
SENATE BILL 5356

State of Washington 56th Legislature 1999 Regular Session

By Senators Benton, Hargrove, Costa and Goings

Read first time 01/20/1999. Referred to Committee on Judiciary.

1 AN ACT Relating to sexual offenders; amending RCW 9.94A.120;
2 reenacting and amending RCW 9.94A.320; and prescribing penalties.

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

4 **Sec. 1.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read
5 as follows:

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

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

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

15 (3) Whenever a sentence outside the standard range is imposed, the
16 court shall set forth the reasons for its decision in written findings
17 of fact and conclusions of law. A sentence outside the standard range
18 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 sex offender sentencing alternative and consider the victim's opinion
6 whether the offender should receive a treatment disposition under this
7 subsection. If the court determines that this special sex offender
8 sentencing alternative is appropriate, the court shall then impose a
9 sentence within the sentence range. If this sentence is less than
10 eleven years of confinement, the court may suspend the execution of the
11 sentence and impose the following conditions of suspension:

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

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

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

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

35 (III) Report as directed to the court and a community corrections
36 officer;

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

1 (V) Make recoupment to the victim for the cost of any counseling
2 required as a result of the offender's crime; and

3 (C) Sex offenders sentenced under this special sex offender
4 sentencing alternative are not eligible to accrue any earned early
5 release time while serving a suspended sentence.

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 (ix) For purposes of this subsection (8), "victim" means any person
15 who has sustained emotional, psychological, physical, or financial
16 injury to person or property as a result of the crime charged.
17 "Victim" also means a parent or guardian of a victim who is a minor
18 child unless the parent or guardian is the perpetrator of the offense.

19 (x) If the defendant was less than eighteen years of age when the
20 charge was filed, the state shall pay for the cost of initial
21 evaluation and treatment.

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

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

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

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

1 (iii) Report as directed to the court and a community corrections
2 officer;

3 (iv) Undergo available outpatient treatment.

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

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

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

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

1 custody actually served shall be credited against the community
2 placement portion of the sentence.

3 (b) When a court sentences a person to a term of total confinement
4 to the custody of the department of corrections for an offense
5 categorized as a sex offense committed on or after July 1, 1990, but
6 before June 6, 1996, a serious violent offense, vehicular homicide, or
7 vehicular assault, committed on or after July 1, 1990, the court shall
8 in addition to other terms of the sentence, sentence the offender to
9 community placement for two years or up to the period of earned early
10 release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is
11 longer. The community placement shall begin either upon completion of
12 the term of confinement or at such time as the offender is transferred
13 to community custody in lieu of earned early release in accordance with
14 RCW 9.94A.150 (1) and (2). When the court sentences an offender under
15 this subsection to the statutory maximum period of confinement then the
16 community placement portion of the sentence shall consist entirely of
17 the community custody to which the offender may become eligible, in
18 accordance with RCW 9.94A.150 (1) and (2). Any period of community
19 custody actually served shall be credited against the community
20 placement portion of the sentence. Unless a condition is waived by the
21 court, the terms of community placement for offenders sentenced
22 pursuant to this section shall include the following conditions:

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

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

27 (iii) The offender shall not possess or consume controlled
28 substances except pursuant to lawfully issued prescriptions;

29 (iv) The offender shall pay supervision fees as determined by the
30 department of corrections;

31 (v) The residence location and living arrangements are subject to
32 the prior approval of the department of corrections during the period
33 of community placement; and

34 (vi) The offender shall submit to affirmative acts necessary to
35 monitor compliance with the orders of the court as required by the
36 department.

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

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

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

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

7 (iv) The offender shall not consume alcohol;

8 (v) The offender shall comply with any crime-related prohibitions;
9 or

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

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

19 (10)(a) When a court sentences a person to the custody of the
20 department of corrections for an offense categorized as a sex offense
21 committed on or after June 6, 1996, the court shall, in addition to
22 other terms of the sentence, sentence the offender to community custody
23 for three years or up to the period of earned early release awarded
24 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The
25 community custody shall begin either upon completion of the term of
26 confinement or at such time as the offender is transferred to community
27 custody in lieu of earned early release in accordance with RCW
28 9.94A.150 (1) and (2).

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

36 (c) At any time prior to the completion of a sex offender's term of
37 community custody, if the court finds that public safety would be
38 enhanced, the court may impose and enforce an order extending any or
39 all of the conditions imposed pursuant to this section for a period up

1 to the maximum allowable sentence for the crime as it is classified in
2 chapter 9A.20 RCW, regardless of the expiration of the offender's term
3 of community custody. If a violation of a condition extended under
4 this subsection occurs after the expiration of the offender's term of
5 community custody, it shall be deemed a violation of the sentence for
6 the purposes of RCW 9.94A.195 and may be punishable as contempt of
7 court as provided for in RCW 7.21.040.

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

14 (12) If a sentence imposed includes payment of a legal financial
15 obligation, the sentence shall specify the total amount of the legal
16 financial obligation owed, and shall require the offender to pay a
17 specified monthly sum toward that legal financial obligation.
18 Restitution to victims shall be paid prior to any other payments of
19 monetary obligations. Any legal financial obligation that is imposed
20 by the court may be collected by the department, which shall deliver
21 the amount paid to the county clerk for credit. The offender's
22 compliance with payment of legal financial obligations shall be
23 supervised by the department for ten years following the entry of the
24 judgment and sentence or ten years following the offender's release
25 from total confinement. All monetary payments ordered shall be paid no
26 later than ten years after the last date of release from confinement
27 pursuant to a felony conviction or the date the sentence was entered
28 unless the superior court extends the criminal judgment an additional
29 ten years. If the legal financial obligations including crime victims'
30 assessments are not paid during the initial ten-year period, the
31 superior court may extend jurisdiction under the criminal judgment an
32 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
33 9.94A.145. If jurisdiction under the criminal judgment is extended,
34 the department is not responsible for supervision of the offender
35 during the subsequent period. Independent of the department, the party
36 or entity to whom the legal financial obligation is owed shall have the
37 authority to utilize any other remedies available to the party or
38 entity to collect the legal financial obligation. Nothing in this
39 section makes the department, the state, or any of its employees,

1 agents, or other persons acting on their behalf liable under any
2 circumstances for the payment of these legal financial obligations. If
3 an order includes restitution as one of the monetary assessments, the
4 county clerk shall make disbursements to victims named in the order.

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

9 (14) All offenders sentenced to terms involving community
10 supervision, community service, community placement, or legal financial
11 obligation shall be under the supervision of the department of
12 corrections and shall follow explicitly the instructions and conditions
13 of the department of corrections. The department may require an
14 offender to perform affirmative acts it deems appropriate to monitor
15 compliance with the conditions of the sentence imposed.

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

21 (b) For offenders sentenced to terms involving community custody
22 for crimes committed on or after June 6, 1996, the department may
23 include, in addition to the instructions in (a) of this subsection, any
24 appropriate conditions of supervision, including but not limited to,
25 prohibiting the offender from having contact with any other specified
26 individuals or specific class of individuals. The conditions
27 authorized under this subsection (14)(b) may be imposed by the
28 department prior to or during an offender's community custody term. If
29 a violation of conditions imposed by the court or the department
30 pursuant to subsection (10) of this section occurs during community
31 custody, it shall be deemed a violation of community placement for the
32 purposes of RCW 9.94A.207 and shall authorize the department to
33 transfer an offender to a more restrictive confinement status as
34 provided in RCW 9.94A.205. At any time prior to the completion of a
35 sex offender's term of community custody, the department may recommend
36 to the court that any or all of the conditions imposed by the court or
37 the department pursuant to subsection (10) of this section be continued
38 beyond the expiration of the offender's term of community custody as
39 authorized in subsection (10)(c) of this section.

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

6 (15) All offenders sentenced to terms involving community
7 supervision, community service, or community placement under the
8 supervision of the department of corrections shall not own, use, or
9 possess firearms or ammunition. Offenders who own, use, or are found
10 to be in actual or constructive possession of firearms or ammunition
11 shall be subject to the appropriate violation process and sanctions.
12 "Constructive possession" as used in this subsection means the power
13 and intent to control the firearm or ammunition. "Firearm" as used in
14 this subsection means a weapon or device from which a projectile may be
15 fired by an explosive such as gunpowder.

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

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

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

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

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

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

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

20 (23)(a) If the offense is not one for which the conviction results
21 in the offender's being a persistent offender, the court shall, at the
22 time of sentencing, impose as a condition of release such treatment,
23 including the use of medroxyprogesterone acetate, or a comparable
24 chemical, together with any other mental health or chemical dependency
25 treatment, as the court finds appropriate to reduce the likelihood of
26 the offender's commission of a subsequent sex offense upon release, for
27 any of the following offenses:

28 (i) Rape in the first degree;

29 (ii) Rape in the second degree;

30 (iii) Rape of a child in the first degree; and

31 (iv) Child molestation in the first degree, if it is the person's
32 second conviction for child molestation in the first degree.

33 (b)(i) At least thirty days before the department sets a release
34 date for an offender who has had a treatment regimen imposed as a
35 condition of release under (a) of this subsection, the offender must be
36 brought back before the court for a hearing, including an examination
37 by medical experts, for the purpose of determining whether to impose
38 the regimen. At the hearing, the offender has the right to all due
39 process rights including counsel, cross-examination, testimony,

1 experts, and the provision of counsel if the offender is indigent, but
2 not the presence of a jury.

3 (ii) At the hearing under (b)(i) of this subsection, the court
4 shall determine, by a preponderance of the evidence, whether a proposed
5 treatment regimen, including treatment with medroxyprogesterone acetate
6 or a comparable chemical, makes it likely that the regimen will reduce
7 the chance that the offender will commit a sex offense upon release.
8 In making its determination, the court shall consider:

9 (A) Whether the offender has a mental abnormality as defined in RCW
10 71.09.020;

11 (B) Whether the offender is likely to engage in predatory acts, as
12 defined in RCW 71.09.020, if the regimen is not required; and

13 (C) Whether the regimen is likely to decrease the offender's
14 likelihood to engage in predatory acts, as defined in RCW 71.09.020.

15 (c) If the court decides that the offender and the treatment
16 regimen meet the criteria in (b) of this subsection, the court shall
17 impose the requirement of the treatment regimen as a condition of
18 release and the treatment must begin before the release of the
19 offender. The court may set the treatment regimen period for as long
20 as the court finds it necessary. If the court decides that the
21 criteria are not met, then the court shall suspend the imposition of
22 the treatment regimen, but may reimpose it if, following a hearing, the
23 court finds the offender meets the criteria in (b)(ii) of this
24 subsection. The offender, to the extent private resources are
25 available, shall bear the cost of the treatment regimen.

26 (d) Imposition and successful use of the treatment regimen shall in
27 no way otherwise reduce the time in confinement an offender would
28 otherwise serve.

29 (e) The court may require the offender to return at any time in
30 order for the court to monitor the progress and effect of the treatment
31 regimen.

32 (f) An offender may appeal any determination made under this
33 subsection, but a determination under this subsection is of record and
34 the offender shall continue any treatment regimen imposed under this
35 subsection pending a decision on the appeal.

36 (g) An offender may at any time seek early termination of a
37 treatment regimen imposed under this subsection, but an early
38 termination may not be granted unless, by clear and convincing
39 evidence, the offender proves that the offender no longer has a mental

1 abnormality, as defined in RCW 71.09.020, and that a continued
2 treatment regimen is not necessary to prevent the offender's commission
3 of a predatory act, as defined in RCW 71.09.020.

4 (h) The offender may at any time agree to surgical alternatives to
5 medroxyprogesterone acetate or a comparable chemical treatment if the
6 offender voluntarily, knowingly, and intelligently petitions the court
7 in writing.

8 (i) An offender who unlawfully stops treatment imposed under this
9 subsection is guilty of a class B felony.

10 **Sec. 2.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
11 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
12 follows:

13 TABLE 2

14 CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

15	XV	Aggravated Murder 1 (RCW 10.95.020)
16	XIV	Murder 1 (RCW 9A.32.030)
17		Homicide by abuse (RCW 9A.32.055)
18		Malicious explosion 1 (RCW 70.74.280(1))
19	XIII	Murder 2 (RCW 9A.32.050)
20		Malicious explosion 2 (RCW 70.74.280(2))
21		Malicious placement of an explosive 1 (RCW
22		70.74.270(1))
23	XII	Assault 1 (RCW 9A.36.011)
24		Assault of a Child 1 (RCW 9A.36.120)
25		Rape 1 (RCW 9A.44.040)
26		Rape of a Child 1 (RCW 9A.44.073)
27		Malicious placement of an imitation device
28		1 (RCW 70.74.272(1)(a))
29	XI	Rape 2 (RCW 9A.44.050)
30		Rape of a Child 2 (RCW 9A.44.076)
31		Manslaughter 1 (RCW 9A.32.060)
32	X	Kidnapping 1 (RCW 9A.40.020)
33		Child Molestation 1 (RCW 9A.44.083)
34		Malicious explosion 3 (RCW 70.74.280(3))

1 Over 18 and deliver heroin, a narcotic from
2 Schedule I or II, or flunitrazepam
3 from Schedule IV to someone under 18
4 (RCW 69.50.406)
5 Leading Organized Crime (RCW
6 9A.82.060(1)(a))
7 Indecent Liberties (with forcible
8 compulsion) (RCW 9A.44.100(1)(a))
9 Manufacture of methamphetamine (RCW
10 69.50.401(a)(1)(ii))
11 IX Assault of a Child 2 (RCW 9A.36.130)
12 Robbery 1 (RCW 9A.56.200)
13 Explosive devices prohibited (RCW
14 70.74.180)
15 Malicious placement of an explosive 2 (RCW
16 70.74.270(2))
17 Over 18 and deliver narcotic from Schedule
18 III, IV, or V or a nonnarcotic, except
19 flunitrazepam, from Schedule I-V to
20 someone under 18 and 3 years junior
21 (RCW 69.50.406)
22 Controlled Substance Homicide (RCW
23 69.50.415)
24 Sexual Exploitation (RCW 9.68A.040)
25 Inciting Criminal Profiteering (RCW
26 9A.82.060(1)(b))
27 Vehicular Homicide, by being under the
28 influence of intoxicating liquor or
29 any drug (RCW 46.61.520)
30 Homicide by Watercraft, by being under the
31 influence of intoxicating liquor or
32 any drug (RCW 88.12.029)
33 VIII Arson 1 (RCW 9A.48.020)
34 Promoting Prostitution 1 (RCW 9A.88.070)
35 Selling for profit (controlled or
36 counterfeit) any controlled substance
37 (RCW 69.50.410)

1 Manufacture, deliver, or possess with
2 intent to deliver heroin or cocaine
3 (RCW 69.50.401(a)(1)(i))
4 Deliver or possess with intent to deliver
5 methamphetamine (RCW
6 69.50.401(a)(1)(ii))
7 Manufacture, deliver, or possess with
8 intent to deliver amphetamine (RCW
9 69.50.401(a)(1)(ii))
10 Possession of ephedrine or pseudoephedrine
11 with intent to manufacture
12 methamphetamine (RCW 69.50.440)
13 Vehicular Homicide, by the operation of any
14 vehicle in a reckless manner (RCW
15 46.61.520)
16 Homicide by Watercraft, by the operation of
17 any vessel in a reckless manner (RCW
18 88.12.029)
19 Manslaughter 2 (RCW 9A.32.070)
20 VII Burglary 1 (RCW 9A.52.020)
21 Vehicular Homicide, by disregard for the
22 safety of others (RCW 46.61.520)
23 Homicide by Watercraft, by disregard for
24 the safety of others (RCW 88.12.029)
25 Introducing Contraband 1 (RCW 9A.76.140)
26 Indecent Liberties (without forcible
27 compulsion) (RCW 9A.44.100(1) (b) and
28 (c))
29 Child Molestation 2 (RCW 9A.44.086)
30 Dealing in depictions of minor engaged in
31 sexually explicit conduct (RCW
32 9.68A.050)
33 Sending, bringing into state depictions of
34 minor engaged in sexually explicit
35 conduct (RCW 9.68A.060)
36 Involving a minor in drug dealing (RCW
37 69.50.401(f))
38 Drive-by Shooting (RCW 9A.36.045)

1 Unlawful Possession of a Firearm in the
2 first degree (RCW 9.41.040(1)(a))
3 Malicious placement of an explosive 3 (RCW
4 70.74.270(3))

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

21 V Persistent prison misbehavior (RCW
22 9.94.070)
23 Criminal Mistreatment 1 (RCW 9A.42.020)
24 Abandonment of dependent person 1 (RCW
25 9A.42.060)
26 Rape 3 (RCW 9A.44.060)
27 Sexual Misconduct with a Minor 1 (RCW
28 9A.44.093)
29 Child Molestation 3 (RCW 9A.44.089)
30 Kidnapping 2 (RCW 9A.40.030)
31 Extortion 1 (RCW 9A.56.120)
32 Incest 2 (RCW 9A.64.020(2))
33 Perjury 1 (RCW 9A.72.020)
34 Extortionate Extension of Credit (RCW
35 9A.82.020)
36 Advancing money or property for
37 extortionate extension of credit (RCW
38 9A.82.030)

1 Extortionate Means to Collect Extensions of
2 Credit (RCW 9A.82.040)
3 Rendering Criminal Assistance 1 (RCW
4 9A.76.070)
5 Bail Jumping with class A Felony (RCW
6 9A.76.170(2)(b))
7 Sexually Violating Human Remains (RCW
8 9A.44.105)
9 Delivery of imitation controlled substance
10 by person eighteen or over to person
11 under eighteen (RCW 69.52.030(2))
12 Possession of a Stolen Firearm (RCW
13 9A.56.310)
14 Unlawful termination of sex offender
15 reoffense reduction treatment (RCW
16 9.94A.120(23))

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)
35 Assault by Watercraft (RCW 88.12.032)

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,
5 amphetamine, methamphetamines, or
6 flunitrazepam) (RCW 69.50.401(a)(1)
7 (iii) through (v))
8 Influencing Outcome of Sporting Event (RCW
9 9A.82.070)
10 Use of Proceeds of Criminal Profiteering
11 (RCW 9A.82.080 (1) and (2))
12 Knowingly Trafficking in Stolen Property
13 (RCW 9A.82.050(2))
14 III Criminal Gang Intimidation (RCW 9A.46.120)
15 Criminal Mistreatment 2 (RCW 9A.42.030)
16 Abandonment of dependent person 2 (RCW
17 9A.42.070)
18 Extortion 2 (RCW 9A.56.130)
19 Unlawful Imprisonment (RCW 9A.40.040)
20 Assault 3 (RCW 9A.36.031)
21 Assault of a Child 3 (RCW 9A.36.140)
22 Custodial Assault (RCW 9A.36.100)
23 Unlawful possession of firearm in the
24 second degree (RCW 9.41.040(1)(b))
25 Harassment (RCW 9A.46.020)
26 Promoting Prostitution 2 (RCW 9A.88.080)
27 Willful Failure to Return from Work Release
28 (RCW 72.65.070)
29 Burglary 2 (RCW 9A.52.030)
30 Introducing Contraband 2 (RCW 9A.76.150)
31 Communication with a Minor for Immoral
32 Purposes (RCW 9.68A.090)
33 Patronizing a Juvenile Prostitute (RCW
34 9.68A.100)
35 Escape 2 (RCW 9A.76.120)
36 Perjury 2 (RCW 9A.72.030)
37 Bail Jumping with class B or C Felony (RCW
38 9A.76.170(2)(c))

1 Intimidating a Public Servant (RCW
2 9A.76.180)
3 Tampering with a Witness (RCW 9A.72.120)
4 Manufacture, deliver, or possess with
5 intent to deliver marijuana (RCW
6 69.50.401(a)(1)(iii))
7 Delivery of a material in lieu of a
8 controlled substance (RCW
9 69.50.401(c))
10 Manufacture, distribute, or possess with
11 intent to distribute an imitation
12 controlled substance (RCW
13 69.52.030(1))
14 Recklessly Trafficking in Stolen Property
15 (RCW 9A.82.050(1))
16 Theft of livestock 2 (RCW 9A.56.080)
17 Securities Act violation (RCW 21.20.400)
18 II Unlawful Practice of Law (RCW 2.48.180)
19 Malicious Mischief 1 (RCW 9A.48.070)
20 Possession of Stolen Property 1 (RCW
21 9A.56.150)
22 Theft 1 (RCW 9A.56.030)
23 Class B Felony Theft of Rental, Leased, or
24 Lease-purchased Property (RCW
25 9A.56.096(4))
26 Trafficking in Insurance Claims (RCW
27 48.30A.015)
28 Unlicensed Practice of a Profession or
29 Business (RCW 18.130.190(7))
30 Health Care False Claims (RCW 48.80.030)
31 Possession of controlled substance that is
32 either heroin or narcotics from
33 Schedule I or II or flunitrazepam from
34 Schedule IV (RCW 69.50.401(d))
35 Possession of phencyclidine (PCP) (RCW
36 69.50.401(d))
37 Create, deliver, or possess a counterfeit
38 controlled substance (RCW
39 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Escape from Community Custody (RCW
3 72.09.310)
4 I Theft 2 (RCW 9A.56.040)
5 Class C Felony Theft of Rental, Leased, or
6 Lease-purchased Property (RCW
7 9A.56.096(4))
8 Possession of Stolen Property 2 (RCW
9 9A.56.160)
10 Forgery (RCW 9A.60.020)
11 Taking Motor Vehicle Without Permission
12 (RCW 9A.56.070)
13 Vehicle Prowl 1 (RCW 9A.52.095)
14 Attempting to Elude a Pursuing Police
15 Vehicle (RCW 46.61.024)
16 Malicious Mischief 2 (RCW 9A.48.080)
17 Reckless Burning 1 (RCW 9A.48.040)
18 Unlawful Issuance of Checks or Drafts (RCW
19 9A.56.060)
20 Unlawful Use of Food Stamps (RCW 9.91.140
21 (2) and (3))
22 False Verification for Welfare (RCW
23 74.08.055)
24 Forged Prescription (RCW 69.41.020)
25 Forged Prescription for a Controlled
26 Substance (RCW 69.50.403)
27 Possess Controlled Substance that is a
28 Narcotic from Schedule III, IV, or V
29 or Non-narcotic from Schedule I-V
30 (except phencyclidine or
31 flunitrazepam) (RCW 69.50.401(d))

--- END ---