

CERTIFICATION OF ENROLLMENT

HOUSE BILL 1924

Chapter 340, Laws of 1997

55th Legislature
1997 Regular Session

SEX OFFENSES--SENTENCING

EFFECTIVE DATE: 7/27/97

Passed by the House April 23, 1997
Yeas 98 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate April 17, 1997
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved May 13, 1997

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1924** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 13, 1997 - 2:25 p.m.

**Secretary of State
State of Washington**

HOUSE BILL 1924

Passed Legislature - 1997 Regular Session

AS AMENDED BY THE SENATE

State of Washington

55th Legislature

1997 Regular Session

By Representatives Ballasiotes, Sheahan, Dickerson, Radcliff, Sheldon, Chopp, Mason, Conway, Costa, Mitchell, K. Schmidt, Buck, Wensman, Schoesler, Parlette, Hankins, Backlund, Johnson, D. Schmidt, Sterk, Sump, Cooke, Mastin, Scott, O'Brien, Cooper, Hatfield, Blalock, Kessler, Mulliken, Cole, Kenney, Gardner, McMorris and Tokuda

Read first time 02/14/97. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to sex offenses; amending RCW 9A.44.130; reenacting
2 and amending RCW 9.94A.320, 9.94A.120, and 9.94A.030; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 9.94A.320 and 1996 c 302 s 6, 1996 c 205 s 3, and 1996
6 c 36 s 2 are each reenacted and amended to read as follows:

7 TABLE 2

8 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

9 XV	Aggravated Murder 1 (RCW 10.95.020)
10 XIV	Murder 1 (RCW 9A.32.030)
11	Homicide by abuse (RCW 9A.32.055)
12 XIII	Murder 2 (RCW 9A.32.050)
13 XII	Assault 1 (RCW 9A.36.011)
14	Assault of a Child 1 (RCW 9A.36.120)
15	<u>Rape 1 (RCW 9A.44.040)</u>
16	<u>Rape of a Child 1 (RCW 9A.44.073)</u>

1 XI ((Rape 1 (RCW 9A.44.040)
2 Rape of a Child 1 (RCW 9A.44.073)))
3 Rape 2 (RCW 9A.44.050)
4 Rape of a Child 2 (RCW 9A.44.076)

5 X Kidnapping 1 (RCW 9A.40.020)
6 ((~~Rape 2 (RCW 9A.44.050)~~
7 ~~Rape of a Child 2 (RCW 9A.44.076)~~))
8 Child Molestation 1 (RCW 9A.44.083)
9 Damaging building, etc., by explosion with
10 threat to human being (RCW
11 70.74.280(1))
12 Over 18 and deliver heroin or narcotic from
13 Schedule I or II to someone under 18
14 (RCW 69.50.406)
15 Leading Organized Crime (RCW
16 9A.82.060(1)(a))
17 Indecent Liberties (with forcible
18 compulsion) (RCW 9A.44.100(1)(a))

19 IX Assault of a Child 2 (RCW 9A.36.130)
20 Robbery 1 (RCW 9A.56.200)
21 Manslaughter 1 (RCW 9A.32.060)
22 Explosive devices prohibited (RCW
23 70.74.180)
24 ((~~Indecent Liberties (with forcible~~
25 ~~compulsion) (RCW 9A.44.100(1)(a))~~))
26 Endangering life and property by explosives
27 with threat to human being (RCW
28 70.74.270)
29 Over 18 and deliver narcotic from Schedule
30 III, IV, or V or a nonnarcotic from
31 Schedule I-V to someone under 18 and 3
32 years junior (RCW 69.50.406)
33 Controlled Substance Homicide (RCW
34 69.50.415)
35 Sexual Exploitation (RCW 9.68A.040)
36 Inciting Criminal Profiteering (RCW
37 9A.82.060(1)(b))

1 Vehicular Homicide, by being under the
2 influence of intoxicating liquor or
3 any drug (RCW 46.61.520)

4 VIII Arson 1 (RCW 9A.48.020)
5 Promoting Prostitution 1 (RCW 9A.88.070)
6 Selling for profit (controlled or
7 counterfeit) any controlled substance
8 (RCW 69.50.410)
9 Manufacture, deliver, or possess with
10 intent to deliver heroin or cocaine
11 (RCW 69.50.401(a)(1)(i))
12 Manufacture, deliver, or possess with
13 intent to deliver methamphetamine (RCW
14 69.50.401(a)(1)(ii))
15 Possession of ephedrine or pseudoephedrine
16 with intent to manufacture
17 methamphetamine (RCW 69.50.440)
18 Vehicular Homicide, by the operation of any
19 vehicle in a reckless manner (RCW
20 46.61.520)

21 VII Burglary 1 (RCW 9A.52.020)
22 Vehicular Homicide, by disregard for the
23 safety of others (RCW 46.61.520)
24 Introducing Contraband 1 (RCW 9A.76.140)
25 Indecent Liberties (without forcible
26 compulsion) (RCW 9A.44.100(1) (b) and
27 (c))
28 Child Molestation 2 (RCW 9A.44.086)
29 Dealing in depictions of minor engaged in
30 sexually explicit conduct (RCW
31 9.68A.050)
32 Sending, bringing into state depictions of
33 minor engaged in sexually explicit
34 conduct (RCW 9.68A.060)
35 Involving a minor in drug dealing (RCW
36 69.50.401(f))
37 Reckless Endangerment 1 (RCW 9A.36.045)

1 Unlawful Possession of a Firearm in the
2 first degree (RCW 9.41.040(1)(a))

3 VI Bribery (RCW 9A.68.010)
4 Manslaughter 2 (RCW 9A.32.070)
5 Rape of a Child 3 (RCW 9A.44.079)
6 Intimidating a Juror/Witness (RCW
7 9A.72.110, 9A.72.130)
8 Damaging building, etc., by explosion with
9 no threat to human being (RCW
10 70.74.280(2))
11 Endangering life and property by explosives
12 with no threat to human being (RCW
13 70.74.270)
14 Incest 1 (RCW 9A.64.020(1))
15 Manufacture, deliver, or possess with
16 intent to deliver narcotics from
17 Schedule I or II (except heroin or
18 cocaine) (RCW 69.50.401(a)(1)(i))
19 Intimidating a Judge (RCW 9A.72.160)
20 Bail Jumping with Murder 1 (RCW
21 9A.76.170(2)(a))
22 Theft of a Firearm (RCW 9A.56.300)

23 V Persistent prison misbehavior (RCW
24 9.94.070)
25 Criminal Mistreatment 1 (RCW 9A.42.020)
26 Abandonment of dependent person 1 (RCW
27 9A.42.060)
28 Rape 3 (RCW 9A.44.060)
29 Sexual Misconduct with a Minor 1 (RCW
30 9A.44.093)
31 Child Molestation 3 (RCW 9A.44.089)
32 Kidnapping 2 (RCW 9A.40.030)
33 Extortion 1 (RCW 9A.56.120)
34 Incest 2 (RCW 9A.64.020(2))
35 Perjury 1 (RCW 9A.72.020)
36 Extortionate Extension of Credit (RCW
37 9A.82.020)

1 Advancing money or property for
2 extortionate extension of credit (RCW
3 9A.82.030)
4 Extortionate Means to Collect Extensions of
5 Credit (RCW 9A.82.040)
6 Rendering Criminal Assistance 1 (RCW
7 9A.76.070)
8 Bail Jumping with class A Felony (RCW
9 9A.76.170(2)(b))
10 Sexually Violating Human Remains (RCW
11 9A.44.105)
12 Delivery of imitation controlled substance
13 by person eighteen or over to person
14 under eighteen (RCW 69.52.030(2))
15 Possession of a Stolen Firearm (RCW
16 9A.56.310)

17 IV Residential Burglary (RCW 9A.52.025)
18 Theft of Livestock 1 (RCW 9A.56.080)
19 Robbery 2 (RCW 9A.56.210)
20 Assault 2 (RCW 9A.36.021)
21 Escape 1 (RCW 9A.76.110)
22 Arson 2 (RCW 9A.48.030)
23 Commercial Bribery (RCW 9A.68.060)
24 Bribing a Witness/Bribe Received by Witness
25 (RCW 9A.72.090, 9A.72.100)
26 Malicious Harassment (RCW 9A.36.080)
27 Threats to Bomb (RCW 9.61.160)
28 Willful Failure to Return from Furlough
29 (RCW 72.66.060)
30 Hit and Run -- Injury Accident (RCW
31 46.52.020(4))
32 Hit and Run with Vessel -- Injury Accident
33 (RCW 88.12.155(3))
34 Vehicular Assault (RCW 46.61.522)

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule III, IV, or V or nonnarcotics
4 from Schedule I-V (except marijuana or
5 methamphetamines) (RCW 69.50.401(a)(1)
6 (iii) through (v))
7 Influencing Outcome of Sporting Event (RCW
8 9A.82.070)
9 Use of Proceeds of Criminal Profiteering
10 (RCW 9A.82.080 (1) and (2))
11 Knowingly Trafficking in Stolen Property
12 (RCW 9A.82.050(2))
13 III Criminal Mistreatment 2 (RCW 9A.42.030)
14 Abandonment of dependent person 2 (RCW
15 9A.42.070)
16 Extortion 2 (RCW 9A.56.130)
17 Unlawful Imprisonment (RCW 9A.40.040)
18 Assault 3 (RCW 9A.36.031)
19 Assault of a Child 3 (RCW 9A.36.140)
20 Custodial Assault (RCW 9A.36.100)
21 Unlawful possession of firearm in the
22 second degree (RCW 9.41.040(1)(b))
23 Harassment (RCW 9A.46.020)
24 Promoting Prostitution 2 (RCW 9A.88.080)
25 Willful Failure to Return from Work Release
26 (RCW 72.65.070)
27 Burglary 2 (RCW 9A.52.030)
28 Introducing Contraband 2 (RCW 9A.76.150)
29 Communication with a Minor for Immoral
30 Purposes (RCW 9.68A.090)
31 Patronizing a Juvenile Prostitute (RCW
32 9.68A.100)
33 Escape 2 (RCW 9A.76.120)
34 Perjury 2 (RCW 9A.72.030)
35 Bail Jumping with class B or C Felony (RCW
36 9A.76.170(2)(c))
37 Intimidating a Public Servant (RCW
38 9A.76.180)
39 Tampering with a Witness (RCW 9A.72.120)

1 Manufacture, deliver, or possess with
2 intent to deliver marijuana (RCW
3 69.50.401(a)(1)(iii))
4 Delivery of a material in lieu of a
5 controlled substance (RCW
6 69.50.401(c))
7 Manufacture, distribute, or possess with
8 intent to distribute an imitation
9 controlled substance (RCW
10 69.52.030(1))
11 Recklessly Trafficking in Stolen Property
12 (RCW 9A.82.050(1))
13 Theft of livestock 2 (RCW 9A.56.080)
14 Securities Act violation (RCW 21.20.400)

15 II Unlawful Practice of Law (RCW 2.48.180)
16 Malicious Mischief 1 (RCW 9A.48.070)
17 Possession of Stolen Property 1 (RCW
18 9A.56.150)
19 Theft 1 (RCW 9A.56.030)
20 Trafficking in Insurance Claims (RCW
21 48.30A.015)
22 Unlicensed Practice of a Profession or
23 Business (RCW 18.130.190(7))
24 Health Care False Claims (RCW 48.80.030)
25 Possession of controlled substance that is
26 either heroin or narcotics from
27 Schedule I or II (RCW 69.50.401(d))
28 Possession of phencyclidine (PCP) (RCW
29 69.50.401(d))
30 Create, deliver, or possess a counterfeit
31 controlled substance (RCW
32 69.50.401(b))
33 Computer Trespass 1 (RCW 9A.52.110)
34 Escape from Community Custody (RCW
35 72.09.310)

36 I Theft 2 (RCW 9A.56.040)
37 Possession of Stolen Property 2 (RCW
38 9A.56.160)

1 Forgery (RCW 9A.60.020)
2 Taking Motor Vehicle Without Permission
3 (RCW 9A.56.070)
4 Vehicle Prowl 1 (RCW 9A.52.095)
5 Attempting to Elude a Pursuing Police
6 Vehicle (RCW 46.61.024)
7 Malicious Mischief 2 (RCW 9A.48.080)
8 Reckless Burning 1 (RCW 9A.48.040)
9 Unlawful Issuance of Checks or Drafts (RCW
10 9A.56.060)
11 Unlawful Use of Food Stamps (RCW 9.91.140
12 (2) and (3))
13 False Verification for Welfare (RCW
14 74.08.055)
15 Forged Prescription (RCW 69.41.020)
16 Forged Prescription for a Controlled
17 Substance (RCW 69.50.403)
18 Possess Controlled Substance that is a
19 Narcotic from Schedule III, IV, or V
20 or Non-narcotic from Schedule I-V
21 (except phencyclidine) (RCW
22 69.50.401(d))

23 **Sec. 2.** RCW 9.94A.120 and 1996 c 275 s 2, 1996 c 215 s 5, 1996 c
24 199 s 1, and 1996 c 93 s 1 are each reenacted and amended to read as
25 follows:

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

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

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

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

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

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

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

36 (b) Undergo available outpatient treatment for up to two years, or
37 inpatient treatment not to exceed the standard range of confinement for
38 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)(a) An offender is eligible for the special drug offender
11 sentencing alternative if:

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

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

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

25 (b) If the midpoint of the standard range is greater than one year
26 and the sentencing judge determines that the offender is eligible for
27 this option and that the offender and the community will benefit from
28 the use of the special drug offender sentencing alternative, the judge
29 may waive imposition of a sentence within the standard range and impose
30 a sentence that must include a period of total confinement in a state
31 facility for one-half of the midpoint of the standard range. During
32 incarceration in the state facility, offenders sentenced under this
33 subsection shall undergo a comprehensive substance abuse assessment and
34 receive, within available resources, treatment services appropriate for
35 the offender. The treatment services shall be designed by the division
36 of alcohol and substance abuse of the department of social and health
37 services, in cooperation with the department of corrections. If the
38 midpoint of the standard range is twenty-four months or less, no more
39 than three months of the sentence may be served in a work release

1 status. The court shall also impose one year of concurrent community
2 custody and community supervision that must include appropriate
3 outpatient substance abuse treatment, crime-related prohibitions
4 including a condition not to use illegal controlled substances, and a
5 requirement to submit to urinalysis or other testing to monitor that
6 status. The court may require that the monitoring for controlled
7 substances be conducted by the department or by a treatment
8 alternatives to street crime program or a comparable court or agency-
9 referred program. The offender may be required to pay thirty dollars
10 per month while on community custody to offset the cost of monitoring.
11 In addition, the court shall impose three or more of the following
12 conditions:

- 13 (i) Devote time to a specific employment or training;
- 14 (ii) Remain within prescribed geographical boundaries and notify
15 the court or the community corrections officer before any change in the
16 offender's address or employment;
- 17 (iii) Report as directed to a community corrections officer;
- 18 (iv) Pay all court-ordered legal financial obligations;
- 19 (v) Perform community service work;
- 20 (vi) Stay out of areas designated by the sentencing judge.

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

35 (d) The department shall determine the rules for calculating the
36 value of a day fine based on the offender's income and reasonable
37 obligations which the offender has for the support of the offender and
38 any dependents. These rules shall be developed in consultation with

1 the administrator for the courts, the office of financial management,
2 and the commission.

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

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

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

24 The examiner shall assess and report regarding the defendant's
25 amenability to treatment and relative risk to the community. A
26 proposed treatment plan shall be provided and shall include, at a
27 minimum:

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

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

31 (C) Monitoring plans, including any requirements regarding living
32 conditions, lifestyle requirements, and monitoring by family members
33 and others;

34 (D) Anticipated length of treatment; and

35 (E) Recommended crime-related prohibitions.

36 The court on its own motion may order, or on a motion by the state
37 shall order, a second examination regarding the offender's amenability
38 to treatment. The evaluator shall be selected by the party making the
39 motion. The defendant shall pay the cost of any second examination

1 ordered unless the court finds the defendant to be indigent in which
2 case the state shall pay the cost.

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

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

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

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

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

37 (III) Report as directed to the court and a community corrections
38 officer;

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

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

6 (iii) The sex offender therapist shall submit quarterly reports on
7 the defendant's progress in treatment to the court and the parties.
8 The report shall reference the treatment plan and include at a minimum
9 the following: Dates of attendance, defendant's compliance with
10 requirements, treatment activities, the defendant's relative progress
11 in treatment, and any other material as specified by the court at
12 sentencing.

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

28 (v) If a violation of conditions occurs during community custody,
29 the department shall either impose sanctions as provided for in RCW
30 9.94A.205(2)(a) or refer the violation to the court and recommend
31 revocation of the suspended sentence as provided for in (a)(vi) of this
32 subsection.

33 (vi) The court may revoke the suspended sentence at any time during
34 the period of community custody and order execution of the sentence if:
35 (A) The defendant violates the conditions of the suspended sentence, or
36 (B) the court finds that the defendant is failing to make satisfactory
37 progress in treatment. All confinement time served during the period
38 of community custody shall be credited to the offender if the suspended
39 sentence is revoked.

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

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

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

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

26 Except for an offender who has been convicted of a violation of RCW
27 9A.44.040 or 9A.44.050, if the offender completes the treatment program
28 before the expiration of his or her term of confinement, the department
29 of corrections may request the court to convert the balance of
30 confinement to community supervision and to place conditions on the
31 offender including crime-related prohibitions and requirements that the
32 offender perform any one or more of the following:

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

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

37 (iii) Report as directed to the court and a community corrections
38 officer;

39 (iv) Undergo available outpatient treatment.

1 If the offender violates any of the terms of his or her community
2 supervision, the court may order the offender to serve out the balance
3 of his or her community supervision term in confinement in the custody
4 of the department of corrections.

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

9 (c) Offenders convicted and sentenced for a sex offense committed
10 prior to July 1, 1987, may, subject to available funds, request an
11 evaluation by the department of corrections to determine whether they
12 are amenable to treatment. If the offender is determined to be
13 amenable to treatment, the offender may request placement in a
14 treatment program within a correctional facility operated by the
15 department. Placement in such treatment program is subject to
16 available funds.

17 (9)(a) When a court sentences a person to a term of total
18 confinement to the custody of the department of corrections for an
19 offense categorized as a sex offense or a serious violent offense
20 committed after July 1, 1988, but before July 1, 1990, assault in the
21 second degree, assault of a child in the second degree, any crime
22 against a person where it is determined in accordance with RCW
23 9.94A.125 that the defendant or an accomplice was armed with a deadly
24 weapon at the time of commission, or any felony offense under chapter
25 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
26 committed on or after July 1, 1988, the court shall in addition to the
27 other terms of the sentence, sentence the offender to a one-year term
28 of community placement beginning either upon completion of the term of
29 confinement or at such time as the offender is transferred to community
30 custody in lieu of earned early release in accordance with RCW
31 9.94A.150 (1) and (2). When the court sentences an offender under this
32 subsection to the statutory maximum period of confinement then the
33 community placement portion of the sentence shall consist entirely of
34 such community custody to which the offender may become eligible, in
35 accordance with RCW 9.94A.150 (1) and (2). Any period of community
36 custody actually served shall be credited against the community
37 placement portion of the sentence.

38 (b) When a court sentences a person to a term of total confinement
39 to the custody of the department of corrections for an offense

1 categorized as a sex offense committed on or after July 1, 1990, but
2 before June 6, 1996, a serious violent offense, vehicular homicide, or
3 vehicular assault, committed on or after July 1, 1990, the court shall
4 in addition to other terms of the sentence, sentence the offender to
5 community placement for two 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 placement 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). When the court sentences an offender under
11 this subsection to the statutory maximum period of confinement then the
12 community placement portion of the sentence shall consist entirely of
13 the community custody to which the offender may become eligible, in
14 accordance with RCW 9.94A.150 (1) and (2). Any period of community
15 custody actually served shall be credited against the community
16 placement portion of the sentence. Unless a condition is waived by the
17 court, the terms of community placement for offenders sentenced
18 pursuant to this section shall include the following conditions:

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

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

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

25 (iv) An offender in community custody shall not unlawfully possess
26 controlled substances;

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

29 (vi) The residence location and living arrangements are subject to
30 the prior approval of the department of corrections during the period
31 of community placement.

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

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

37 (ii) The offender shall not have direct or indirect contact with
38 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 offender shall comply with any crime-related prohibitions;
5 or

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

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

15 (10)(a) When a court sentences a person to the custody of the
16 department of corrections for an offense categorized as a sex offense
17 committed on or after June 6, 1996, the court shall, in addition to
18 other terms of the sentence, sentence the offender to community custody
19 for three years or up to the period of earned early release awarded
20 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
21 community custody shall begin either upon completion of the term of
22 confinement or at such time as the offender is transferred to community
23 custody in lieu of earned early release in accordance with RCW
24 9.94A.150 (1) and (2).

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

32 (c) At any time prior to the completion of a sex offender's term of
33 community custody, if the court finds that public safety would be
34 enhanced, the court may impose and enforce an order extending any or
35 all of the conditions imposed pursuant to this section for a period up
36 to the maximum allowable sentence for the crime as it is classified in
37 chapter 9A.20 RCW, regardless of the expiration of the offender's term
38 of community custody. If a violation of a condition extended under
39 this subsection occurs after the expiration of the offender's term of

1 community custody, it shall be deemed a violation of the sentence for
2 the purposes of RCW 9.94A.195 and may be punishable as contempt of
3 court as provided for in RCW 7.21.040.

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

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

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

35 (14) All offenders sentenced to terms involving community
36 supervision, community service, community placement, or legal financial
37 obligation shall be under the supervision of the department of
38 corrections and shall follow explicitly the instructions and conditions
39 of the department of corrections.

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

6 (b) For sex offenders sentenced to terms involving community
7 custody for crimes committed on or after June 6, 1996, the department
8 may include, in addition to the instructions in (a) of this subsection,
9 any appropriate conditions of supervision, including but not limited
10 to, prohibiting the offender from having contact with any other
11 specified individuals or specific class of individuals. The conditions
12 authorized under this subsection (14)(b) may be imposed by the
13 department prior to or during a sex offender's community custody term.
14 If a violation of conditions imposed by the court or the department
15 pursuant to subsection (10) of this section occurs during community
16 custody, it shall be deemed a violation of community placement for the
17 purposes of RCW 9.94A.207 and shall authorize the department to
18 transfer an offender to a more restrictive confinement status as
19 provided in RCW 9.94A.205. At any time prior to the completion of a
20 sex offender's term of community custody, the department may recommend
21 to the court that any or all of the conditions imposed by the court or
22 the department pursuant to subsection (10) of this section be continued
23 beyond the expiration of the offender's term of community custody as
24 authorized in subsection (10)(c) of this section.

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

30 (15) All offenders sentenced to terms involving community
31 supervision, community service, or community placement under the
32 supervision of the department of corrections shall not own, use, or
33 possess firearms or ammunition. Offenders who own, use, or are found
34 to be in actual or constructive possession of firearms or ammunition
35 shall be subject to the appropriate violation process and sanctions.
36 "Constructive possession" as used in this subsection means the power
37 and intent to control the firearm or ammunition. "Firearm" as used in
38 this subsection means a weapon or device from which a projectile may be
39 fired by an explosive such as gunpowder.

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

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

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

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

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

28 (21) All court-ordered legal financial obligations collected by the
29 department and remitted to the county clerk shall be credited and paid
30 where restitution is ordered. Restitution shall be paid prior to any
31 other payments of monetary obligations.

32 **Sec. 3.** RCW 9A.44.130 and 1996 c 275 s 11 are each amended to read
33 as follows:

34 (1) Any adult or juvenile residing in this state who has been found
35 to have committed or has been convicted of any sex offense, or who has
36 been found not guilty by reason of insanity under chapter 10.77 RCW of
37 committing any sex offense, shall register with the county sheriff for
38 the county of the person's residence.

1 (2) The person shall provide the county sheriff with the following
2 information when registering: (a) Name; (b) address; (c) date and
3 place of birth; (d) place of employment; (e) crime for which convicted;
4 (f) date and place of conviction; (g) aliases used; and (h) social
5 security number.

6 (3)(a) Sex offenders shall register within the following deadlines.
7 For purposes of this section the term "conviction" refers to adult
8 convictions and juvenile adjudications for sex offenses:

9 (i) SEX OFFENDERS IN CUSTODY. Sex offenders who committed a sex
10 offense on, before, or after February 28, 1990, and who, on or after
11 July 28, 1991, are in custody, as a result of that offense, of the
12 state department of corrections, the state department of social and
13 health services, a local division of youth services, or a local jail or
14 juvenile detention facility, must register within twenty-four hours
15 from the time of release with the county sheriff for the county of the
16 person's residence. The agency that has jurisdiction over the offender
17 shall provide notice to the sex offender of the duty to register.
18 Failure to register within twenty-four hours of release constitutes a
19 violation of this section and is punishable as provided in subsection
20 (7) of this section.

21 (ii) SEX OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL
22 JURISDICTION. Sex offenders, who, on July 28, 1991, are not in custody
23 but are under the jurisdiction of the indeterminate sentence review
24 board or under the department of correction's active supervision, as
25 defined by the department of corrections, the state department of
26 social and health services, or a local division of youth services, for
27 sex offenses committed before, on, or after February 28, 1990, must
28 register within ten days of July 28, 1991. A change in supervision
29 status of a sex offender who was required to register under this
30 subsection (3)(a)(ii) as of July 28, 1991, shall not relieve the
31 offender of the duty to register or to reregister following a change in
32 residence. The obligation to register shall only cease pursuant to RCW
33 9A.44.140.

34 (iii) SEX OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who,
35 on or after July 23, 1995, as a result of that offense are in the
36 custody of the United States bureau of prisons or other federal or
37 military correctional agency for sex offenses committed before, on, or
38 after February 28, 1990, must register within twenty-four hours from
39 the time of release with the county sheriff for the county of the

1 person's residence. Sex offenders who, on July 23, 1995, are not in
2 custody but are under the jurisdiction of the United States bureau of
3 prisons, United States courts, United States parole commission, or
4 military parole board for sex offenses committed before, on, or after
5 February 28, 1990, must register within ten days of July 23, 1995. A
6 change in supervision status of a sex offender who was required to
7 register under this subsection (3)(a)(iii) as of July 23, 1995, shall
8 not relieve the offender of the duty to register or to reregister
9 following a change in residence. The obligation to register shall only
10 cease pursuant to RCW 9A.44.140.

11 (iv) SEX OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex
12 offenders who are convicted of a sex offense on or after July 28, 1991,
13 for a sex offense that was committed on or after February 28, 1990, but
14 who are not sentenced to serve a term of confinement immediately upon
15 sentencing, shall report to the county sheriff to register immediately
16 upon completion of being sentenced.

17 (v) SEX OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON
18 RESIDENTS. Sex offenders who move to Washington state from another
19 state or a foreign country that are not under the jurisdiction of the
20 state department of corrections, the indeterminate sentence review
21 board, or the state department of social and health services at the
22 time of moving to Washington, must register within thirty days of
23 establishing residence or reestablishing residence if the person is a
24 former Washington resident. The duty to register under this subsection
25 applies to sex offenders convicted under the laws of another state or
26 a foreign country, federal or military statutes, or Washington state
27 for offenses committed on or after February 28, 1990. Sex offenders
28 from other states or a foreign country who, when they move to
29 Washington, are under the jurisdiction of the department of
30 corrections, the indeterminate sentence review board, or the department
31 of social and health services must register within twenty-four hours of
32 moving to Washington. The agency that has jurisdiction over the
33 offender shall notify the offender of the registration requirements
34 before the offender moves to Washington.

35 (vi) SEX OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any
36 adult or juvenile who has been found not guilty by reason of insanity
37 under chapter 10.77 RCW of committing a sex offense on, before, or
38 after February 28, 1990, and who, on or after July 23, 1995, is in
39 custody, as a result of that finding, of the state department of social

1 and health services, must register within twenty-four hours from the
2 time of release with the county sheriff for the county of the person's
3 residence. The state department of social and health services shall
4 provide notice to the adult or juvenile in its custody of the duty to
5 register. Any adult or juvenile who has been found not guilty by
6 reason of insanity of committing a sex offense on, before, or after
7 February 28, 1990, but who was released prior to July 23, 1995, shall
8 be required to register within twenty-four hours of receiving notice of
9 this registration requirement. The state department of social and
10 health services shall make reasonable attempts within available
11 resources to notify offenders who were released prior to July 23, 1995.
12 Failure to register within twenty-four hours of release, or of
13 receiving notice, constitutes a violation of this section and is
14 punishable as provided in subsection (7) of this section.

15 (b) Failure to register within the time required under this section
16 constitutes a per se violation of this section and is punishable as
17 provided in subsection (7) of this section. The county sheriff shall
18 not be required to determine whether the person is living within the
19 county.

20 (c) An arrest on charges of failure to register, service of an
21 information, or a complaint for a violation of this section, or
22 arraignment on charges for a violation of this section, constitutes
23 actual notice of the duty to register. Any person charged with the
24 crime of failure to register under this section who asserts as a
25 defense the lack of notice of the duty to register shall register
26 immediately following actual notice of the duty through arrest,
27 service, or arraignment. Failure to register as required under this
28 subsection (c) constitutes grounds for filing another charge of failing
29 to register. Registering following arrest, service, or arraignment on
30 charges shall not relieve the offender from criminal liability for
31 failure to register prior to the filing of the original charge.

32 (d) The deadlines for the duty to register under this section do
33 not relieve any sex offender of the duty to register under this section
34 as it existed prior to July 28, 1991.

35 (4)(a) If any person required to register pursuant to this section
36 changes his or her residence address within the same county, the person
37 must send written notice of the change of address to the county sheriff
38 at least fourteen days before moving. If any person required to
39 register pursuant to this section moves to a new county, the person

1 must send written notice of the change of address at least fourteen
2 days before moving to the county sheriff in the new county of residence
3 and must register with that county sheriff within twenty-four hours of
4 moving. The person must also send written notice within ten days of
5 the change of address in the new county to the county sheriff with whom
6 the person last registered. If any person required to register
7 pursuant to this section moves out of Washington state, the person must
8 also send written notice within ten days of moving to the new state or
9 a foreign country to the county sheriff with whom the person last
10 registered in Washington state.

11 (b) It is an affirmative defense to a charge that the person failed
12 to send a notice at least fourteen days in advance of moving as
13 required under (a) of this subsection that the person did not know the
14 location of his or her new residence at least fourteen days before
15 moving. The defendant must establish the defense by a preponderance of
16 the evidence and, to prevail on the defense, must also prove by a
17 preponderance that the defendant sent the required notice within
18 twenty-four hours of determining the new address.

19 (5) The county sheriff shall obtain a photograph of the individual
20 and shall obtain a copy of the individual's fingerprints.

21 (6) "Sex offense" for the purpose of RCW 9A.44.130, 10.01.200,
22 43.43.540, 70.48.470, and 72.09.330 means any offense defined as a sex
23 offense by RCW 9.94A.030 and any violation of RCW 9.68A.090 or
24 9A.44.096 as well as any gross misdemeanor that is, under chapter 9A.28
25 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy
26 to commit an offense that is classified as a sex offense under RCW
27 9.94A.030.

28 (7) A person who knowingly fails to register or who moves without
29 notifying the county sheriff as required by this section is guilty of
30 a class C felony if the crime for which the individual was convicted
31 was a (~~class A~~) felony or a federal or out-of-state conviction for an
32 offense that under the laws of this state would be a (~~class A~~)
33 felony. If the crime was other than a (~~class A~~) felony or a federal
34 or out-of-state conviction for an offense that under the laws of this
35 state would be other than a (~~class A~~) felony, violation of this
36 section is a gross misdemeanor.

37 **Sec. 4.** RCW 9.94A.030 and 1996 c 289 s 1 are each amended to read
38 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

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

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

11 (3) "Community corrections officer" means an employee of the
12 department who is responsible for carrying out specific duties in
13 supervision of sentenced offenders and monitoring of sentence
14 conditions.

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

20 (5) "Community placement" means that period during which the
21 offender is subject to the conditions of community custody and/or
22 postrelease supervision, which begins either upon completion of the
23 term of confinement (postrelease supervision) or at such time as the
24 offender is transferred to community custody in lieu of earned early
25 release. Community placement may consist of entirely community
26 custody, entirely postrelease supervision, or a combination of the two.

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

30 (7) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
34 may include crime-related prohibitions and other conditions imposed
35 pursuant to RCW 9.94A.120(5). For purposes of the interstate compact
36 for out-of-state supervision of parolees and probationers, RCW
37 9.95.270, community supervision is the functional equivalent of
38 probation and should be considered the same as probation by other
39 states.

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

3 (9) "Conviction" means an adjudication of guilt pursuant to Titles
4 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
5 acceptance of a plea of guilty.

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

20 (11) "Crime-related prohibition" means an order of a court
21 prohibiting conduct that directly relates to the circumstances of the
22 crime for which the offender has been convicted, and shall not be
23 construed to mean orders directing an offender affirmatively to
24 participate in rehabilitative programs or to otherwise perform
25 affirmative conduct.

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

32 (b) "Criminal history" shall always include juvenile convictions
33 for sex offenses and serious violent offenses and shall also include a
34 defendant's other prior convictions in juvenile court if: (i) The
35 conviction was for an offense which is a felony or a serious traffic
36 offense and is criminal history as defined in RCW 13.40.020(9); (ii)
37 the defendant was fifteen years of age or older at the time the offense
38 was committed; and (iii) with respect to prior juvenile class B and C
39 felonies or serious traffic offenses, the defendant was less than

1 twenty-three years of age at the time the offense for which he or she
2 is being sentenced was committed.

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

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

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

13 (16) "Determinate sentence" means a sentence that states with
14 exactitude the number of actual years, months, or days of total
15 confinement, of partial confinement, of community supervision, the
16 number of actual hours or days of community service work, or dollars or
17 terms of a legal financial obligation. The fact that an offender
18 through "earned early release" can reduce the actual period of
19 confinement shall not affect the classification of the sentence as a
20 determinate sentence.

21 (17) "Disposable earnings" means that part of the earnings of an
22 individual remaining after the deduction from those earnings of any
23 amount required by law to be withheld. For the purposes of this
24 definition, "earnings" means compensation paid or payable for personal
25 services, whether denominated as wages, salary, commission, bonuses, or
26 otherwise, and, notwithstanding any other provision of law making the
27 payments exempt from garnishment, attachment, or other process to
28 satisfy a court-ordered legal financial obligation, specifically
29 includes periodic payments pursuant to pension or retirement programs,
30 or insurance policies of any type, but does not include payments made
31 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
32 or Title 74 RCW.

33 (18) "Drug offense" means:

34 (a) Any felony violation of chapter 69.50 RCW except possession of
35 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
36 controlled substance (RCW 69.50.403);

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

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

4 (19) "Escape" means:

5 (a) Escape in the first degree (RCW 9A.76.110), escape in the
6 second degree (RCW 9A.76.120), willful failure to return from furlough
7 (RCW 72.66.060), willful failure to return from work release (RCW
8 72.65.070), or willful failure to be available for supervision by the
9 department while in community custody (RCW 72.09.310); or

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

13 (20) "Felony traffic offense" means:

14 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
15 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
16 and-run injury-accident (RCW 46.52.020(4)); or

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

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

22 (22)(a) "First-time offender" means any person who is convicted of
23 a felony (i) not classified as a violent offense or a sex offense under
24 this chapter, or (ii) that is not the manufacture, delivery, or
25 possession with intent to manufacture or deliver a controlled substance
26 classified in schedule I or II that is a narcotic drug, nor the
27 manufacture, delivery, or possession with intent to deliver
28 methamphetamine, its salts, isomers, and salts of its isomers as
29 defined in RCW 69.50.206(d)(2), nor the selling for profit of any
30 controlled substance or counterfeit substance classified in schedule I,
31 RCW 69.50.204, except leaves and flowering tops of marijuana, and
32 except as provided in (b) of this subsection, who previously has never
33 been convicted of a felony in this state, federal court, or another
34 state, and who has never participated in a program of deferred
35 prosecution for a felony offense.

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

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

4 (a) Any felony defined under any law as a class A felony or
5 criminal solicitation of or criminal conspiracy to commit a class A
6 felony;

7 (b) Assault in the second degree;

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

9 (d) Child molestation in the second degree;

10 (e) Controlled substance homicide;

11 (f) Extortion in the first degree;

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

13 (h) Indecent liberties;

14 (i) Kidnapping in the second degree;

15 (j) Leading organized crime;

16 (k) Manslaughter in the first degree;

17 (l) Manslaughter in the second degree;

18 (m) Promoting prostitution in the first degree;

19 (n) Rape in the third degree;

20 (o) Robbery in the second degree;

21 (p) Sexual exploitation;

22 (q) Vehicular assault;

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

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

29 (t) Any other felony with a deadly weapon verdict under RCW
30 9.94A.125;

31 (u) Any felony offense in effect at any time prior to December 2,
32 1993, that is comparable to a most serious offense under this
33 subsection, or any federal or out-of-state conviction for an offense
34 that under the laws of this state would be a felony classified as a
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
38 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as

1 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
2 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
3 (ii) A prior conviction for indecent liberties under RCW
4 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
5 if: (A) The crime was committed against a child under the age of
6 fourteen; or (B) the relationship between the victim and perpetrator is
7 included in the definition of indecent liberties under RCW
8 9A.44.100(1)(c) as it existed from July 1, 1988, through the effective
9 date of this section or RCW 9A.44.100(1) (d) or (e) as it existed from
10 July 25, 1993, through the effective date of this section.

11 (24) "Nonviolent offense" means an offense which is not a violent
12 offense.

13 (25) "Offender" means a person who has committed a felony
14 established by state law and is eighteen years of age or older or is
15 less than eighteen years of age but whose case has been transferred by
16 the appropriate juvenile court to a criminal court pursuant to RCW
17 13.40.110. Throughout this chapter, the terms "offender" and
18 "defendant" are used interchangeably.

19 (26) "Partial confinement" means confinement for no more than one
20 year in a facility or institution operated or utilized under contract
21 by the state or any other unit of government, or, if home detention or
22 work crew has been ordered by the court, in an approved residence, for
23 a substantial portion of each day with the balance of the day spent in
24 the community. Partial confinement includes work release, home
25 detention, work crew, and a combination of work crew and home detention
26 as defined in this section.

27 (27) "Persistent offender" is an offender who:

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

30 (ii) Has, before the commission of the offense under (a) of this
31 subsection, been convicted as an offender on at least two separate
32 occasions, whether in this state or elsewhere, of felonies that under
33 the laws of this state would be considered most serious offenses and
34 would be included in the offender score under RCW 9.94A.360; provided
35 that of the two or more previous convictions, at least one conviction
36 must have occurred before the commission of any of the other most
37 serious offenses for which the offender was previously convicted; or

38 (b)(i) Has been convicted of (A) rape in the first degree, rape in
39 the second degree, or indecent liberties by forcible compulsion; (B)

1 murder in the first degree, murder in the second degree, kidnapping in
2 the first degree, kidnapping in the second degree, assault in the first
3 degree, assault in the second degree, or burglary in the first degree,
4 with a finding of sexual motivation; or (C) an attempt to commit any
5 crime listed in this subsection (27)(b)(i); and

6 (ii) Has, before the commission of the offense under (b)(i) of this
7 subsection, been convicted as an offender on at least one occasion,
8 whether in this state or elsewhere, of an offense listed in (b)(i) of
9 this subsection.

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

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

16 (30) "Serious traffic offense" means:

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

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

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

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

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

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

37 (33) "Sex offense" means:

38 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
39 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.

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