

2 **SHB 2318** - S COMM AMD

3 By Committee on Human Services & Corrections

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that improving the
8 supervision of convicted sex offenders in the community upon release
9 from incarceration is a substantial public policy goal, in that
10 effective supervision accomplishes many purposes including protecting
11 the community, supporting crime victims, assisting offenders to change,
12 and providing important information to decision makers.

13 **Sec. 2.** RCW 9.94A.120 and 1995 c 108 s 3 are each amended to read
14 as follows:

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

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

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

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

28 (4) A persistent offender shall be sentenced to a term of total
29 confinement for life without the possibility of parole or, when
30 authorized by RCW 10.95.030 for the crime of aggravated murder in the
31 first degree, sentenced to death, notwithstanding the maximum sentence
32 under any other law. An offender convicted of the crime of murder in
33 the first degree shall be sentenced to a term of total confinement not
34 less than twenty years. An offender convicted of the crime of assault
35 in the first degree or assault of a child in the first degree where the

1 offender used force or means likely to result in death or intended to
2 kill the victim shall be sentenced to a term of total confinement not
3 less than five years. An offender convicted of the crime of rape in
4 the first degree shall be sentenced to a term of total confinement not
5 less than five years. The foregoing minimum terms of total confinement
6 are mandatory and shall not be varied or modified as provided in
7 subsection (2) of this section. In addition, all offenders subject to
8 the provisions of this subsection shall not be eligible for community
9 custody, earned early release time, furlough, home detention, partial
10 confinement, work crew, work release, or any other form of early
11 release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8),
12 or any other form of authorized leave of absence from the correctional
13 facility while not in the direct custody of a corrections officer or
14 officers during such minimum terms of total confinement except in the
15 case of an offender in need of emergency medical treatment or for the
16 purpose of commitment to an inpatient treatment facility in the case of
17 an offender convicted of the crime of rape in the first degree.

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

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

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

31 (c) Pursue a prescribed, secular course of study or vocational
32 training;

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

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

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

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

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

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

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

16 (b) If the midpoint of the standard range is greater than one year
17 and the sentencing judge determines that the offender is eligible for
18 this option and that the offender and the community will benefit from
19 the use of the special drug offender sentencing alternative, the judge
20 may waive imposition of a sentence within the standard range and impose
21 a sentence that must include a period of total confinement in a state
22 facility for one-half of the midpoint of the standard range. During
23 incarceration in the state facility, offenders sentenced under this
24 subsection shall undergo a comprehensive substance abuse assessment and
25 receive, within available resources, treatment services appropriate for
26 the offender. The treatment services shall be designed by the division
27 of alcohol and substance abuse of the department of social and health
28 services, in cooperation with the department of corrections. If the
29 midpoint of the standard range is twenty-four months or less, no more
30 than three months of the sentence may be served in a work release
31 status. The court shall also impose one year of concurrent community
32 custody and community supervision that must include appropriate
33 outpatient substance abuse treatment, crime-related prohibitions
34 including a condition not to use illegal controlled substances, and a
35 requirement to submit to urinalysis or other testing to monitor that
36 status. The court may require that the monitoring for controlled
37 substances be conducted by the department or by a treatment
38 (~~alternative[s]~~) alternatives to street crime program or a comparable
39 court or agency-referred program. The offender may be required to pay

1 thirty dollars per month while on community custody to offset the cost
2 of monitoring. In addition, the court shall impose three or more of
3 the following conditions:

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

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

8 (iii) Report as directed to a community corrections officer;

9 (iv) Pay all court-ordered legal financial obligations;

10 (v) Perform community service work;

11 (vi) Stay out of areas designated by the sentencing judge.

12 (c) If the offender violates any of the sentence conditions in (b)
13 of this subsection, the department shall impose sanctions
14 administratively, with notice to the prosecuting attorney and the
15 sentencing court. Upon motion of the court or the prosecuting
16 attorney, a violation hearing shall be held by the court. If the court
17 finds that conditions have been willfully violated, the court may
18 impose confinement consisting of up to the remaining one-half of the
19 midpoint of the standard range. All total confinement served during
20 the period of community custody shall be credited to the offender,
21 regardless of whether the total confinement is served as a result of
22 the original sentence, as a result of a sanction imposed by the
23 department, or as a result of a violation found by the court. The term
24 of community supervision shall be tolled by any period of time served
25 in total confinement as a result of a violation found by the court.

26 (d) The department shall determine the rules for calculating the
27 value of a day fine based on the offender's income and reasonable
28 obligations which the offender has for the support of the offender and
29 any dependents. These rules shall be developed in consultation with
30 the administrator for the courts, the office of financial management,
31 and the commission.

32 (7) If a sentence range has not been established for the
33 defendant's crime, the court shall impose a determinate sentence which
34 may include not more than one year of confinement, community service
35 work, a term of community supervision not to exceed one year, and/or
36 other legal financial obligations. The court may impose a sentence
37 which provides more than one year of confinement if the court finds,
38 considering the purpose of this chapter, that there are substantial and
39 compelling reasons justifying an exceptional sentence.

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

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

14 The examiner shall assess and report regarding the defendant's
15 amenability to treatment and relative risk to the community. A
16 proposed treatment plan shall be provided and shall include, at a
17 minimum:

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

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

21 (C) Monitoring plans, including any requirements regarding living
22 conditions, lifestyle requirements, and monitoring by family members
23 and others;

24 (D) Anticipated length of treatment; and

25 (E) Recommended crime-related prohibitions.

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

32 (ii) After receipt of the reports, the court shall consider whether
33 the offender and the community will benefit from use of this special
34 sexual offender sentencing alternative and consider the victim's
35 opinion whether the offender should receive a treatment disposition
36 under this subsection. If the court determines that this special sex
37 offender sentencing alternative is appropriate, the court shall then
38 impose a sentence within the sentence range. If this sentence is less

1 than eight years of confinement, the court may suspend the execution of
2 the sentence and impose the following conditions of suspension:

3 (A) The court shall place the defendant on community
4 (~~supervision~~) custody for the length of the suspended sentence or
5 three years, whichever is greater, and require the offender to comply
6 with any conditions imposed by the department of corrections under
7 subsection (14) of this section; and

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

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

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

27 (III) Report as directed to the court and a community corrections
28 officer;

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

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

34 (iii) The sex offender therapist shall submit quarterly reports on
35 the defendant's progress in treatment to the court and the parties.
36 The report shall reference the treatment plan and include at a minimum
37 the following: Dates of attendance, defendant's compliance with
38 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)) custody, and either (B) terminate treatment,
17 or (C) extend treatment for up to the remaining period of community
18 ((supervision)) custody.

19 (v) If a violation of conditions occurs during community custody,
20 the department shall either impose sanctions as provided for in RCW
21 9.94A.205(2)(a) or refer the violation to the court and recommend
22 revocation of the suspended sentence as provided for in (a)(vi) of this
23 subsection.

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

31 (vii) Except as provided in (a)(vii) of this subsection, after July
32 1, 1991, examinations and treatment ordered pursuant to this subsection
33 shall only be conducted by sex offender treatment providers certified
34 by the department of health pursuant to chapter 18.155 RCW.

35 (viii) A sex offender therapist who examines or treats a sex
36 offender pursuant to this subsection (8) does not have to be certified
37 by the department of health pursuant to chapter 18.155 RCW if the court
38 finds that: (A) The offender has already moved to another state or
39 plans to move to another state for reasons other than circumventing the

1 certification requirements; (B) no certified providers are available
2 for treatment within a reasonable geographical distance of the
3 offender's home; and (C) the evaluation and treatment plan comply with
4 this subsection (8) and the rules adopted by the department of health.

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

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

17 Except for an offender who has been convicted of a violation of RCW
18 9A.44.040 or 9A.44.050, if the offender completes the treatment program
19 before the expiration of his or her term of confinement, the department
20 of corrections may request the court to convert the balance of
21 confinement to community supervision and to place conditions on the
22 offender including crime-related prohibitions and requirements that the
23 offender perform any one or more of the following:

- 24 (i) Devote time to a specific employment or occupation;
- 25 (ii) Remain within prescribed geographical boundaries and notify
26 the court or the community corrections officer prior to any change in
27 the offender's address or employment;
- 28 (iii) Report as directed to the court and a community corrections
29 officer;
- 30 (iv) Undergo available outpatient treatment.

31 If the offender violates any of the terms of his or her community
32 supervision, the court may order the offender to serve out the balance
33 of his or her community supervision term in confinement in the custody
34 of the department of corrections.

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

1 (c) Offenders convicted and sentenced for a sex offense committed
2 prior to July 1, 1987, may, subject to available funds, request an
3 evaluation by the department of corrections to determine whether they
4 are amenable to treatment. If the offender is determined to be
5 amenable to treatment, the offender may request placement in a
6 treatment program within a correctional facility operated by the
7 department. Placement in such treatment program is subject to
8 available funds.

9 (9)(a) When a court sentences a person to a term of total
10 confinement to the custody of the department of corrections for an
11 offense categorized as a sex offense or a serious violent offense
12 committed after July 1, 1988, but before July 1, 1990, assault in the
13 second degree, assault of a child in the second degree, any crime
14 against a person where it is determined in accordance with RCW
15 9.94A.125 that the defendant or an accomplice was armed with a deadly
16 weapon at the time of commission, or any felony offense under chapter
17 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
18 committed on or after July 1, 1988, the court shall in addition to the
19 other terms of the sentence, sentence the offender to a one-year term
20 of community placement beginning either upon completion of the term of
21 confinement or at such time as the offender is transferred to community
22 custody in lieu of earned early release in accordance with RCW
23 9.94A.150 (1) and (2). When the court sentences an offender under this
24 subsection to the statutory maximum period of confinement then the
25 community placement portion of the sentence shall consist entirely of
26 such community custody to which the offender may become eligible, in
27 accordance with RCW 9.94A.150 (1) and (2). Any period of community
28 custody actually served shall be credited against the community
29 placement portion of the sentence.

30 (b) When a court sentences a person to a term of total confinement
31 to the custody of the department of corrections for an offense
32 categorized as a sex offense committed on or after July 1, 1990, but
33 before the effective date of this act, or a serious violent offense
34 committed on or after July 1, 1990, the court shall in addition to
35 other terms of the sentence, sentence the offender to community
36 placement for two years or up to the period of earned early release
37 awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer.
38 The community placement shall begin either upon completion of the term
39 of confinement or at such time as the offender is transferred to

1 community custody in lieu of earned early release in accordance with
2 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
3 this subsection to the statutory maximum period of confinement then the
4 community placement portion of the sentence shall consist entirely of
5 the community custody to which the offender may become eligible, in
6 accordance with RCW 9.94A.150 (1) and (2). Any period of community
7 custody actually served shall be credited against the community
8 placement portion of the sentence. Unless a condition is waived by the
9 court, the terms of community placement for offenders sentenced
10 pursuant to this section shall include the following conditions:

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

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

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

17 (iv) An offender in community custody shall not unlawfully possess
18 controlled substances;

19 (v) The offender shall pay supervision fees as determined by the
20 department of corrections; and

21 (vi) The residence location and living arrangements are subject to
22 the prior approval of the department of corrections during the period
23 of community placement.

24 (c) As a part of any sentence imposed under (a) or (b) of this
25 subsection, 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;

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

33 (iv) The offender shall not consume alcohol; or

34 (v) The offender shall comply with any crime-related prohibitions.

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

1 (10)(a) When a court sentences a person to the custody of the
2 department of corrections for an offense categorized as a sex offense
3 committed on or after the effective date of this act, the court shall,
4 in addition to other terms of the sentence, sentence the offender to
5 community custody for three years or up to the period of earned early
6 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
7 longer. The community custody shall begin either upon completion of
8 the term of confinement or at such time as the offender is transferred
9 to community custody in lieu of earned early release in accordance with
10 RCW 9.94A.150 (1) and (2).

11 (b) Unless a condition is waived by the court, the terms of
12 community custody shall be the same as those provided for in subsection
13 (9)(b) of this section and may include those provided for in subsection
14 (9)(c) of this section. As part of any sentence that includes a term
15 of community custody imposed under this subsection, the court shall
16 also require the offender to comply with any conditions imposed by the
17 department of corrections under subsection (14) of this section.

18 (c) At any time prior to the completion of a sex offender's term of
19 community custody, if the court finds that public safety would be
20 enhanced, the court may impose and enforce an order extending any or
21 all of the conditions imposed pursuant to this section for a period up
22 to the maximum allowable sentence for the crime as it is classified in
23 chapter 9A.20 RCW, regardless of the expiration of the offender's term
24 of community custody. If a violation of a condition extended under
25 this subsection occurs after the expiration of the offender's term of
26 community custody, it shall be deemed a violation of the sentence for
27 the purposes of RCW 9.94A.195 and may be punishable as contempt of
28 court as provided for in RCW 7.21.040.

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

35 ~~((11))~~ (12) If a sentence imposed includes payment of a legal
36 financial obligation, the sentence shall specify the total amount of
37 the legal financial obligation owed, and shall require the offender to
38 pay a specified monthly sum toward that legal financial obligation.
39 Restitution to victims shall be paid prior to any other payments of

1 monetary obligations. Any legal financial obligation that is imposed
2 by the court may be collected by the department, which shall deliver
3 the amount paid to the county clerk for credit. The offender's
4 compliance with payment of legal financial obligations shall be
5 supervised by the department. All monetary payments ordered shall be
6 paid no later than ten years after the last date of release from
7 confinement pursuant to a felony conviction or the date the sentence
8 was entered. Independent of the department, the party or entity to
9 whom the legal financial obligation is owed shall have the authority to
10 utilize any other remedies available to the party or entity to collect
11 the legal financial obligation. Nothing in this section makes the
12 department, the state, or any of its employees, agents, or other
13 persons acting on their behalf liable under any circumstances for the
14 payment of these legal financial obligations. If an order includes
15 restitution as one of the monetary assessments, the county clerk shall
16 make disbursements to victims named in the order.

17 ~~((12))~~ (13) Except as provided under RCW 9.94A.140(1) and
18 9.94A.142(1), a court may not impose a sentence providing for a term of
19 confinement or community supervision or community placement which
20 exceeds the statutory maximum for the crime as provided in chapter
21 9A.20 RCW.

22 ~~((13))~~ (14) All offenders sentenced to terms involving community
23 supervision, community service, community placement, or legal financial
24 obligation shall be under the supervision of the ~~((secretary of the))~~
25 department of corrections ~~((or such person as the secretary may~~
26 ~~designate))~~ and shall follow explicitly the instructions and conditions
27 of the ~~((secretary including))~~ department of corrections.

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

33 (b) For sex offenders sentenced to terms involving community
34 custody for crimes committed on or after the effective date of this
35 act, the department may include, in addition to the instructions in (a)
36 of this subsection, any appropriate conditions of supervision,
37 including but not limited to, prohibiting the offender from having
38 contact with any other specified individuals or specific class of
39 individuals. The conditions authorized under this subsection (14)(b)

1 may be imposed by the department prior to or during a sex offenders'
2 community custody term. If a violation of conditions imposed by the
3 court or the department pursuant to subsection (10) of this section
4 occurs during community custody, it shall be deemed a violation of
5 community placement for the purposes of RCW 9.94A.207 and shall
6 authorize the department to transfer an offender to a more restrictive
7 confinement status as provided in RCW 9.94A.205. At any time prior to
8 the completion of a sex offender's term of community custody, the
9 department may recommend to the court that any or all of the conditions
10 imposed by the court or the department pursuant to subsection (10) of
11 this section be continued beyond the expiration of the offender's term
12 of community custody as authorized in subsection (10)(c) of this
13 section.

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

19 ~~((14))~~ (15) All offenders sentenced to terms involving community
20 supervision, community service, or community placement under the
21 supervision of the department of corrections shall not own, use, or
22 possess firearms or ammunition. Offenders who own, use, or are found
23 to be in actual or constructive possession of firearms or ammunition
24 shall be subject to the appropriate violation process and sanctions.
25 "Constructive possession" as used in this subsection means the power
26 and intent to control the firearm or ammunition. "Firearm" as used in
27 this subsection means a weapon or device from which a projectile may be
28 fired by an explosive such as gunpowder.

29 ~~((15))~~ (16) The sentencing court shall give the offender credit
30 for all confinement time served before the sentencing if that
31 confinement was solely in regard to the offense for which the offender
32 is being sentenced.

33 ~~((16))~~ (17) A departure from the standards in RCW 9.94A.400 (1)
34 and (2) governing whether sentences are to be served consecutively or
35 concurrently is an exceptional sentence subject to the limitations in
36 subsections (2) and (3) of this section, and may be appealed by the
37 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

38 ~~((17))~~ (18) The court shall order restitution whenever the
39 offender is convicted of a felony that results in injury to any person

1 or damage to or loss of property, whether the offender is sentenced to
2 confinement or placed under community supervision, unless extraordinary
3 circumstances exist that make restitution inappropriate in the court's
4 judgment. The court shall set forth the extraordinary circumstances in
5 the record if it does not order restitution.

6 ~~((18))~~ (19) As a part of any sentence, the court may impose and
7 enforce an order that relates directly to the circumstances of the
8 crime for which the offender has been convicted, prohibiting the
9 offender from having any contact with other specified individuals or a
10 specific class of individuals for a period not to exceed the maximum
11 allowable sentence for the crime, regardless of the expiration of the
12 offender's term of community supervision or community placement.

13 ~~((19))~~ (20) In any sentence of partial confinement, the court may
14 require the defendant to serve the partial confinement in work release,
15 in a program of home detention, on work crew, or in a combined program
16 of work crew and home detention.

17 ~~((20))~~ (21) All court-ordered legal financial obligations
18 collected by the department and remitted to the county clerk shall be
19 credited and paid where restitution is ordered. Restitution shall be
20 paid prior to any other payments of monetary obligations.

21 **Sec. 3.** RCW 9.94A.205 and 1988 c 153 s 4 are each amended to read
22 as follows:

23 (1) If an inmate violates any condition or requirement of community
24 custody, the department may transfer the inmate to a more restrictive
25 confinement status to serve up to the remaining portion of the
26 sentence, less credit for any period actually spent in community
27 custody or in detention awaiting disposition of an alleged violation
28 and subject to the limitations of subsection (2) of this section.

29 (2)(a) For a sex offender sentenced to a term of community custody
30 under RCW 9.94A.120(8) who violates any condition of community custody,
31 the department may impose a sanction of up to sixty days confinement in
32 a local correctional facility for each violation;

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

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

7 **Sec. 4.** RCW 9.94A.207 and 1988 c 153 s 5 are each amended to read
8 as follows:

9 (1) The secretary may issue warrants for the arrest of any offender
10 who violates a condition of community placement. The arrest warrants
11 shall authorize any law enforcement or peace officer or community
12 corrections officer of this state or any other state where such
13 offender may be located, to arrest the offender and place him or her in
14 total confinement pending disposition of the alleged violation. The
15 department shall compensate the local jurisdiction at the office of
16 financial management's adjudicated rate, in accordance with RCW
17 70.48.440. A community corrections officer, if he or she has
18 reasonable cause to believe an offender in community placement has
19 violated a condition of community placement, may suspend the person's
20 community placement status and arrest or cause the arrest and detention
21 in total confinement of the offender, pending the determination of the
22 secretary as to whether the violation has occurred. The community
23 corrections officer shall report to the secretary all facts and
24 circumstances and the reasons for the action of suspending community
25 placement status. A violation of a condition of community placement
26 shall be deemed a violation of the sentence for purposes of RCW
27 9.94A.195. The authority granted to community corrections officers
28 under this section shall be in addition to that set forth in RCW
29 9.94A.195.

30 (2) Inmates, as defined in RCW (~~(72.09.020)~~) 72.09.015, who have
31 been transferred to community custody and who are detained in a local
32 correctional facility are the financial responsibility of the
33 department of corrections, except as provided in subsection (3) of this
34 section. The community custody inmate shall be removed from the local
35 correctional facility, except as provided in subsection (3) of this
36 section, not later than eight days, excluding weekends and holidays,
37 following admittance to the local correctional facility and

1 notification that the inmate is available for movement to a state
2 correctional institution. ((However, if good cause is shown,))

3 (3) The department may negotiate with local correctional
4 authorities for an additional period of detention; however, sex
5 offenders sanctioned for community custody violations under RCW
6 9.94A.205(2) to a term of confinement shall remain in the local
7 correctional facility for the complete term of the sanction. For
8 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
9 correctional facility shall be financially responsible. For
10 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
11 of corrections shall be financially responsible for that portion of the
12 sanction served during the time in which the sex offender is on
13 community custody in lieu of earned early release, and the local
14 correctional facility shall be financially responsible for that portion
15 of the sanction served by the sex offender after the time in which the
16 sex offender is on community custody in lieu of earned early release.

17 **Sec. 5.** RCW 9.94A.030 and 1995 c 268 s 2, 1995 c 108 s 1, and 1995
18 c 101 s 2 are each reenacted and amended to read as follows:

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

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

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

29 (3) "Community corrections officer" means an employee of the
30 department who is responsible for carrying out specific duties in
31 supervision of sentenced offenders and monitoring of sentence
32 conditions.

33 (4) "Community custody" means that portion of an inmate's sentence
34 of confinement in lieu of earned early release time or imposed pursuant
35 to RCW 9.94A.120 (6), (8), or (10) served in the community subject to
36 controls placed on the inmate's movement and activities by the
37 department of corrections.

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

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

11 (7) "Community supervision" means a period of time during which a
12 convicted offender is subject to crime-related prohibitions and other
13 sentence conditions imposed by a court pursuant to this chapter or RCW
14 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
15 may include crime-related prohibitions and other conditions imposed
16 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
17 for out-of-state supervision of parolees and probationers, RCW
18 9.95.270, community supervision is the functional equivalent of
19 probation and should be considered the same as probation by other
20 states.

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

23 (9) "Conviction" means an adjudication of guilt pursuant to Titles
24 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
25 acceptance of a plea of guilty.

26 (10) "Court-ordered legal financial obligation" means a sum of
27 money that is ordered by a superior court of the state of Washington
28 for legal financial obligations which may include restitution to the
29 victim, statutorily imposed crime victims' compensation fees as
30 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
31 drug funds, court-appointed attorneys' fees, and costs of defense,
32 fines, and any other financial obligation that is assessed to the
33 offender as a result of a felony conviction. Upon conviction for
34 vehicular assault while under the influence of intoxicating liquor or
35 any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the
36 influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a),
37 legal financial obligations may also include payment to a public agency
38 of the expense of an emergency response to the incident resulting in
39 the conviction, subject to the provisions in RCW 38.52.430.

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 serious violent offenses and shall also include a
15 defendant's other prior convictions in juvenile court if: (i) The
16 conviction was for an offense which is a felony or a serious traffic
17 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
18 the defendant was fifteen years of age or older at the time the offense
19 was committed; and (iii) with respect to prior juvenile class B and C
20 felonies or serious traffic offenses, the defendant was less than
21 twenty-three years of age at the time the offense for which he or she
22 is being sentenced was committed.

23 (13) "Day fine" means a fine imposed by the sentencing judge that
24 equals the difference between the offender's net daily income and the
25 reasonable obligations that the offender has for the support of the
26 offender and any dependents.

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

32 (15) "Department" means the department of corrections.

33 (16) "Determinate sentence" means a sentence that states with
34 exactitude the number of actual years, months, or days of total
35 confinement, of partial confinement, of community supervision, the
36 number of actual hours or days of community service work, or dollars or
37 terms of a legal financial obligation. The fact that an offender
38 through "earned early release" can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a
2 determinate sentence.

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

15 (18) "Drug offense" means:

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

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

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

25 (19) "Escape" means:

26 (a) Escape in the first degree (RCW 9A.76.110), escape in the
27 second degree (RCW 9A.76.120), willful failure to return from furlough
28 (RCW 72.66.060), willful failure to return from work release (RCW
29 72.65.070), or willful failure to be available for supervision by the
30 department while in community custody (RCW 72.09.310); or

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

34 (20) "Felony traffic offense" means:

35 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
36 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
37 and-run injury-accident (RCW 46.52.020(4)); 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 a felony
3 traffic offense under (a) of this subsection.

4 (21) "Fines" means the requirement that the offender pay a specific
5 sum of money over a specific period of time to the court.

6 (22)(a) "First-time offender" means any person who is convicted of
7 a felony (i) not classified as a violent offense or a sex offense under
8 this chapter, or (ii) that is not the manufacture, delivery, or
9 possession with intent to manufacture or deliver a controlled substance
10 classified in schedule I or II that is a narcotic drug, nor the
11 manufacture, delivery, or possession with intent to deliver
12 methamphetamine, its salts, isomers, and salts of its isomers as
13 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
14 controlled substance or counterfeit substance classified in schedule I,
15 RCW 69.50.204, except leaves and flowering tops of marihuana, and
16 except as provided in (b) of this subsection, who previously has never
17 been convicted of a felony in this state, federal court, or another
18 state, and who has never participated in a program of deferred
19 prosecution for a felony offense.

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

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

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

30 (b) Assault in the second degree;

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

32 (d) Child molestation in the second degree;

33 (e) Controlled substance homicide;

34 (f) Extortion in the first degree;

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

36 (h) Indecent liberties;

37 (i) Kidnapping in the second degree;

38 (j) Leading organized crime;

39 (k) Manslaughter in the first degree;

1 (l) Manslaughter in the second degree;
2 (m) Promoting prostitution in the first degree;
3 (n) Rape in the third degree;
4 (o) Robbery in the second degree;
5 (p) Sexual exploitation;
6 (q) Vehicular assault;
7 (r) Vehicular homicide, when proximately caused by the driving of
8 any vehicle by any person while under the influence of intoxicating
9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
10 any vehicle in a reckless manner;
11 (s) Any other class B felony offense with a finding of sexual
12 motivation, as "sexual motivation" is defined under this section;
13 (t) Any other felony with a deadly weapon verdict under RCW
14 9.94A.125;
15 (u) Any felony offense in effect at any time prior to December 2,
16 1993, that is comparable to a most serious offense under this
17 subsection, or any federal or out-of-state conviction for an offense
18 that under the laws of this state would be a felony classified as a
19 most serious offense under this subsection.
20 (24) "Nonviolent offense" means an offense which is not a violent
21 offense.
22 (25) "Offender" means a person who has committed a felony
23 established by state law and is eighteen years of age or older or is
24 less than eighteen years of age but whose case has been transferred by
25 the appropriate juvenile court to a criminal court pursuant to RCW
26 13.40.110. Throughout this chapter, the terms "offender" and
27 "defendant" are used interchangeably.
28 (26) "Partial confinement" means confinement for no more than one
29 year in a facility or institution operated or utilized under contract
30 by the state or any other unit of government, or, if home detention or
31 work crew has been ordered by the court, in an approved residence, for
32 a substantial portion of each day with the balance of the day spent in
33 the community. Partial confinement includes work release, home
34 detention, work crew, and a combination of work crew and home detention
35 as defined in this section.
36 (27) "Persistent offender" is an offender who:
37 (a) Has been convicted in this state of any felony considered a
38 most serious offense; and

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

9 (28) "Postrelease supervision" is that portion of an offender's
10 community placement that is not community custody.

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

15 (30) "Serious traffic offense" means:

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

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

24 (31) "Serious violent offense" is a subcategory of violent offense
25 and means:

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

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

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

36 (33) "Sex offense" means:

37 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
38 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a

1 criminal attempt, criminal solicitation, or criminal conspiracy to
2 commit such crimes;

3 (b) A felony with a finding of sexual motivation under RCW
4 9.94A.127 or 13.40.135; or

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

8 (34) "Sexual motivation" means that one of the purposes for which
9 the defendant committed the crime was for the purpose of his or her
10 sexual gratification.

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

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

21 (37) "Victim" means any person who has sustained emotional,
22 psychological, physical, or financial injury to person or property as
23 a direct result of the crime charged.

24 (38) "Violent offense" means:

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 6.** This act applies to crimes committed on or
31 after the effective date of this act."

32 **SHB 2318** - S COMM AMD
33 By Committee on Human Services & Corrections

34
35 On page 1, line 1 of the title, after "offenders;" strike the
36 remainder of the title and insert "amending RCW 9.94A.120, 9.94A.205,

1 and 9.94A.207; reenacting and amending RCW 9.94A.030; creating new
2 sections; and prescribing penalties."

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