felony sex offense on or after
30 July 1, 1987, and is sentenced to a term of confinement of more than

1 one year but less than six years, the sentencing court may, on its own
2 motion or on the motion of the offender or the state, request the
3 department of corrections to evaluate whether the offender is amenable
4 to treatment and the department may place the offender in a treatment
5 program within a correctional facility operated by the department.

6 Except for an offender who has been convicted of a violation of RCW
7 9A.44.040 or 9A.44.050, if the offender completes the treatment program
8 before the expiration of his term of confinement, the department of
9 corrections may request the court to convert the balance of confinement
10 to community supervision and to place conditions on the offender
11 including crime-related prohibitions and requirements that the offender
12 perform any one or more of the following:

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

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

17 (iii) Report as directed to the court and a community corrections
18 officer;

19 (iv) Undergo available outpatient treatment.

20 If the offender violates any of the terms of his community
21 supervision, the court may order the offender to serve out the balance
22 of his community supervision term in confinement in the custody of the
23 department of corrections.

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

28 (d) Offenders convicted and sentenced for a sex offense committed
29 prior to July 1, 1987, may, subject to available funds, request an
30 evaluation by the department of corrections to determine whether they

1 are amenable to treatment. If the offender is determined to be
2 amenable to treatment, the offender may request placement in a
3 treatment program within a correctional facility operated by the
4 department. Placement in such treatment program is subject to
5 available funds.

6 (8)(a) When a court sentences a person to a term of total
7 confinement to the custody of the department of corrections for an
8 offense categorized as a sex offense or a serious violent offense
9 committed after July 1, 1988, but before July 1, 1990, assault in the
10 second degree, any crime against a person where it is determined in
11 accordance with RCW 9.94A.125 that the defendant or an accomplice was
12 armed with a deadly weapon at the time of commission, or any felony
13 offense under chapter 69.50 or 69.52 RCW, committed on or after July 1,
14 1988, the court shall in addition to the other terms of the sentence,
15 sentence the offender to a one-year term of community placement
16 beginning either upon completion of the term of confinement or at such
17 time as the offender is transferred to community custody in lieu of
18 earned early release in accordance with RCW 9.94A.150 (1) and (2).
19 When the court sentences an offender under this subsection to the
20 statutory maximum period of confinement then the community placement
21 portion of the sentence shall consist entirely of such community
22 custody to which the offender may become eligible, in accordance with
23 RCW 9.94A.150 (1) and (2). Any period of community custody actually
24 served shall be credited against the community placement portion of the
25 sentence.

26 (b) When a court sentences a person to a term of total confinement
27 to the custody of the department of corrections for an offense
28 categorized as a sex offense or serious violent offense committed on or
29 after July 1, 1990, the court shall in addition to other terms of the
30 sentence, sentence the offender to community placement for two years or

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

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

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

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

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

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

25 (c) The court may also order any of the following special
26 conditions:

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

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

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

3 (iv) The offender shall not consume alcohol;

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

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

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

12 (9) If the court imposes a sentence requiring confinement of thirty
13 days or less, the court may, in its discretion, specify that the
14 sentence be served on consecutive or intermittent days. A sentence
15 requiring more than thirty days of confinement shall be served on
16 consecutive days. Local jail administrators may schedule court-ordered
17 intermittent sentences as space permits.

18 (10) If a sentence imposed includes payment of a legal financial
19 obligation, the sentence shall specify the total amount of the legal
20 financial obligation owed, and shall require the offender to pay a
21 specified monthly sum toward that legal financial obligation.
22 Restitution to victims shall be paid prior to any other payments of
23 monetary obligations. Any legal financial obligation that is imposed
24 by the court may be collected by the department, which shall deliver
25 the amount paid to the county clerk for credit. The offender's
26 compliance with payment of legal financial obligations shall be
27 supervised by the department. All monetary payments ordered shall be
28 paid no later than ten years after the last date of release from
29 confinement pursuant to a felony conviction or the date the sentence
30 was entered. Independent of the department, the party or entity to

1 whom the legal financial obligation is owed shall have the authority to
2 utilize any other remedies available to the party or entity to collect
3 the legal financial obligation. Nothing in this section makes the
4 department, the state, or any of its employees, agents, or other
5 persons acting on their behalf liable under any circumstances for the
6 payment of these legal financial obligations. If an order includes
7 restitution as one of the monetary assessments, the county clerk shall
8 make disbursements to victims named in the order.

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

13 (12) All offenders sentenced to terms involving community
14 supervision, community service, community placement, or legal financial
15 obligation shall be under the supervision of the secretary of the
16 department of corrections or such person as the secretary may designate
17 and shall follow explicitly the instructions of the secretary including
18 reporting as directed to a community corrections officer, remaining
19 within prescribed geographical boundaries, notifying the community
20 corrections officer of any change in the offender's address or
21 employment, and paying the supervision fee assessment.

22 (13) All offenders sentenced to terms involving community
23 supervision, community service, or community placement under the
24 supervision of the department of corrections shall not own, use, or
25 possess firearms or ammunition. Offenders who own, use, or are found
26 to be in actual or constructive possession of firearms or ammunition
27 shall be subject to the appropriate violation process and sanctions.
28 "Constructive possession" as used in this subsection means the power
29 and intent to control the firearm or ammunition. "Firearm" as used in

1 this subsection means a weapon or device from which a projectile may be
2 fired by an explosive such as gunpowder.

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

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

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

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

26 (18) In any sentence of partial confinement, the court may require
27 the defendant to serve the partial confinement in work release, in a
28 program of home detention, on work crew, or in a combined program of
29 work crew and home detention.

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

5 **Sec. 6.** RCW 13.40.160 and 1990 c 3 s 302 are each amended to read
6 as follows:

7 (1) When the respondent is found to be a serious offender, the
8 court shall commit the offender to the department for the standard
9 range of disposition for the offense, as indicated in option A of
10 schedule D-3, RCW 13.40.0357 except as provided in subsection (5) of
11 this section.

12 If the court concludes, and enters reasons for its conclusion, that
13 disposition within the standard range would effectuate a manifest
14 injustice the court shall impose a disposition outside the standard
15 range, as indicated in option B of schedule D-3, RCW 13.40.0357. The
16 court's finding of manifest injustice shall be supported by clear and
17 convincing evidence.

18 A disposition outside the standard range shall be determinate and
19 shall be comprised of confinement or community supervision, or a
20 combination thereof. When a judge finds a manifest injustice and
21 imposes a sentence of confinement exceeding thirty days, the court
22 shall sentence the juvenile to a maximum term, and the provisions of
23 RCW 13.40.030(2), as now or hereafter amended, shall be used to
24 determine the range. A disposition outside the standard range is
25 appealable under RCW 13.40.230, as now or hereafter amended, by the
26 state or the respondent. A disposition within the standard range is
27 not appealable under RCW 13.40.230 as now or hereafter amended.

28 (2) Where the respondent is found to be a minor or first offender,
29 the court shall order that the respondent serve a term of community

1 supervision as indicated in option A or option B of schedule D-1, RCW
2 13.40.0357 except as provided in subsection (5) of this section. If
3 the court determines that a disposition of community supervision would
4 effectuate a manifest injustice the court may impose another
5 disposition under option C of schedule D-1, RCW 13.40.0357. Except as
6 provided in subsection (5) of this section, a disposition other than a
7 community supervision may be imposed only after the court enters
8 reasons upon which it bases its conclusions that imposition of
9 community supervision would effectuate a manifest injustice. When a
10 judge finds a manifest injustice and imposes a sentence of confinement
11 exceeding thirty days, the court shall sentence the juvenile to a
12 maximum term, and the provisions of RCW 13.40.030(2), as now or
13 hereafter amended, shall be used to determine the range. The court's
14 finding of manifest injustice shall be supported by clear and
15 convincing evidence.

16 Except for disposition of community supervision or a disposition
17 imposed pursuant to subsection (5) of this section, a disposition may
18 be appealed as provided in RCW 13.40.230, as now or hereafter amended,
19 by the state or the respondent. A disposition of community supervision
20 or a disposition imposed pursuant to subsection (5) of this section may
21 not be appealed under RCW 13.40.230 as now or hereafter amended.

22 (3) Where a respondent is found to have committed an offense for
23 which the respondent declined to enter into a diversion agreement, the
24 court shall impose a term of community supervision limited to the
25 conditions allowed in a diversion agreement as provided in RCW
26 13.40.080(2) as now or hereafter amended.

27 (4) If a respondent is found to be a middle offender:

28 (a) The court shall impose a determinate disposition within the
29 standard range(s) for such offense, as indicated in option A of
30 schedule D-2, RCW 13.40.0357 except as provided in subsection (5) of

1 this section: PROVIDED, That if the standard range includes a term of
2 confinement exceeding thirty days, commitment shall be to the
3 department for the standard range of confinement; or

4 (b) The court shall impose a determinate disposition of community
5 supervision and/or up to thirty days confinement, as indicated in
6 option B of schedule D-2, RCW 13.40.0357 in which case, if confinement
7 has been imposed, the court shall state either aggravating or
8 mitigating factors as set forth in RCW 13.40.150 as now or hereafter
9 amended.

10 (c) Only if the court concludes, and enters reasons for its
11 conclusions, that disposition as provided in subsection (4) (a) or (b)
12 of this section would effectuate a manifest injustice, the court shall
13 sentence the juvenile to a maximum term, and the provisions of RCW
14 13.40.030(2), as now or hereafter amended, shall be used to determine
15 the range. The court's finding of manifest injustice shall be
16 supported by clear and convincing evidence.

17 (d) A disposition pursuant to subsection (4)(c) of this section is
18 appealable under RCW 13.40.230, as now or hereafter amended, by the
19 state or the respondent. A disposition pursuant to subsection (4) (a)
20 or (b) of this section is not appealable under RCW 13.40.230 as now or
21 hereafter amended.

22 (5) When a serious, middle, or minor first offender is found to
23 have committed a sex offense, other than a sex offense that is also a
24 serious violent offense as defined by RCW 9.94A.030, and has no history
25 of a prior sex offense, the court, on its own motion or the motion of
26 the state or the respondent, may order an examination to determine
27 whether the respondent is amenable to treatment.

28 The report of the examination shall include at a minimum the
29 following: The respondent's version of the facts and the official
30 version of the facts, the respondent's offense history, an assessment

1 of problems in addition to alleged deviant behaviors, the respondent's
2 social, educational, and employment situation, and other evaluation
3 measures used. The report shall set forth the sources of the
4 evaluator's information.

5 The examiner shall assess and report regarding the respondent's
6 amenability to treatment and relative risk to the community. A
7 proposed treatment plan shall be provided and shall include, at a
8 minimum:

9 (a)(i) Frequency and type of contact between the offender and
10 therapist;

11 (ii) Specific issues to be addressed in the treatment and
12 description of planned treatment modalities;

13 (iii) Monitoring plans, including any requirements regarding living
14 conditions, lifestyle requirements, and monitoring by family members,
15 legal guardians, or others;

16 (iv) Anticipated length of treatment; and

17 (v) Recommended crime-related prohibitions.

18 The court on its own motion may order, or on a motion by the state
19 shall order, a second examination regarding the offender's amenability
20 to treatment. The evaluator shall be selected by the party making the
21 motion. The defendant shall pay the cost of any second examination
22 ordered unless the court finds the defendant to be indigent in which
23 case the state shall pay the cost.

24 After receipt of reports of the examination, the court shall then
25 consider whether the offender and the community will benefit from use
26 of this special sex offender disposition alternative and consider the
27 victim's opinion whether the offender should receive a treatment
28 disposition under this section. If the court determines that this
29 special sex offender disposition alternative is appropriate, then the
30 court shall impose a determinate disposition within the standard range

1 for the offense, and the court may suspend the execution of the
2 disposition and place the offender on community supervision for up to
3 two years. As a condition of the suspended disposition, the court may
4 impose the conditions of community supervision and other conditions,
5 including up to thirty days of confinement and requirements that the
6 offender do any one or more of the following:

7 (b)(i) Devote time to a specific education, employment, or
8 occupation;

9 (ii) Undergo available outpatient sex offender treatment for up to
10 two years, or inpatient sex offender treatment not to exceed the
11 standard range of confinement for that offense. A community mental
12 health center may not be used for such treatment unless it has an
13 appropriate program designed for sex offender treatment. The
14 respondent shall not change sex offender treatment providers or
15 treatment conditions without first notifying the prosecutor, the
16 probation counselor, and the court, and shall not change providers
17 without court approval after a hearing if the prosecutor or probation
18 counselor object to the change;

19 (iii) Remain within prescribed geographical boundaries and notify
20 the court or the probation counselor prior to any change in the
21 offender's address, educational program, or employment;

22 (iv) Report to the prosecutor and the probation counselor prior to
23 any change in a sex offender treatment provider. This change shall
24 have prior approval by the court;

25 (v) Report as directed to the court and a probation counselor;

26 (vi) Pay all court-ordered legal financial obligations, perform
27 community service, or any combination thereof; or

28 (vii) Make restitution to the victim for the cost of any counseling
29 reasonably related to the offense.

1 The sex offender treatment provider shall submit quarterly reports
2 on the respondent's progress in treatment to the court and the parties.
3 The reports shall reference the treatment plan and include at a minimum
4 the following: Dates of attendance, respondent's compliance with
5 requirements, treatment activities, the respondent's relative progress
6 in treatment, and any other material specified by the court at the time
7 of the disposition.

8 At the time of the disposition, the court may set treatment review
9 hearings as the court considers appropriate.

10 Except as provided in this subsection (5), after July 1, 1991,
11 examinations and treatment ordered pursuant to this subsection shall
12 only be conducted by sex offender treatment providers certified by the
13 department of health pursuant to chapter 18.155 RCW. A sex offender
14 therapist who examines or treats a juvenile sex offender pursuant to
15 this subsection does not have to be certified by the department of
16 health pursuant to chapter 18.155 RCW if the court finds that: (A) The
17 offender has already moved to another state or plans to move to another
18 state for reasons other than circumventing the certification
19 requirements; (B) no certified providers are available for treatment
20 within a reasonable geographical distance of the offender's home; and
21 (C) the evaluation and treatment plan comply with this subsection (5)
22 and the rules adopted by the department of health.

23 If the offender violates any condition of the disposition or the
24 court finds that the respondent is failing to make satisfactory
25 progress in treatment, the court may revoke the suspension and order
26 execution of the sentence. The court shall give credit for any
27 confinement time previously served if that confinement was for the
28 offense for which the suspension is being revoked.

29 For purposes of this section, "victim" means any person who has
30 sustained emotional, psychological, physical, or financial injury to

1 person or property as a direct result of the crime charged. "Victim"
2 may also include a known parent or guardian of a victim who is a minor
3 child unless the parent or guardian is the perpetrator of the offense.

4 (6) Whenever a juvenile offender is entitled to credit for time
5 spent in detention prior to a dispositional order, the dispositional
6 order shall specifically state the number of days of credit for time
7 served.

8 (7) Except as provided for in subsection (5) of this section, the
9 court shall not suspend or defer the imposition or the execution of the
10 disposition.

11 (8) In no case shall the term of confinement imposed by the court
12 at disposition exceed that to which an adult could be subjected for the
13 same offense.

14 **Sec. 7.** RCW 71.09.090 and 1990 c 3 s 1009 are each amended to read
15 as follows:

16 (1) If the secretary of the department of social and health
17 services determines that the person's mental abnormality or personality
18 disorder has so changed that the person is not likely to (~~commit~~)
19 engage in predatory acts of sexual violence if released, the secretary
20 shall authorize the person to petition the court for release. The
21 petition shall be served upon the court and the prosecuting attorney.
22 The court, upon receipt of the petition for release, shall within
23 forty-five days order a hearing. The prosecuting attorney or the
24 attorney general, if requested by the county, shall represent the
25 state, and shall have the right to have the petitioner examined by an
26 expert or professional person of his or her choice. The hearing shall
27 be before a jury if demanded by either the petitioner or the
28 prosecuting attorney or attorney general. The burden of proof shall be
29 upon the prosecuting attorney or attorney general to show beyond a

1 reasonable doubt that the petitioner's mental abnormality or
2 personality disorder remains such that the petitioner is not safe to be
3 at large and that if discharged is likely to (~~commit~~) engage in
4 predatory acts of sexual violence.

5 (2) Nothing contained in this chapter shall prohibit the person
6 from otherwise petitioning the court for discharge without the
7 secretary's approval. The secretary shall provide the committed person
8 with an annual written notice of the person's right to petition the
9 court for release over the secretary's objection. The notice shall
10 contain a waiver of rights. The secretary shall forward the notice and
11 waiver form to the court with the annual report. If the person does
12 not affirmatively waive the right to petition, the court shall set a
13 show cause hearing to determine whether facts exist that warrant a
14 hearing on whether the person's condition has so changed that he or she
15 is safe to be at large. The committed person shall have a right to
16 have an attorney represent him or her at the show cause hearing but the
17 person is not entitled to be present at the show cause hearing. If the
18 court at the show cause hearing determines that probable cause exists
19 to believe that the person's mental abnormality or personality disorder
20 has so changed that the person is safe to be at large and (~~will~~) is
21 not likely to engage in predatory acts of sexual violence if
22 discharged, then the court shall set a hearing on the issue. At the
23 hearing, the committed person shall be entitled to be present and to
24 the benefit of all constitutional protections that were afforded to the
25 person at the initial commitment proceeding. The prosecuting attorney
26 or the attorney general if requested by the county shall represent the
27 state and shall have a right to a jury trial and to have the committed
28 person evaluated by experts chosen by the state. The committed person
29 shall also have the right to have experts evaluate him or her on his or
30 her behalf and the court shall appoint an expert if the person is

1 indigent and requests an appointment. The burden of proof at the
2 hearing shall be upon the state to prove beyond a reasonable doubt that
3 the committed person's mental abnormality or personality disorder
4 remains such that the person is not safe to be at large and if released
5 (~~will~~) is likely to engage in predatory acts of sexual violence.

6 NEW SECTION. Sec. 8. If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 remainder of the act or the application of the provision to other
9 persons or circumstances is not affected.

10 NEW SECTION. Sec. 9. This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and shall take
13 effect immediately.

14 NEW SECTION. Sec. 10. This act applies to sex offenses
15 committed on, before, or after the effective date of this act.

Passed the House March 7, 1992.

Passed the Senate March 5, 1992.

Approved by the Governor March 26, 1992.

Filed in Office of Secretary of State March 26, 1992.