
SUBSTITUTE SENATE BILL 5421

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Long, Franklin, Costa, Patterson, Winsley and McAuliffe; by request of Governor Locke)

Read first time 03/03/1999.

1 AN ACT Relating to the supervision of offenders in the community;
2 amending RCW 9.94A.010, 9.94A.030, 9.94A.110, 9.94A.120, 9.94A.170,
3 9.94A.205, 9.94A.207, 9.94A.383, and 9.94A.440; reenacting and amending
4 RCW 9.94A.040, 9.94A.145, and 9.94A.320; adding new sections to chapter
5 72.09 RCW; creating new sections; prescribing penalties; making an
6 appropriation; providing an effective date; and providing an expiration
7 date.

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

9 **Sec. 1.** RCW 9.94A.010 and 1981 c 137 s 1 are each amended to read
10 as follows:

11 The purpose of this chapter is to make the criminal justice system
12 accountable to the public by developing a system for the sentencing of
13 felony offenders which structures, but does not eliminate,
14 discretionary decisions affecting sentences, and to (~~add a new chapter~~
15 ~~to Title 9 RCW designed to~~):

16 (1) Ensure that the punishment for a criminal offense is
17 proportionate to the seriousness of the offense and the offender's
18 criminal history;

1 (2) Promote respect for the law by providing punishment which is
2 just;

3 (3) Be commensurate with the punishment imposed on others
4 committing similar offenses;

5 (4) Protect the public;

6 (5) Offer the offender an opportunity to improve him or herself;
7 (~~and~~)

8 (6) Make frugal use of the state's and local governments'
9 resources; and

10 (7) Reduce the risk of reoffending by offenders in the community.

11 **Sec. 2.** RCW 9.94A.030 and 1998 c 290 s 3 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

15 (1) "Collect," or any derivative thereof, "collect and remit," or
16 "collect and deliver," when used with reference to the department of
17 corrections, means that the department, either directly or through a
18 collection agreement authorized by RCW 9.94A.145, is responsible for
19 monitoring and enforcing the offender's sentence with regard to the
20 legal financial obligation, receiving payment thereof from the
21 offender, and, consistent with current law, delivering daily the entire
22 payment to the superior court clerk without depositing it in a
23 departmental account.

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

25 (3) "Community corrections officer" means an employee of the
26 department who is responsible for carrying out specific duties in
27 supervision of sentenced offenders and monitoring of sentence
28 conditions.

29 (4) "Community custody" means that portion of an (~~inmate's~~)
30 offender's sentence of confinement in lieu of earned (~~early~~) release
31 time or imposed pursuant to RCW 9.94A.120 ~~(5), (6), (7), (8), (~~or~~)~~
32 ~~(10), or (11),~~ or RCW 9.94A.383, served in the community subject to
33 controls placed on the (~~inmate's~~) offender's movement and activities
34 by the department of corrections. For offenders placed on community
35 custody for crimes committed on or after July 1, 2000, the department
36 shall assess the offender's risk of reoffense and may establish and
37 modify conditions of community custody, in addition to those imposed by
38 the court, based upon the risk to community safety.

1 (5) "Community custody range" means the minimum and maximum period
2 of community custody included as part of a sentence under RCW 9.94A.120
3 (11), as established by the sentencing guidelines commission or the
4 legislature under RCW 9.94A.040, for crimes committed on or after July
5 1, 2000.

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

14 ((+6)) (7) "Community service" means compulsory service, without
15 compensation, performed for the benefit of the community by the
16 offender.

17 ((+7)) (8) "Community supervision" means a period of time during
18 which a convicted offender is subject to crime-related prohibitions and
19 other sentence conditions imposed by a court pursuant to this chapter
20 or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the
21 supervision may include crime-related prohibitions and other conditions
22 imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate
23 compact for out-of-state supervision of parolees and probationers, RCW
24 9.95.270, community supervision is the functional equivalent of
25 probation and should be considered the same as probation by other
26 states.

27 ((+8)) (9) "Confinement" means total or partial confinement as
28 defined in this section.

29 ((+9)) (10) "Conviction" means an adjudication of guilt pursuant
30 to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of
31 guilty, and acceptance of a plea of guilty.

32 ((+10)) (11) "Court-ordered legal financial obligation" means a
33 sum of money that is ordered by a superior court of the state of
34 Washington for legal financial obligations which may include
35 restitution to the victim, statutorily imposed crime victims'
36 compensation fees as assessed pursuant to RCW 7.68.035, court costs,
37 county or interlocal drug funds, court-appointed attorneys' fees, and
38 costs of defense, fines, and any other financial obligation that is
39 assessed to the offender as a result of a felony conviction. Upon

1 conviction for vehicular assault while under the influence of
2 intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular
3 homicide while under the influence of intoxicating liquor or any drug,
4 RCW 46.61.520(1)(a), legal financial obligations may also include
5 payment to a public agency of the expense of an emergency response to
6 the incident resulting in the conviction, subject to the provisions in
7 RCW 38.52.430.

8 ~~((11))~~ (12) "Crime-related prohibition" means an order of a court
9 prohibiting conduct that directly relates to the circumstances of the
10 crime for which the offender has been convicted, and shall not be
11 construed to mean orders directing an offender affirmatively to
12 participate in rehabilitative programs or to otherwise perform
13 affirmative conduct. However, affirmative acts necessary to monitor
14 compliance with the order of a court may be required by the department.

15 ~~((12))~~ (13) "Criminal history" means the list of a defendant's
16 prior convictions and juvenile adjudications, whether in this state, in
17 federal court, or elsewhere. The history shall include, where known,
18 for each conviction (a) whether the defendant has been placed on
19 probation and the length and terms thereof; and (b) whether the
20 defendant has been incarcerated and the length of incarceration.

21 ~~((13))~~ (14) "Day fine" means a fine imposed by the sentencing
22 judge that equals the difference between the offender's net daily
23 income and the reasonable obligations that the offender has for the
24 support of the offender and any dependents.

25 ~~((14))~~ (15) "Day reporting" means a program of enhanced
26 supervision designed to monitor the defendant's daily activities and
27 compliance with sentence conditions, and in which the defendant is
28 required to report daily to a specific location designated by the
29 department or the sentencing judge.

30 ~~((15))~~ (16) "Department" means the department of corrections.

31 ~~((16))~~ (17) "Determinate sentence" means a sentence that states
32 with exactitude the number of actual years, months, or days of total
33 confinement, of partial confinement, of community supervision, the
34 number of actual hours or days of community service work, or dollars or
35 terms of a legal financial obligation. The fact that an offender
36 through "earned ~~((early))~~ release" can reduce the actual period of
37 confinement shall not affect the classification of the sentence as a
38 determinate sentence.

1 (~~(17)~~) (18) "Disposable earnings" means that part of the earnings
2 of an individual remaining after the deduction from those earnings of
3 any amount required by law to be withheld. For the purposes of this
4 definition, "earnings" means compensation paid or payable for personal
5 services, whether denominated as wages, salary, commission, bonuses, or
6 otherwise, and, notwithstanding any other provision of law making the
7 payments exempt from garnishment, attachment, or other process to
8 satisfy a court-ordered legal financial obligation, specifically
9 includes periodic payments pursuant to pension or retirement programs,
10 or insurance policies of any type, but does not include payments made
11 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
12 or Title 74 RCW.

13 (~~(18)~~) (19) "Drug offense" means:

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

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

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

23 (~~(19)~~) (20) "Escape" means:

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

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

32 (~~(20)~~) (21) "Felony traffic offense" means:

33 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
34 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
35 and-run injury-accident (RCW 46.52.020(4)); or

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

1 (~~(21)~~) (22) "Fines" means the requirement that the offender pay
2 a specific sum of money over a specific period of time to the court.

3 (~~(22)~~) (23) "First-time offender" means any person who is
4 convicted of a felony (a) not classified as a violent offense or a sex
5 offense under this chapter, or (b) that is not the manufacture,
6 delivery, or possession with intent to manufacture or deliver a
7 controlled substance classified in Schedule I or II that is a narcotic
8 drug or flunitrazepam classified in Schedule IV, nor the manufacture,
9 delivery, or possession with intent to deliver methamphetamine, its
10 salts, isomers, and salts of its isomers as defined in RCW
11 69.50.206(d)(2), nor the selling for profit of any controlled substance
12 or counterfeit substance classified in Schedule I, RCW 69.50.204,
13 except leaves and flowering tops of marihuana, who previously has never
14 been convicted of a felony in this state, federal court, or another
15 state, and who has never participated in a program of deferred
16 prosecution for a felony offense.

17 (~~(23)~~) (24) "Home detention" means a program of partial
18 confinement available to offenders wherein the offender is confined in
19 a private residence subject to electronic surveillance.

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

23 (a) Any felony defined under any law as a class A felony or
24 criminal solicitation of or criminal conspiracy to commit a class A
25 felony;

26 (b) Assault in the second degree;

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

28 (d) Child molestation in the second degree;

29 (e) Controlled substance homicide;

30 (f) Extortion in the first degree;

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

32 (h) Indecent liberties;

33 (i) Kidnapping in the second degree;

34 (j) Leading organized crime;

35 (k) Manslaughter in the first degree;

36 (l) Manslaughter in the second degree;

37 (m) Promoting prostitution in the first degree;

38 (n) Rape in the third degree;

39 (o) Robbery in the second degree;

1 (p) Sexual exploitation;

2 (q) Vehicular assault;

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

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

9 (t) Any other felony with a deadly weapon verdict under RCW
10 9.94A.125;

11 (u) Any felony offense in effect at any time prior to December 2,
12 1993, that is comparable to a most serious offense under this
13 subsection, or any federal or out-of-state conviction for an offense
14 that under the laws of this state would be a felony classified as a
15 most serious offense under this subsection;

16 (v)(i) A prior conviction for indecent liberties under RCW
17 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
18 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
19 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
20 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

21 (ii) A prior conviction for indecent liberties under RCW
22 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
23 if: (A) The crime was committed against a child under the age of
24 fourteen; or (B) the relationship between the victim and perpetrator is
25 included in the definition of indecent liberties under RCW
26 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
27 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
28 through July 27, 1997.

29 (~~(24)~~) (26) "Nonviolent offense" means an offense which is not a
30 violent offense.

31 (~~(25)~~) (27) "Offender" means a person who has committed a felony
32 established by state law and is eighteen years of age or older or is
33 less than eighteen years of age but whose case is under superior court
34 jurisdiction under RCW 13.04.030 or has been transferred by the
35 appropriate juvenile court to a criminal court pursuant to RCW
36 13.40.110. Throughout this chapter, the terms "offender" and
37 "defendant" are used interchangeably.

38 (~~(26)~~) (28) "Partial confinement" means confinement for no more
39 than one year in a facility or institution operated or utilized under

1 contract by the state or any other unit of government, or, if home
2 detention or work crew has been ordered by the court, in an approved
3 residence, for a substantial portion of each day with the balance of
4 the day spent in the community. Partial confinement includes work
5 release, home detention, work crew, and a combination of work crew and
6 home detention as defined in this section.

7 ~~((+27+))~~ (29) "Persistent offender" is an offender who:

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

10 (ii) Has, before the commission of the offense under (a) of this
11 subsection, been convicted as an offender on at least two separate
12 occasions, whether in this state or elsewhere, of felonies that under
13 the laws of this state would be considered most serious offenses and
14 would be included in the offender score under RCW 9.94A.360; provided
15 that of the two or more previous convictions, at least one conviction
16 must have occurred before the commission of any of the other most
17 serious offenses for which the offender was previously convicted; or

18 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
19 of a child in the first degree, child molestation in the first degree,
20 rape in the second degree, rape of a child in the second degree, or
21 indecent liberties by forcible compulsion; (B) murder in the first
22 degree, murder in the second degree, homicide by abuse, kidnapping in
23 the first degree, kidnapping in the second degree, assault in the first
24 degree, assault in the second degree, assault of a child in the first
25 degree, or burglary in the first degree, with a finding of sexual
26 motivation; or (C) an attempt to commit any crime listed in this
27 subsection ~~((+27+))~~ (29)(b)(i); and

28 (ii) Has, before the commission of the offense under (b)(i) of this
29 subsection, been convicted as an offender on at least one occasion,
30 whether in this state or elsewhere, of an offense listed in (b)(i) of
31 this subsection. A conviction for rape of a child in the first degree
32 constitutes a conviction under subsection ~~((+27+))~~ (29)(b)(i) only when
33 the offender was sixteen years of age or older when the offender
34 committed the offense. A conviction for rape of a child in the second
35 degree constitutes a conviction under subsection ~~((+27+))~~ (29)(b)(i)
36 only when the offender was eighteen years of age or older when the
37 offender committed the offense.

38 ~~((+28+))~~ (30) "Postrelease supervision" is that portion of an
39 offender's community placement that is not community custody.

1 (~~(29)~~) (31) "Restitution" means the requirement that the offender
2 pay a specific sum of money over a specific period of time to the court
3 as payment of damages. The sum may include both public and private
4 costs. The imposition of a restitution order does not preclude civil
5 redress.

6 (~~(30)~~) (32) "Risk assessment" means the application of an
7 objective instrument supported by research and adopted by the
8 department for the purpose of assessing an offender's risk of
9 reoffense, taking into consideration the nature of the harm done by the
10 offender, place and circumstances of the offender related to risk, the
11 offender's relationship to any victim, and any information provided to
12 the department by victims. The results of a risk assessment shall not
13 be based on unconfirmed or unconfirmable allegations.

14 (33) "Serious traffic offense" means:

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

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

23 (~~(31)~~) (34) "Serious violent offense" is a subcategory of violent
24 offense and means:

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

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

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

36 (~~(33)~~) (36) "Sex offense" means:

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

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

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

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

8 (~~(34)~~) (37) "Sexual motivation" means that one of the purposes
9 for which the defendant committed the crime was for the purpose of his
10 or her sexual gratification.

11 (~~(35)~~) (38) "Total confinement" means confinement inside the
12 physical boundaries of a facility or institution operated or utilized
13 under contract by the state or any other unit of government for twenty-
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 (~~(36)~~) (39) "Transition training" means written and verbal
16 instructions and assistance provided by the department to the offender
17 during the two weeks prior to the offender's successful completion of
18 the work ethic camp program. The transition training shall include
19 instructions in the offender's requirements and obligations during the
20 offender's period of community custody.

21 (~~(37)~~) (40) "Victim" means any person who has sustained
22 emotional, psychological, physical, or financial injury to person or
23 property as a direct result of the crime charged.

24 (~~(38)~~) (41) "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, drive-by shooting, vehicular assault, and vehicular
34 homicide, when proximately caused by the driving of any vehicle by any
35 person while under the influence of intoxicating liquor or any drug as
36 defined by RCW 46.61.502, or by the operation of any vehicle in a
37 reckless manner;

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

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

7 ~~((+39+))~~ (42) "Work crew" means a program of partial confinement
8 consisting of civic improvement tasks for the benefit of the community
9 of not less than thirty-five hours per week that complies with RCW
10 9.94A.135. The civic improvement tasks shall have minimal negative
11 impact on existing private industries or the labor force in the county
12 where the service or labor is performed. The civic improvement tasks
13 shall not affect employment opportunities for people with developmental
14 disabilities contracted through sheltered workshops as defined in RCW
15 82.04.385. Only those offenders sentenced to a facility operated or
16 utilized under contract by a county or the state, or sanctioned under
17 RCW 9.94A.205, are eligible to participate on a work crew. Offenders
18 sentenced for a sex offense as defined in subsection ~~((+33+))~~ (36) of
19 this section are not eligible for the work crew program.

20 ~~((+40+))~~ (43) "Work ethic camp" means an alternative incarceration
21 program designed to reduce recidivism and lower the cost of corrections
22 by requiring offenders to complete a comprehensive array of real-world
23 job and vocational experiences, character-building work ethics
24 training, life management skills development, substance abuse
25 rehabilitation, counseling, literacy training, and basic adult
26 education.

27 ~~((+41+))~~ (44) "Work release" means a program of partial confinement
28 available to offenders who are employed or engaged as a student in a
29 regular course of study at school. Participation in work release shall
30 be conditioned upon the offender attending work or school at regularly
31 defined hours and abiding by the rules of the work release facility.

32 ~~((+42) "Home detention" means a program of partial confinement
33 available to offenders wherein the offender is confined in a private
34 residence subject to electronic surveillance.))~~

35 **Sec. 3.** RCW 9.94A.040 and 1997 c 365 s 2 and 1997 c 338 s 3 are
36 each reenacted and amended to read as follows:

37 (1) A sentencing guidelines commission is established as an agency
38 of state government.

1 (2) The legislature finds that the commission, having accomplished
2 its original statutory directive to implement this chapter, and having
3 expertise in sentencing practice and policies, shall:

4 (a) Evaluate state sentencing policy, to include whether the
5 sentencing ranges and standards are consistent with and further:

6 (i) The purposes of this chapter as defined in RCW 9.94A.010; and

7 (ii) The intent of the legislature to emphasize confinement for the
8 violent offender and alternatives to confinement for the nonviolent
9 offender.

10 The commission shall provide the governor and the legislature with
11 its evaluation and recommendations under this subsection not later than
12 December 1, 1996, and every two years thereafter;

13 (b) Recommend to the legislature revisions or modifications to the
14 standard sentence ranges, state sentencing policy, prosecuting
15 standards, and other standards. If implementation of the revisions or
16 modifications would result in exceeding the capacity of correctional
17 facilities, then the commission shall accompany its recommendation with
18 an additional list of standard sentence ranges which are consistent
19 with correction capacity;

20 (c) Study the existing criminal code and from time to time make
21 recommendations to the legislature for modification;

22 (d)(i) Serve as a clearinghouse and information center for the
23 collection, preparation, analysis, and dissemination of information on
24 state and local adult and juvenile sentencing practices; (ii) develop
25 and maintain a computerized adult and juvenile sentencing information
26 system by individual superior court judge consisting of offender,
27 offense, history, and sentence information entered from judgment and
28 sentence forms for all adult felons; and (iii) conduct ongoing research
29 regarding adult and juvenile sentencing guidelines, use of total
30 confinement and alternatives to total confinement, plea bargaining, and
31 other matters relating to the improvement of the adult criminal justice
32 system and the juvenile justice system;

33 (e) Assume the powers and duties of the juvenile disposition
34 standards commission after June 30, 1996;

35 (f) Evaluate the effectiveness of existing disposition standards
36 and related statutes in implementing policies set forth in RCW
37 13.40.010 generally, specifically review the guidelines relating to the
38 confinement of minor and first offenders as well as the use of
39 diversion, and review the application of current and proposed juvenile

1 sentencing standards and guidelines for potential adverse impacts on
2 the sentencing outcomes of racial and ethnic minority youth;

3 (g) Solicit the comments and suggestions of the juvenile justice
4 community concerning disposition standards, and make recommendations to
5 the legislature regarding revisions or modifications of the standards.
6 The evaluations shall be submitted to the legislature on December 1 of
7 each odd-numbered year. The department of social and health services
8 shall provide the commission with available data concerning the
9 implementation of the disposition standards and related statutes and
10 their effect on the performance of the department's responsibilities
11 relating to juvenile offenders, and with recommendations for
12 modification of the disposition standards. The office of the
13 administrator for the courts shall provide the commission with
14 available data on diversion and dispositions of juvenile offenders
15 under chapter 13.40 RCW; and

16 (h) Not later than December 1, 1997, and at least every two years
17 thereafter, based on available information, report to the governor and
18 the legislature on:

19 (i) Racial disproportionality in juvenile and adult sentencing;

20 (ii) The capacity of state and local juvenile and adult facilities
21 and resources; and

22 (iii) Recidivism information on adult and juvenile offenders.

23 (3) Each of the commission's recommended standard sentence ranges
24 shall include one or more of the following: Total confinement, partial
25 confinement, community supervision, community service, and a fine.

26 (4) The standard sentence ranges of total and partial confinement
27 under this chapter are subject to the following limitations:

28 (a) If the maximum term in the range is one year or less, the
29 minimum term in the range shall be no less than one-third of the
30 maximum term in the range, except that if the maximum term in the range
31 is ninety days or less, the minimum term may be less than one-third of
32 the maximum;

33 (b) If the maximum term in the range is greater than one year, the
34 minimum term in the range shall be no less than seventy-five percent of
35 the maximum term in the range, except that for murder in the second
36 degree in seriousness category XIII under RCW 9.94A.310, the minimum
37 term in the range shall be no less than fifty percent of the maximum
38 term in the range; and

1 (c) The maximum term of confinement in a range may not exceed the
2 statutory maximum for the crime as provided in RCW 9A.20.021.

3 (5)(a) Not later than December 31, 1999, the commission shall
4 propose to the legislature the initial community custody ranges to be
5 included in sentences under RCW 9.94A.120(11) for crimes committed on
6 or after July 1, 2000. Not later than December 31 of each year, the
7 commission may propose modifications to the ranges. The ranges shall
8 be based on the principles in RCW 9.94A.010, and shall take into
9 account the funds available to the department for community custody.
10 The minimum term in each range shall not be less than one-half of the
11 maximum term.

12 (b) The legislature may, by enactment of a legislative bill, adopt
13 or modify the community custody ranges proposed by the commission. If
14 the legislature fails to adopt or modify the initial ranges in its next
15 regular session after they are proposed, the proposed ranges shall take
16 effect without legislative approval for crimes committed on or after
17 July 1, 2000.

18 When the sentencing guidelines commission proposes modifications to
19 ranges pursuant to this subsection, the legislature may, by enactment
20 of a bill, adopt or modify the ranges proposed by the commission for
21 crimes committed on or after July 1 of the year after they were
22 proposed. Unless the legislature adopts or modifies the commission's
23 proposal in its next regular session, the proposed ranges shall not
24 take effect.

25 (6) The commission shall exercise its duties under this section in
26 conformity with chapter 34.05 RCW.

27 **Sec. 4.** RCW 9.94A.110 and 1998 c 260 s 2 are each amended to read
28 as follows:

29 Before imposing a sentence upon a defendant, the court shall
30 conduct a sentencing hearing. The sentencing hearing shall be held
31 within forty court days following conviction. Upon the motion of
32 either party for good cause shown, or on its own motion, the court may
33 extend the time period for conducting the sentencing hearing.

34 Except in cases where the defendant shall be sentenced to a term of
35 total confinement for life without the possibility of release or, when
36 authorized by RCW 10.95.030 for the crime of aggravated murder in the
37 first degree, sentenced to death, the court may order the department to

1 complete a risk assessment report. If available before sentencing, the
2 report shall be provided to the court.

3 The court shall, at the time of plea or conviction, order the
4 department to complete a presentence report before imposing a sentence
5 upon a defendant who has been convicted of a felony sexual offense.
6 The department of corrections shall give priority to presentence
7 investigations for sexual offenders. If the court determines that the
8 defendant may be a mentally ill person as defined in RCW 71.24.025,
9 although the defendant has not established that at the time of the
10 crime he or she lacked the capacity to commit the crime, was
11 incompetent to commit the crime, or was insane at the time of the
12 crime, the court shall order the department to complete a presentence
13 report before imposing a sentence.

14 The court shall consider the risk assessment report and presentence
15 reports, if any, including any victim impact statement and criminal
16 history, and allow arguments from the prosecutor, the defense counsel,
17 the offender, the victim, the survivor of the victim, or a
18 representative of the victim or survivor, and an investigative law
19 enforcement officer as to the sentence to be imposed.

20 If the court is satisfied by a preponderance of the evidence that
21 the defendant has a criminal history, the court shall specify the
22 convictions it has found to exist. All of this information shall be
23 part of the record. Copies of all risk assessment reports and
24 presentence reports presented to the sentencing court and all written
25 findings of facts and conclusions of law as to sentencing entered by
26 the court shall be sent to the department by the clerk of the court at
27 the conclusion of the sentencing and shall accompany the offender if
28 the offender is committed to the custody of the department. Court
29 clerks shall provide, without charge, certified copies of documents
30 relating to criminal convictions requested by prosecuting attorneys.

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

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

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

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

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

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

35 (5) In sentencing a first-time offender the court may waive the
36 imposition of a sentence within the sentence range and impose a
37 sentence which may include up to ninety days of confinement in a
38 facility operated or utilized under contract by the county and a
39 requirement that the offender refrain from committing new offenses.

1 The sentence may also include up to (~~two years~~) one year of community
2 (~~supervision, which,~~) custody. If treatment has been ordered, the
3 period of community custody may include up to the period of treatment,
4 but shall not exceed two years. In addition to crime-related
5 prohibitions, conditions may include requirements that the offender
6 perform any one or more of the following:

- 7 (a) Devote time to a specific employment or occupation;
- 8 (b) Undergo available outpatient treatment for up to two years, or
9 inpatient treatment not to exceed the standard range of confinement for
10 that offense;
- 11 (c) Pursue a prescribed, secular course of study or vocational
12 training;
- 13 (d) Remain within prescribed geographical boundaries and notify
14 (~~the court or~~) the community corrections officer prior to any change
15 in the offender's address or employment;
- 16 (e) Report as directed to (~~the court and~~) a community corrections
17 officer; or
- 18 (f) Pay all court-ordered legal financial obligations as provided
19 in RCW 9.94A.030 and/or perform community service work.

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

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

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

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

35 (b) If the midpoint of the standard range is greater than one year
36 and the sentencing judge determines that the offender is eligible for
37 this option and that the offender and the community will benefit from
38 the use of the special drug offender sentencing alternative, the judge
39 may waive imposition of a sentence within the standard range and impose

1 a sentence that must include a period of total confinement in a state
2 facility for one-half of the midpoint of the standard range. During
3 incarceration in the state facility, offenders sentenced under this
4 subsection shall undergo a comprehensive substance abuse assessment and
5 receive, within available resources, treatment services appropriate for
6 the offender. The treatment services shall be designed by the division
7 of alcohol and substance abuse of the department of social and health
8 services, in cooperation with the department of corrections. If the
9 midpoint of the standard range is twenty-four months or less, no more
10 than three months of the sentence may be served in a work release
11 status. The court shall also impose one year of concurrent community
12 custody and community supervision that must include appropriate
13 outpatient substance abuse treatment, crime-related prohibitions
14 including a condition not to use illegal controlled substances, and a
15 requirement to submit to urinalysis or other testing to monitor that
16 status. The court may require that the monitoring for controlled
17 substances be conducted by the department or by a treatment
18 alternatives to street crime program or a comparable court or agency-
19 referred program. The offender may be required to pay thirty dollars
20 per month while on community custody to offset the cost of monitoring.
21 In addition, the court shall impose three or more of the following
22 conditions:

- 23 (i) Devote time to a specific employment or training;
 - 24 (ii) Remain within prescribed geographical boundaries and notify
25 the court or the community corrections officer before any change in the
26 offender's address or employment;
 - 27 (iii) Report as directed to a community corrections officer;
 - 28 (iv) Pay all court-ordered legal financial obligations;
 - 29 (v) Perform community service work;
 - 30 (vi) Stay out of areas designated by the sentencing judge.
- 31 (c) If the offender violates any of the sentence conditions in (b)
32 of this subsection, the department shall impose sanctions
33 administratively, with notice to the prosecuting attorney and the
34 sentencing court. Upon motion of the court or the prosecuting
35 attorney, a violation hearing shall be held by the court. If the court
36 finds that conditions have been willfully violated, the court may
37 impose confinement consisting of up to the remaining one-half of the
38 midpoint of the standard range. All total confinement served during
39 the period of community custody shall be credited to the offender,

1 regardless of whether the total confinement is served as a result of
2 the original sentence, as a result of a sanction imposed by the
3 department, or as a result of a violation found by the court. The term
4 of community supervision shall be tolled by any period of time served
5 in total confinement as a result of a violation found by the court.

6 (d) The department shall determine the rules for calculating the
7 value of a day fine based on the offender's income and reasonable
8 obligations which the offender has for the support of the offender and
9 any dependents. These rules shall be developed in consultation with
10 the administrator for the courts, the office of financial management,
11 and the commission.

12 (7) If a sentence range has not been established for the
13 defendant's crime, the court shall impose a determinate sentence which
14 may include not more than one year of confinement(~~(7)~~); community
15 service work; until July 1, 2000, a term of community supervision not
16 to exceed one year(~~(7)~~) and on and after July 1, 2000, a term of
17 community custody not to exceed one year, subject to conditions and
18 sanctions as authorized in subsection (11)(b) and (c) of this section;
19 and/or other legal financial obligations. The court may impose a
20 sentence which provides more than one year of confinement if the court
21 finds, considering the purpose of this chapter, that there are
22 substantial and compelling reasons justifying an exceptional sentence.

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

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

36 The examiner shall assess and report regarding the defendant's
37 amenability to treatment and relative risk to the community. A
38 proposed treatment plan shall be provided and shall include, at a
39 minimum:

- 1 (A) Frequency and type of contact between offender and therapist;
- 2 (B) Specific issues to be addressed in the treatment and
- 3 description of planned treatment modalities;
- 4 (C) Monitoring plans, including any requirements regarding living
- 5 conditions, lifestyle requirements, and monitoring by family members
- 6 and others;
- 7 (D) Anticipated length of treatment; and
- 8 (E) Recommended crime-related prohibitions.

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

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

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

29 (B) The court shall order treatment for any period up to three
30 years in duration. The court in its discretion shall order outpatient
31 sex offender treatment or inpatient sex offender treatment, if
32 available. A community mental health center may not be used for such
33 treatment unless it has an appropriate program designed for sex
34 offender treatment. The offender shall not change sex offender
35 treatment providers or treatment conditions without first notifying the
36 prosecutor, the community corrections officer, and the court, and shall
37 not change providers without court approval after a hearing if the
38 prosecutor or community corrections officer object to the change. In
39 addition, as conditions of the suspended sentence, the court may impose

1 other sentence conditions including up to six months of confinement,
2 not to exceed the sentence range of confinement for that offense,
3 crime-related prohibitions, and requirements that the offender perform
4 any one or more of the following:

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

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

9 (III) Report as directed to the court and a community corrections
10 officer;

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

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

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

19 (iii) The sex offender therapist shall submit quarterly reports on
20 the defendant's progress in treatment to the court and the parties.
21 The report shall reference the treatment plan and include at a minimum
22 the following: Dates of attendance, defendant's compliance with
23 requirements, treatment activities, the defendant's relative progress
24 in treatment, and any other material as specified by the court at
25 sentencing.

26 (iv) At the time of sentencing, the court shall set a treatment
27 termination hearing for three months prior to the anticipated date for
28 completion of treatment. Prior to the treatment termination hearing,
29 the treatment professional and community corrections officer shall
30 submit written reports to the court and parties regarding the
31 defendant's compliance with treatment and monitoring requirements, and
32 recommendations regarding termination from treatment, including
33 proposed community supervision conditions. Either party may request
34 and the court may order another evaluation regarding the advisability
35 of termination from treatment. The defendant shall pay the cost of any
36 additional evaluation ordered unless the court finds the defendant to
37 be indigent in which case the state shall pay the cost. At the
38 treatment termination hearing the court may: (A) Modify conditions of

1 community custody, and either (B) terminate treatment, or (C) extend
2 treatment for up to the remaining period of community custody.

3 (v) If a violation of conditions occurs during community custody,
4 the department shall either impose sanctions as provided for in RCW
5 9.94A.205(2)(a) or refer the violation to the court and recommend
6 revocation of the suspended sentence as provided for in (a)(vi) of this
7 subsection.

8 (vi) The court may revoke the suspended sentence at any time during
9 the period of community custody and order execution of the sentence if:
10 (A) The defendant violates the conditions of the suspended sentence, or
11 (B) the court finds that the defendant is failing to make satisfactory
12 progress in treatment. All confinement time served during the period
13 of community custody shall be credited to the offender if the suspended
14 sentence is revoked.

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

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

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

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

36 (b) When an offender commits any felony sex offense on or after
37 July 1, 1987, and is sentenced to a term of confinement of more than
38 one year but less than six years, the sentencing court may, on its own
39 motion or on the motion of the offender or the state, request the

1 department of corrections to evaluate whether the offender is amenable
2 to treatment and the department may place the offender in a treatment
3 program within a correctional facility operated by the department.

4 Except for an offender who has been convicted of a violation of RCW
5 9A.44.040 or 9A.44.050, if the offender completes the treatment program
6 before the expiration of his or her term of confinement, the department
7 of corrections may request the court to convert the balance of
8 confinement to community supervision and to place conditions on the
9 offender including crime-related prohibitions and requirements that the
10 offender perform any one or more of the following:

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

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

15 (iii) Report as directed to the court and a community corrections
16 officer;

17 (iv) Undergo available outpatient treatment.

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

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

26 (c) Offenders convicted and sentenced for a sex offense committed
27 prior to July 1, 1987, may, subject to available funds, request an
28 evaluation by the department of corrections to determine whether they
29 are amenable to treatment. If the offender is determined to be
30 amenable to treatment, the offender may request placement in a
31 treatment program within a correctional facility operated by the
32 department. Placement in such treatment program is subject to
33 available funds.

34 (d) The department shall develop and monitor transition and relapse
35 prevention strategies, including risk assessment and release plans, to
36 reduce risk to the community after sex offenders' terms of confinement
37 in the custody of the department.

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

1 offense categorized as a sex offense or a serious violent offense
2 committed after July 1, 1988, but before July 1, 1990, assault in the
3 second degree, assault of a child in the second degree, any crime
4 against a person where it is determined in accordance with RCW
5 9.94A.125 that the defendant or an accomplice was armed with a deadly
6 weapon at the time of commission, or any felony offense under chapter
7 69.50 or 69.52 RCW not sentenced under subsection (6) of this section,
8 committed on or after July 1, 1988, but before the effective date of
9 this section, the court shall in addition to the other terms of the
10 sentence, sentence the offender to a one-year term of community
11 placement beginning either upon completion of the term of confinement
12 or at such time as the offender is transferred to community custody in
13 lieu of earned ((early)) release in accordance with RCW 9.94A.150 (1)
14 and (2). When the court sentences an offender under this subsection to
15 the statutory maximum period of confinement then the community
16 placement portion of the sentence shall consist entirely of such
17 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.

21 (ii) Except for persons sentenced under (b) of this subsection or
22 subsection (10)(a) of this section, when a court sentences a person to
23 a term of total confinement to the custody of the department of
24 corrections for a violent offense, any crime against a person under RCW
25 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52 RCW
26 not sentenced under subsection (6) of this section, committed on or
27 after the effective date of this section but before July 1, 2000, the
28 court shall in addition to the other terms of the sentence, sentence
29 the offender to a one-year term of community placement beginning either
30 upon completion of the term of confinement or at such time as the
31 offender is transferred to community custody in lieu of earned release
32 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
33 the offender under this subsection (9)(a)(ii) to the statutory maximum
34 period of confinement, then the community placement portion of the
35 sentence shall consist entirely of such community custody to which the
36 offender may become eligible, in accordance with RCW 9.94A.150 (1) and
37 (2). Any period of community custody actually served shall be credited
38 against the community placement portion of the sentence.

1 (b) When a court sentences a person to a term of total confinement
2 to the custody of the department of corrections for an offense
3 categorized as a sex offense committed on or after July 1, 1990, but
4 before June 6, 1996, or a serious violent offense, vehicular homicide,
5 or vehicular assault, committed on or after July 1, 1990, but before
6 July 1, 2000, the court shall in addition to other terms of the
7 sentence, sentence the offender to community placement for two years or
8 up to the period of earned ((early)) release awarded pursuant to RCW
9 9.94A.150 (1) and (2), whichever is longer. The community placement
10 shall begin either upon completion of the term of confinement or at
11 such time as the offender is transferred to community custody in lieu
12 of earned ((early)) release in accordance with RCW 9.94A.150 (1) and
13 (2). When the court sentences an offender under this subsection to the
14 statutory maximum period of confinement then the community placement
15 portion of the sentence shall consist entirely of the community custody
16 to which the offender may become eligible, in accordance with RCW
17 9.94A.150 (1) and (2). Any period of community custody actually served
18 shall be credited against the community placement portion of the
19 sentence. Unless a condition is waived by the court, the terms of
20 community placement for offenders sentenced pursuant to this section
21 shall include the following conditions:

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

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

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

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

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

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

36 (c) As a part of any sentence imposed under (a) or (b) of this
37 subsection, the court may also order any of the following special
38 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, but before July 1, 2000, the court
22 shall, in addition to other terms of the sentence, sentence the
23 offender to community custody for three years or up to the period of
24 earned ((early)) release awarded pursuant to RCW 9.94A.150 (1) and (2),
25 whichever is longer. The community custody shall begin either upon
26 completion of the term of confinement or at such time as the offender
27 is transferred to community custody in lieu of earned ((early)) release
28 in accordance with RCW 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)) (15) of this
36 section.

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

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

9 (11)(a) When a court sentences a person to the custody of the
10 department of corrections for a sex offense, a violent offense, any
11 crime against a person under RCW 9.94A.440(2), or a felony offense
12 under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of
13 this section, committed on or after July 1, 2000, the court shall in
14 addition to the other terms of the sentence, sentence the offender to
15 community custody for the community custody range or up to the period
16 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),
17 whichever is longer. The community custody shall begin either upon
18 completion of the term of confinement or at such time as the offender
19 is transferred to community custody in lieu of earned release in
20 accordance with RCW 9.94A.150 (1) and (2).

21 (b) Unless a condition is waived by the court, the conditions of
22 community custody shall include those provided for in subsection
23 (9)(b)(i) through (vi) of this section. The conditions may also
24 include those provided for in subsection (9)(c)(i) through (vi) of this
25 section. The court may also order the offender to participate in
26 rehabilitative programs or otherwise perform affirmative conduct
27 reasonably related to the circumstances of the offense, the offender's
28 risk of reoffending, or the safety of the community, and the department
29 shall enforce such conditions pursuant to (f) of this subsection. As
30 part of any sentence that includes a term of community custody imposed
31 under this subsection, the court shall also require the offender to
32 comply with any conditions imposed by the department of corrections
33 under subsection (15) of this section. The department shall assess the
34 offender's risk of reoffense and may establish and modify additional
35 conditions of the offender's community custody based upon the risk to
36 community safety. The department may not impose conditions that are
37 contrary to those ordered by the court and may not contravene or
38 decrease court imposed conditions. The department shall notify the
39 offender in writing of any such conditions or modifications. In

1 setting, modifying, and enforcing conditions of community custody, the
2 department shall be deemed to be performing a quasi-judicial function.

3 (c) If an offender violates conditions imposed by the court or the
4 department pursuant to this subsection during community custody, the
5 department may transfer the offender to a more restrictive confinement
6 status and impose other available sanctions as provided in RCW
7 9.94A.205 and 9.94A.207.

8 (d) Except for terms of community custody under subsection (8) of
9 this section, the department shall discharge the offender from
10 community custody on a date determined by the department, which the
11 department may modify, based on risk and performance of the offender,
12 within the range or at the end of the period of earned release,
13 whichever is later.

14 (e) At any time prior to the completion or termination of a sex
15 offender's term of community custody, if the court finds that public
16 safety would be enhanced, the court may impose and enforce an order
17 extending any or all of the conditions imposed pursuant to this section
18 for a period up to the maximum allowable sentence for the crime as it
19 is classified in chapter 9A.20 RCW, regardless of the expiration of the
20 offender's term of community custody. If a violation of a condition
21 extended under this subsection occurs after the expiration of the
22 offender's term of community custody, it shall be deemed a violation of
23 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
24 contempt of court as provided for in RCW 7.21.040. If the court
25 extends a condition beyond the expiration of the term of community
26 custody, the department is not responsible for supervision of the
27 offender's compliance with the condition.

28 (f) Within the funds available for community custody, the
29 department shall determine conditions and duration of community custody
30 on the basis of risk to community safety, and shall supervise offenders
31 during community custody on the basis of risk to community safety and
32 conditions imposed by the court. The secretary shall adopt rules to
33 implement the provisions of this subsection (11)(f).

34 (g) By the close of the next business day after receiving notice of
35 a condition imposed or modified by the department, an offender may
36 request an administrative review under rules adopted by the department.
37 The condition shall remain in effect unless the reviewing officer finds
38 that it is not reasonably related to any of the following: (i) The

1 crime of conviction; (ii) the offender's risk of reoffending; or (iii)
2 the safety of the community.

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

9 (~~(12)~~) (13) If a sentence imposed includes payment of a legal
10 financial obligation, the sentence shall specify the total amount of
11 the legal financial obligation owed, and shall require the offender to
12 pay a specified monthly sum toward that legal financial obligation.
13 Restitution to victims shall be paid prior to any other payments of
14 monetary obligations. Any legal financial obligation that is imposed
15 by the court may be collected by the department, which shall deliver
16 the amount paid to the county clerk for credit. The offender's
17 compliance with payment of legal financial obligations shall be
18 supervised by the department for ten years following the entry of the
19 judgment and sentence or ten years following the offender's release
20 from total confinement. All monetary payments ordered shall be paid no
21 later than ten years after the last date of release from confinement
22 pursuant to a felony conviction or the date the sentence was entered
23 unless the superior court extends the criminal judgment an additional
24 ten years. If the legal financial obligations including crime victims'
25 assessments are not paid during the initial ten-year period, the
26 superior court may extend jurisdiction under the criminal judgment an
27 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
28 9.94A.145. If jurisdiction under the criminal judgment is extended,
29 the department is not responsible for supervision of the offender
30 during the subsequent period. Independent of the department, the party
31 or entity to whom the legal financial obligation is owed shall have the
32 authority to utilize any other remedies available to the party or
33 entity to collect the legal financial obligation. Nothing in this
34 section makes the department, the state, or any of its employees,
35 agents, or other persons acting on their behalf liable under any
36 circumstances for the payment of these legal financial obligations. If
37 an order includes restitution as one of the monetary assessments, the
38 county clerk shall make disbursements to victims named in the order.

1 (~~(13)~~) (14) Except as provided under RCW 9.94A.140(1) and
2 9.94A.142(1), a court may not impose a sentence providing for a term of
3 confinement or community supervision (~~(or)~~), community placement, or
4 community custody which exceeds the statutory maximum for the crime as
5 provided in chapter 9A.20 RCW.

6 (~~(14)~~) (15) All offenders sentenced to terms involving community
7 supervision, community service, community placement, community custody,
8 or legal financial obligation shall be under the supervision of the
9 department of corrections and shall follow explicitly the instructions
10 and conditions of the department of corrections. The department may
11 require an offender to perform affirmative acts it deems appropriate to
12 monitor compliance with the conditions of the sentence imposed.

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

18 (b) For offenders sentenced to terms involving community custody
19 for crimes committed on or after June 6, 1996, the department may
20 include, in addition to the instructions in (a) of this subsection, any
21 appropriate conditions of supervision, including but not limited to,
22 prohibiting the offender from having contact with any other specified
23 individuals or specific class of individuals. For offenders sentenced
24 to terms of community custody for crimes committed on or after July 1,
25 2000, the department may additionally require the offender to
26 participate in rehabilitative programs or otherwise perform affirmative
27 conduct, and to obey all laws.

28 The conditions authorized under this subsection (~~(14)~~) (15)(b)
29 may be imposed by the department prior to or during an offender's
30 community custody term. If a violation of conditions imposed by the
31 court or the department pursuant to subsection (10) of this section
32 occurs during community custody, it shall be deemed a violation of
33 community placement for the purposes of RCW 9.94A.207 and shall
34 authorize the department to transfer an offender to a more restrictive
35 confinement status as provided in RCW 9.94A.205. At any time prior to
36 the completion of (~~a sex~~) an offender's term of community custody,
37 the department may recommend to the court that any or all of the
38 conditions imposed by the court or the department pursuant to
39 subsection (10) or (11) of this section be continued beyond the

1 expiration of the offender's term of community custody as authorized in
2 subsection (10)(c) or (11)(e) of this section.

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

8 ~~((15))~~ (16) All offenders sentenced to terms involving community
9 supervision, community service, community custody, or community
10 placement under the supervision of the department of corrections shall
11 not own, use, or possess firearms or ammunition. Offenders who own,
12 use, or are found to be in actual or constructive possession of
13 firearms or ammunition shall be subject to the appropriate violation
14 process and sanctions. "Constructive possession" as used in this
15 subsection means the power and intent to control the firearm or
16 ammunition. "Firearm" as used in this subsection means a weapon or
17 device from which a projectile may be fired by an explosive such as
18 gunpowder.

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

23 ~~((17))~~ (18) A departure from the standards in RCW 9.94A.400 (1)
24 and (2) governing whether sentences are to be served consecutively or
25 concurrently is an exceptional sentence subject to the limitations in
26 subsections (2) and (3) of this section, and may be appealed by the
27 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

28 ~~((18))~~ (19) The court shall order restitution whenever the
29 offender is convicted of a felony that results in injury to any person
30 or damage to or loss of property, whether the offender is sentenced to
31 confinement or placed under community supervision, unless extraordinary
32 circumstances exist that make restitution inappropriate in the court's
33 judgment. The court shall set forth the extraordinary circumstances in
34 the record if it does not order restitution.

35 ~~((19))~~ (20) As a part of any sentence, the court may impose and
36 enforce an order that relates directly to the circumstances of the
37 crime for which the offender has been convicted, prohibiting the
38 offender from having any contact with other specified individuals or a
39 specific class of individuals for a period not to exceed the maximum

1 allowable sentence for the crime, regardless of the expiration of the
2 offender's term of community supervision or community placement.

3 ~~((20))~~ (21) The court may order an offender whose sentence
4 includes community placement or community supervision to undergo a
5 mental status evaluation and to participate in available outpatient
6 mental health treatment, if the court finds that reasonable grounds
7 exist to believe that the offender is a mentally ill person as defined
8 in RCW 71.24.025, and that this condition is likely to have influenced
9 the offense. An order requiring mental status evaluation or treatment
10 must be based on a presentence report and, if applicable, mental status
11 evaluations that have been filed with the court to determine the
12 offender's competency or eligibility for a defense of insanity. The
13 court may order additional evaluations at a later date if deemed
14 appropriate.

15 ~~((21))~~ (22) In any sentence of partial confinement, the court may
16 require the defendant to serve the partial confinement in work release,
17 in a program of home detention, on work crew, or in a combined program
18 of work crew and home detention.

19 ~~((22))~~ (23) All court-ordered legal financial obligations
20 collected by the department and remitted to the county clerk shall be
21 credited and paid where restitution is ordered. Restitution shall be
22 paid prior to any other payments of monetary obligations.

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

- 31 (i) Rape in the first degree;
- 32 (ii) Rape in the second degree;
- 33 (iii) Rape of a child in the first degree; and
- 34 (iv) Child molestation in the first degree, if it is the person's
35 second conviction for child molestation in the first degree.

36 (b)(i) At least thirty days before the department sets a release
37 date for an offender who has had a treatment regimen imposed as a
38 condition of release under (a) of this subsection, the offender must be
39 brought back before the court for a hearing, including an examination

1 by medical experts, for the purpose of determining whether to impose
2 the regimen. At the hearing, the offender has the right to all due
3 process rights including counsel, cross-examination, testimony,
4 experts, and the provision of counsel if the offender is indigent, but
5 not the presence of a jury.

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

12 (A) Whether the offender has a mental abnormality as defined in RCW
13 71.09.020;

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

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

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

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

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

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

1 (g) An offender may at any time seek early termination of a
2 treatment regimen imposed under this subsection, but an early
3 termination may not be granted unless, by clear and convincing
4 evidence, the offender proves that the offender no longer has a mental
5 abnormality, as defined in RCW 71.09.020, and that a continued
6 treatment regimen is not necessary to prevent the offender's commission
7 of a predatory act, as defined in RCW 71.09.020.

8 (h) The offender may at any time agree to surgical alternatives to
9 medroxyprogesterone acetate treatment if the offender voluntarily,
10 knowingly, and intelligently petitions the court in writing.

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

13 (25)(a) Sex offender examinations and treatment ordered as a
14 special condition of community placement or community custody under
15 this section shall be conducted only by sex offender treatment
16 providers certified by the department of health under chapter 18.155
17 RCW unless the court finds that: (i) The offender has already moved to
18 another state or plans to move to another state for reasons other than
19 circumventing the certification requirements; (ii) no certified
20 providers are available for treatment within a reasonable geographic
21 distance of the offender's home, as determined in rules adopted by the
22 secretary; or (iii) the evaluation and treatment plan comply with the
23 rules adopted by the department of health. A treatment provider
24 selected by an offender who is not certified by the department of
25 health shall consult with a certified provider during the offender's
26 period of treatment to ensure compliance with the rules adopted by the
27 department of health. The frequency and content of the consultation
28 shall be based on the recommendation of the certified provider.

29 (b) A sex offender's failure to participate in treatment required
30 as a condition of community placement or community custody is a
31 violation that will not be excused on the basis that no treatment
32 provider was located within a reasonable geographic distance of the
33 offender's home.

34 **Sec. 6.** RCW 9.94A.145 and 1997 c 121 s 5 and 1997 c 52 s 3 are
35 each reenacted and amended to read as follows:

36 (1) Whenever a person is convicted of a felony, the court may order
37 the payment of a legal financial obligation as part of the sentence.
38 The court must on either the judgment and sentence or on a subsequent

1 order to pay, designate the total amount of a legal financial
2 obligation and segregate this amount among the separate assessments
3 made for restitution, costs, fines, and other assessments required by
4 law. On the same order, the court is also to set a sum that the
5 offender is required to pay on a monthly basis towards satisfying the
6 legal financial obligation. If the court fails to set the offender
7 monthly payment amount, the department shall set the amount. Upon
8 receipt of an offender's monthly payment, after restitution is
9 satisfied, the county clerk shall distribute the payment proportionally
10 among all other fines, costs, and assessments imposed, unless otherwise
11 ordered by the court.

12 (2) If the court determines that the offender, at the time of
13 sentencing, has the means to pay for the cost of incarceration, the
14 court may require the offender to pay for the cost of incarceration at
15 a rate of fifty dollars per day of incarceration. Payment of other
16 court-ordered financial obligations, including all legal financial
17 obligations and costs of supervision shall take precedence over the
18 payment of the cost of incarceration ordered by the court. All funds
19 recovered from offenders for the cost of incarceration in the county
20 jail shall be remitted to the county and the costs of incarceration in
21 a prison shall be remitted to the department of corrections.

22 (3) The court may add to the judgment and sentence or subsequent
23 order to pay a statement that a notice of payroll deduction is to be
24 immediately issued. If the court chooses not to order the immediate
25 issuance of a notice of payroll deduction at sentencing, the court
26 shall add to the judgment and sentence or subsequent order to pay a
27 statement that a notice of payroll deduction may be issued or other
28 income-withholding action may be taken, without further notice to the
29 offender if a monthly court-ordered legal financial obligation payment
30 is not paid when due, and an amount equal to or greater than the amount
31 payable for one month is owed.

32 If a judgment and sentence or subsequent order to pay does not
33 include the statement that a notice of payroll deduction may be issued
34 or other income-withholding action may be taken if a monthly legal
35 financial obligation payment is past due, the department may serve a
36 notice on the offender stating such requirements and authorizations.
37 Service shall be by personal service or any form of mail requiring a
38 return receipt.

1 (4) All legal financial obligations that are ordered as a result of
2 a conviction for a felony, may also be enforced in the same manner as
3 a judgment in a civil action by the party or entity to whom the legal
4 financial obligation is owed. Restitution collected through civil
5 enforcement must be paid through the registry of the court and must be
6 distributed proportionately according to each victim's loss when there
7 is more than one victim. The judgment and sentence shall identify the
8 party or entity to whom restitution is owed so that the state, party,
9 or entity may enforce the judgment. If restitution is ordered pursuant
10 to RCW 9.94A.140(3) or 9.94A.142(3) to a victim of rape of a child and
11 the victim's child born from the rape, the Washington state child
12 support registry shall be identified as the party to whom payments must
13 be made. Restitution obligations arising from the rape of a child in
14 the first, second, or third degree that result in the pregnancy of the
15 victim may be enforced for the time periods provided under RCW
16 9.94A.140(3) and 9.94A.142(3). All other legal financial obligations
17 may be enforced at any time during the ten-year period following the
18 offender's release from total confinement or within ten years of entry
19 of the judgment and sentence, whichever period is longer. Prior to the
20 expiration of the initial ten-year period, the superior court may
21 extend the criminal judgment an additional ten years for payment of
22 legal financial obligations including crime victims' assessments. If
23 jurisdiction under the criminal judgment is extended, the department is
24 not responsible for supervision of the offender during the subsequent
25 period. Independent of the department, the party or entity to whom the
26 legal financial obligation is owed shall have the authority to utilize
27 any other remedies available to the party or entity to collect the
28 legal financial obligation.

29 (5) In order to assist the court in setting a monthly sum that the
30 offender must pay during the period of supervision, the offender is
31 required to report to the department for purposes of preparing a
32 recommendation to the court. When reporting, the offender is required,
33 under oath, to truthfully and honestly respond to all questions
34 concerning present, past, and future earning capabilities and the
35 location and nature of all property or financial assets. The offender
36 is further required to bring any and all documents as requested by the
37 department.

38 (6) After completing the investigation, the department shall make
39 a report to the court on the amount of the monthly payment that the

1 offender should be required to make towards a satisfied legal financial
2 obligation.

3 (7) During the period of supervision, the department may make a
4 recommendation to the court that the offender's monthly payment
5 schedule be modified so as to reflect a change in financial
6 circumstances. If the department sets the monthly payment amount, the
7 department may modify the monthly payment amount without the matter
8 being returned to the court. Also, during the period of supervision,
9 the offender may be required at the request of the department to report
10 to the department for the purposes of reviewing the appropriateness of
11 the collection schedule for the legal financial obligation. During
12 this reporting, the offender is required under oath to truthfully and
13 honestly respond to all questions concerning earning capabilities and
14 the location and nature of all property or financial assets. Also, the
15 offender is required to bring any and all documents as requested by the
16 department in order to prepare the collection schedule.

17 (8) After the judgment and sentence or payment order is entered,
18 the department shall for any period of supervision be authorized to
19 collect the legal financial obligation from the offender. Any amount
20 collected by the department shall be remitted daily to the county clerk
21 for the purposes of disbursements. The department is authorized to
22 accept credit cards as payment for a legal financial obligation, and
23 any costs incurred related to accepting credit card payments shall be
24 the responsibility of the offender.

25 (9) The department or any obligee of the legal financial obligation
26 may seek a mandatory wage assignment for the purposes of obtaining
27 satisfaction for the legal financial obligation pursuant to RCW
28 9.94A.2001.

29 (10) The requirement that the offender pay a monthly sum towards a
30 legal financial obligation constitutes a condition or requirement of a
31 sentence and the offender is subject to the penalties as provided in
32 RCW 9.94A.200 for noncompliance.

33 (11) The county clerk shall provide the department with
34 individualized monthly billings for each offender with an unsatisfied
35 legal financial obligation and shall provide the department with notice
36 of payments by such offenders no less frequently than weekly.

37 (12) The department may arrange for the collection of unpaid legal
38 financial obligations through the county clerk. The costs for
39 collection services shall be paid by the offender.

1 **Sec. 7.** RCW 9.94A.170 and 1993 c 31 s 2 are each amended to read
2 as follows:

3 (1) A term of confinement(~~(, including community custody,)~~) ordered
4 in a sentence pursuant to this chapter shall be tolled by any period of
5 time during which the offender has absented ((him)) himself or herself
6 from confinement without the prior approval of the entity in whose
7 custody the offender has been placed. A term of partial confinement
8 shall be tolled during any period of time spent in total confinement
9 pursuant to a new conviction or pursuant to sanctions for violation of
10 sentence conditions on a separate felony conviction.

11 (2) A term of ((~~supervision, including postrelease supervision~~))
12 community custody ordered in a sentence pursuant to this chapter shall
13 be tolled by any period of time during which the offender has absented
14 himself or herself from supervision without prior approval of the
15 entity under whose ((~~supervision~~)) community custody the offender has
16 been placed.

17 (3) Any period of ((~~supervision~~)) community custody shall be tolled
18 during any period of time the offender is in confinement for any
19 reason. However, if an offender is detained pursuant to RCW 9.94A.207
20 or 9.94A.195 and is later found not to have violated a condition or
21 requirement of ((~~supervision~~)) community custody, time spent in
22 confinement due to such detention shall not toll ((~~to {the}~~)) the
23 period of ((~~supervision~~)) community custody.

24 (4) For confinement or ((~~supervision~~)) community custody sentences,
25 the date for the tolling of the sentence shall be established by the
26 entity responsible for the confinement or ((~~supervision~~)) community
27 custody.

28 **Sec. 8.** RCW 9.94A.205 and 1996 c 275 s 3 are each amended to read
29 as follows:

30 (1) If an ((~~inmate~~)) offender violates any condition or requirement
31 of community custody, the department may transfer the ((~~inmate~~))
32 offender to a more restrictive confinement status to serve up to the
33 remaining portion of the sentence, less credit for any period actually
34 spent in community custody or in detention awaiting disposition of an
35 alleged violation and subject to the limitations of subsection (2) of
36 this section.

37 (2)(a) For a sex offender sentenced to a term of community custody
38 under RCW 9.94A.120(8) who violates any condition of community custody,

1 the department may impose a sanction of up to sixty days' confinement
2 in a local correctional facility for each violation. If the department
3 imposes a sanction, the department shall submit within seventy-two
4 hours a report to the court and the prosecuting attorney outlining the
5 violation or violations and the sanctions imposed.

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

12 (c) For an offender sentenced to a term of community custody under
13 RCW 9.94A.120 (5) through (7) or (11), or under RCW 9.94A.383, for a
14 crime committed on or after July 1, 2000, who violates any condition
15 of community custody after having completed his or her maximum term of
16 total confinement, including time served on community custody in lieu
17 of earned release, the department may impose a sanction of up to sixty
18 days in total confinement for each violation. The department may
19 impose sanctions such as work release, home detention with electronic
20 monitoring, work crew, community service, inpatient treatment, daily
21 reporting, curfew, educational or counseling sessions, supervision
22 enhanced through electronic monitoring, or any other sanctions
23 available in the community.

24 (d) For an offender sentenced to a term of community custody under
25 RCW 9.94A.120(9)(a)(ii) who violates any condition of community custody
26 after having completed his or her maximum term of total confinement,
27 including time served on community custody in lieu of earned release,
28 the department may impose a sanction of up to sixty days in total
29 confinement for each violation. The department may impose sanctions
30 such as work release, home detention with electronic monitoring, work
31 crew, community service, inpatient treatment, daily reporting, curfew,
32 educational or counseling sessions, supervision enhanced through
33 electronic monitoring, or any other sanctions available in the
34 community.

35 (3) If an ((inmate)) offender is accused of violating any condition
36 or requirement of community custody, he or she is entitled to a hearing
37 before the department prior to the imposition of sanctions. The
38 hearing shall be considered as ((inmate)) offender disciplinary
39 proceedings and shall not be subject to chapter 34.05 RCW. The

1 department shall develop hearing procedures and a structure of
2 graduated sanctions.

3 (4) The hearing procedures required under subsection (3) of this
4 section shall be developed by rule and include the following:

5 (a) Hearing officers shall report through a chain of command
6 separate from that of community corrections officers;

7 (b) The department shall provide the offender with written notice
8 of the violation, the evidence relied upon, and the reasons the
9 particular sanction was imposed. The notice shall include a statement
10 of the rights specified in this subsection, and the offender's right to
11 file a personal restraint petition under court rules after the final
12 decision of the department;

13 (c) The hearing shall be held unless waived by the offender and
14 shall be electronically recorded. For offenders not in total
15 confinement, the hearing shall be held within fifteen working days, but
16 not less than twenty-four hours, after notice of the violation. For
17 offenders in total confinement, the hearing shall be held within five
18 working days, but not less than twenty-four hours, after notice of the
19 violation;

20 (d) The offender shall have the right to: (i) Be present at the
21 hearing; (ii) have the assistance of a person qualified to assist the
22 offender in the hearing, appointed by the hearing officer if the
23 offender has a language or communications barrier; (iii) testify or
24 remain silent; (iv) call witnesses and present documentary evidence;
25 and (v) question witnesses who appear and testify; and

26 (e) The sanction shall take effect if affirmed by the hearing
27 officer. Within seven days after the hearing officer's decision, the
28 offender may appeal the decision to a panel of three reviewing officers
29 designated by the secretary or the secretary's designee. The sanction
30 shall be reversed or modified if a majority of the panel finds that the
31 sanction was not reasonably related to any of the following: (i) The
32 crime of conviction; (ii) the violation committed; (iii) the offender's
33 risk of reoffending; or (iv) the safety of the community.

34 (5) For purposes of this section, no finding of a violation of
35 conditions may be based on unconfirmed or unconfirmable allegations.

36 **Sec. 9.** RCW 9.94A.207 and 1996 c 275 s 4 are each amended to read
37 as follows:

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

24 (2) Inmates, as defined in RCW 72.09.015, who have been transferred
25 to community custody and who are detained in a local correctional
26 facility are the financial responsibility of the department of
27 corrections, except as provided in subsection (3) of this section. The
28 community custody inmate shall be removed from the local correctional
29 facility, except as provided in subsection (3) of this section, not
30 later than eight days, excluding weekends and holidays, following
31 admittance to the local correctional facility and notification that the
32 inmate is available for movement to a state correctional institution.

33 (3) The department may negotiate with local correctional
34 authorities for an additional period of detention; however, sex
35 offenders sanctioned for community custody violations under RCW
36 9.94A.205(2) to a term of confinement shall remain in the local
37 correctional facility for the complete term of the sanction. For
38 confinement sanctions imposed under RCW 9.94A.205(2)(a), the local
39 correctional facility shall be financially responsible. For

1 confinement sanctions imposed under RCW 9.94A.205(2)(b), the department
2 of corrections shall be financially responsible for that portion of the
3 sanction served during the time in which the sex offender is on
4 community custody in lieu of earned ((early)) release, and the local
5 correctional facility shall be financially responsible for that portion
6 of the sanction served by the sex offender after the time in which the
7 sex offender is on community custody in lieu of earned ((early))
8 release. The department, in consultation with the Washington
9 association of sheriffs and police chiefs and those counties in which
10 the sheriff does not operate a correctional facility, shall establish
11 a methodology for determining the existing local correctional
12 facilities bed utilization rate for offenders being held for violations
13 of the conditions of supervision in the community. If the department's
14 use of bed space in local correctional facilities for confinement
15 sanctions imposed on offenders sentenced to a term of community custody
16 under RCW 9.94A.120 (7) or (11) or 9.94A.383 exceeds the previously
17 existing local correctional facilities bed utilization rate, the
18 department shall negotiate with the Washington association of sheriffs
19 and police chiefs and those counties in which the sheriff does not
20 operate a correctional facility the terms and conditions for this use
21 level.

22 **Sec. 10.** RCW 9.94A.383 and 1988 c 143 s 23 are each amended to
23 read as follows:

24 On all sentences of confinement for one year or less, the court may
25 impose up to one year of community ((supervision)) custody, subject to
26 conditions and sanctions as authorized in RCW 9.94A.120(11) (b) and
27 (c). An offender shall be on community ((supervision)) custody as of
28 the date of sentencing. However, during the time for which the
29 offender is in total or partial confinement pursuant to the sentence or
30 a violation of the sentence, the period of community ((supervision))
31 custody shall toll.

32 **Sec. 11.** RCW 9.94A.320 and 1998 c 290 s 4, 1998 c 219 s 4, 1998 c
33 82 s 1, and 1998 c 78 s 1 are each reenacted and amended to read as
34 follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

1		
2		CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL
3	XV	Aggravated Murder 1 (RCW 10.95.020)
4	XIV	Murder 1 (RCW 9A.32.030)
5		Homicide by abuse (RCW 9A.32.055)
6		Malicious explosion 1 (RCW 70.74.280(1))
7	XIII	Murder 2 (RCW 9A.32.050)
8		Malicious explosion 2 (RCW 70.74.280(2))
9		Malicious placement of an explosive 1 (RCW
10		70.74.270(1))
11	XII	Assault 1 (RCW 9A.36.011)
12		Assault of a Child 1 (RCW 9A.36.120)
13		Rape 1 (RCW 9A.44.040)
14		Rape of a Child 1 (RCW 9A.44.073)
15		Malicious placement of an imitation device
16		1 (RCW 70.74.272(1)(a))
17	XI	Rape 2 (RCW 9A.44.050)
18		Rape of a Child 2 (RCW 9A.44.076)
19		Manslaughter 1 (RCW 9A.32.060)
20	X	Kidnapping 1 (RCW 9A.40.020)
21		Child Molestation 1 (RCW 9A.44.083)
22		Malicious explosion 3 (RCW 70.74.280(3))
23		Over 18 and deliver heroin, a narcotic from
24		Schedule I or II, or flunitrazepam
25		from Schedule IV to someone under 18
26		(RCW 69.50.406)
27		Leading Organized Crime (RCW
28		9A.82.060(1)(a))
29		Indecent Liberties (with forcible
30		compulsion) (RCW 9A.44.100(1)(a))
31		Manufacture of methamphetamine (RCW
32		69.50.401(a)(1)(ii))
33	IX	Assault of a Child 2 (RCW 9A.36.130)
34		Robbery 1 (RCW 9A.56.200)

1 Explosive devices prohibited (RCW
2 70.74.180)
3 Malicious placement of an explosive 2 (RCW
4 70.74.270(2))
5 Over 18 and deliver narcotic from Schedule
6 III, IV, or V or a nonnarcotic, except
7 flunitrazepam, from Schedule I-V to
8 someone under 18 and 3 years junior
9 (RCW 69.50.406)
10 Controlled Substance Homicide (RCW
11 69.50.415)
12 Sexual Exploitation (RCW 9.68A.040)
13 Inciting Criminal Profiteering (RCW
14 9A.82.060(1)(b))
15 Vehicular Homicide, by being under the
16 influence of intoxicating liquor or
17 any drug (RCW 46.61.520)
18 Homicide by Watercraft, by being under the
19 influence of intoxicating liquor or
20 any drug (RCW 88.12.029)
21 VIII Arson 1 (RCW 9A.48.020)
22 Promoting Prostitution 1 (RCW 9A.88.070)
23 Selling for profit (controlled or
24 counterfeit) any controlled substance
25 (RCW 69.50.410)
26 Manufacture, deliver, or possess with
27 intent to deliver heroin or cocaine
28 (RCW 69.50.401(a)(1)(i))
29 Deliver or possess with intent to deliver
30 methamphetamine (RCW
31 69.50.401(a)(1)(ii))
32 Manufacture, deliver, or possess with
33 intent to deliver amphetamine (RCW
34 69.50.401(a)(1)(ii))
35 Possession of ephedrine or pseudoephedrine
36 with intent to manufacture
37 methamphetamine (RCW 69.50.440)

1 Vehicular Homicide, by the operation of any
2 vehicle in a reckless manner (RCW
3 46.61.520)
4 Homicide by Watercraft, by the operation of
5 any vessel in a reckless manner (RCW
6 88.12.029)
7 Manslaughter 2 (RCW 9A.32.070)

8 VII Burglary 1 (RCW 9A.52.020)
9 Vehicular Homicide, by disregard for the
10 safety of others (RCW 46.61.520)
11 Homicide by Watercraft, by disregard for
12 the safety of others (RCW 88.12.029)
13 Introducing Contraband 1 (RCW 9A.76.140)
14 Indecent Liberties (without forcible
15 compulsion) (RCW 9A.44.100(1) (b) and
16 (c))
17 Child Molestation 2 (RCW 9A.44.086)
18 Dealing in depictions of minor engaged in
19 sexually explicit conduct (RCW
20 9.68A.050)
21 Sending, bringing into state depictions of
22 minor engaged in sexually explicit
23 conduct (RCW 9.68A.060)
24 Involving a minor in drug dealing (RCW
25 69.50.401(f))
26 Drive-by Shooting (RCW 9A.36.045)
27 Unlawful Possession of a Firearm in the
28 first degree (RCW 9.41.040(1)(a))
29 Malicious placement of an explosive 3 (RCW
30 70.74.270(3))

31 VI Bribery (RCW 9A.68.010)
32 Rape of a Child 3 (RCW 9A.44.079)
33 Intimidating a Juror/Witness (RCW
34 9A.72.110, 9A.72.130)
35 Malicious placement of an imitation device
36 2 (RCW 70.74.272(1)(b))
37 Incest 1 (RCW 9A.64.020(1))

1 Manufacture, deliver, or possess with
2 intent to deliver narcotics from
3 Schedule I or II (except heroin or
4 cocaine) or flunitrazepam from
5 Schedule IV (RCW 69.50.401(a)(1)(i))
6 Intimidating a Judge (RCW 9A.72.160)
7 Bail Jumping with Murder 1 (RCW
8 9A.76.170(2)(a))
9 Theft of a Firearm (RCW 9A.56.300)

10 V Persistent prison misbehavior (RCW
11 9.94.070)
12 Criminal Mistreatment 1 (RCW 9A.42.020)
13 Abandonment of dependent person 1 (RCW
14 9A.42.060)
15 Rape 3 (RCW 9A.44.060)
16 Sexual Misconduct with a Minor 1 (RCW
17 9A.44.093)
18 Child Molestation 3 (RCW 9A.44.089)
19 Kidnapping 2 (RCW 9A.40.030)
20 Extortion 1 (RCW 9A.56.120)
21 Incest 2 (RCW 9A.64.020(2))
22 Perjury 1 (RCW 9A.72.020)
23 Extortionate Extension of Credit (RCW
24 9A.82.020)
25 Advancing money or property for
26 extortionate extension of credit (RCW
27 9A.82.030)
28 Extortionate Means to Collect Extensions of
29 Credit (RCW 9A.82.040)
30 Rendering Criminal Assistance 1 (RCW
31 9A.76.070)
32 Bail Jumping with class A Felony (RCW
33 9A.76.170(2)(b))
34 Sexually Violating Human Remains (RCW
35 9A.44.105)
36 Delivery of imitation controlled substance
37 by person eighteen or over to person
38 under eighteen (RCW 69.52.030(2))

1 Possession of a Stolen Firearm (RCW
2 9A.56.310)
3 Unlawful termination of sex offender
4 reoffense reduction treatment (RCW
5 9.94A.120(24))

6 IV Residential Burglary (RCW 9A.52.025)
7 Theft of Livestock 1 (RCW 9A.56.080)
8 Robbery 2 (RCW 9A.56.210)
9 Assault 2 (RCW 9A.36.021)
10 Escape 1 (RCW 9A.76.110)
11 Arson 2 (RCW 9A.48.030)
12 Commercial Bribery (RCW 9A.68.060)
13 Bribing a Witness/Bribe Received by Witness
14 (RCW 9A.72.090, 9A.72.100)
15 Malicious Harassment (RCW 9A.36.080)
16 Threats to Bomb (RCW 9.61.160)
17 Willful Failure to Return from Furlough
18 (RCW 72.66.060)
19 Hit and Run--Injury Accident (RCW
20 46.52.020(4))
21 Hit and Run with Vessel--Injury Accident
22 (RCW 88.12.155(3))
23 Vehicular Assault (RCW 46.61.522)
24 Assault by Watercraft (RCW 88.12.032)
25 Manufacture, deliver, or possess with
26 intent to deliver narcotics from
27 Schedule III, IV, or V or nonnarcotics
28 from Schedule I-V (except marijuana,
29 amphetamine, methamphetamines, or
30 flunitrazepam) (RCW 69.50.401(a)(1)
31 (iii) through (v))
32 Influencing Outcome of Sporting Event (RCW
33 9A.82.070)
34 Use of Proceeds of Criminal Profiteering
35 (RCW 9A.82.080 (1) and (2))
36 Knowingly Trafficking in Stolen Property
37 (RCW 9A.82.050(2))

1 III Criminal Gang Intimidation (RCW 9A.46.120)
2 Criminal Mistreatment 2 (RCW 9A.42.030)
3 Abandonment of dependent person 2 (RCW
4 9A.42.070)
5 Extortion 2 (RCW 9A.56.130)
6 Unlawful Imprisonment (RCW 9A.40.040)
7 Assault 3 (RCW 9A.36.031)
8 Assault of a Child 3 (RCW 9A.36.140)
9 Custodial Assault (RCW 9A.36.100)
10 Unlawful possession of firearm in the
11 second degree (RCW 9.41.040(1)(b))
12 Harassment (RCW 9A.46.020)
13 Promoting Prostitution 2 (RCW 9A.88.080)
14 Willful Failure to Return from Work Release
15 (RCW 72.65.070)
16 Burglary 2 (RCW 9A.52.030)
17 Introducing Contraband 2 (RCW 9A.76.150)
18 Communication with a Minor for Immoral
19 Purposes (RCW 9.68A.090)
20 Patronizing a Juvenile Prostitute (RCW
21 9.68A.100)
22 Escape 2 (RCW 9A.76.120)
23 Perjury 2 (RCW 9A.72.030)
24 Bail Jumping with class B or C Felony (RCW
25 9A.76.170(2)(c))
26 Intimidating a Public Servant (RCW
27 9A.76.180)
28 Tampering with a Witness (RCW 9A.72.120)
29 Manufacture, deliver, or possess with
30 intent to deliver marijuana (RCW
31 69.50.401(a)(1)(iii))
32 Delivery of a material in lieu of a
33 controlled substance (RCW
34 69.50.401(c))
35 Manufacture, distribute, or possess with
36 intent to distribute an imitation
37 controlled substance (RCW
38 69.52.030(1))

1 Recklessly Trafficking in Stolen Property
2 (RCW 9A.82.050(1))
3 Theft of livestock 2 (RCW 9A.56.080)
4 Securities Act violation (RCW 21.20.400)

5 II Unlawful Practice of Law (RCW 2.48.180)
6 Malicious Mischief 1 (RCW 9A.48.070)
7 Possession of Stolen Property 1 (RCW
8 9A.56.150)
9 Theft 1 (RCW 9A.56.030)
10 Class B Felony Theft of Rental, Leased, or
11 Lease-purchased Property (RCW
12 9A.56.096(4))
13 Trafficking in Insurance Claims (RCW
14 48.30A.015)
15 Unlicensed Practice of a Profession or
16 Business (RCW 18.130.190(7))
17 Health Care False Claims (RCW 48.80.030)
18 Possession of controlled substance that is
19 either heroin or narcotics from
20 Schedule I or II or flunitrazepam from
21 Schedule IV (RCW 69.50.401(d))
22 Possession of phencyclidine (PCP) (RCW
23 69.50.401(d))
24 Create, deliver, or possess a counterfeit
25 controlled substance (RCW
26 69.50.401(b))
27 Computer Trespass 1 (RCW 9A.52.110)
28 Escape from Community Custody (RCW
29 72.09.310)

30 I Theft 2 (RCW 9A.56.040)
31 Class C Felony Theft of Rental, Leased, or
32 Lease-purchased Property (RCW
33 9A.56.096(4))
34 Possession of Stolen Property 2 (RCW
35 9A.56.160)
36 Forgery (RCW 9A.60.020)
37 Taking Motor Vehicle Without Permission
38 (RCW 9A.56.070)

1 Vehicle Prowl 1 (RCW 9A.52.095)
2 Attempting to Elude a Pursuing Police
3 Vehicle (RCW 46.61.024)
4 Malicious Mischief 2 (RCW 9A.48.080)
5 Reckless Burning 1 (RCW 9A.48.040)
6 Unlawful Issuance of Checks or Drafts (RCW
7 9A.56.060)
8 Unlawful Use of Food Stamps (RCW 9.91.140
9 (2) and (3))
10 False Verification for Welfare (RCW
11 74.08.055)
12 Forged Prescription (RCW 69.41.020)
13 Forged Prescription for a Controlled
14 Substance (RCW 69.50.403)
15 Possess Controlled Substance that is a
16 Narcotic from Schedule III, IV, or V
17 or Non-narcotic from Schedule I-V
18 (except phencyclidine or
19 flunitrazepam) (RCW 69.50.401(d))

20 **Sec. 12.** RCW 9.94A.440 and 1996 c 93 s 2 are each amended to read
21 as follows:

22 (1) Decision not to prosecute.

23 STANDARD: A prosecuting attorney may decline to prosecute, even
24 though technically sufficient evidence to prosecute exists, in
25 situations where prosecution would serve no public purpose, would
26 defeat the underlying purpose of the law in question or would result in
27 decreased respect for the law.

28 GUIDELINE/COMMENTARY:

29 Examples

30 The following are examples of reasons not to prosecute which could
31 satisfy the standard.

32 (a) Contrary to Legislative Intent - It may be proper to decline to
33 charge where the application of criminal sanctions would be clearly
34 contrary to the intent of the legislature in enacting the particular
35 statute.

36 (b) Antiquated Statute - It may be proper to decline to charge
37 where the statute in question is antiquated in that:

38 (i) It has not been enforced for many years; and

1 (ii) Most members of society act as if it were no longer in
2 existence; and
3 (iii) It serves no deterrent or protective purpose in today's
4 society; and
5 (iv) The statute has not been recently reconsidered by the
6 legislature.

7 This reason is not to be construed as the basis for declining cases
8 because the law in question is unpopular or because it is difficult to
9 enforce.

10 (c) De Minimus Violation - It may be proper to decline to charge
11 where the violation of law is only technical or insubstantial and where
12 no public interest or deterrent purpose would be served by prosecution.

13 (d) Confinement on Other Charges - It may be proper to decline to
14 charge because the accused has been sentenced on another charge to a
15 lengthy period of confinement; and

16 (i) Conviction of the new offense would not merit any additional
17 direct or collateral punishment;

18 (ii) The new offense is either a misdemeanor or a felony which is
19 not particularly aggravated; and

20 (iii) Conviction of the new offense would not serve any significant
21 deterrent purpose.

22 (e) Pending Conviction on Another Charge - It may be proper to
23 decline to charge because the accused is facing a pending prosecution
24 in the same or another county; and

25 (i) Conviction of the new offense would not merit any additional
26 direct or collateral punishment;

27 (ii) Conviction in the pending prosecution is imminent;

28 (iii) The new offense is either a misdemeanor or a felony which is
29 not particularly aggravated; and

30 (iv) Conviction of the new offense would not serve any significant
31 deterrent purpose.

32 (f) High Disproportionate Cost of Prosecution - It may be proper to
33 decline to charge where the cost of locating or transporting, or the
34 burden on, prosecution witnesses is highly disproportionate to the
35 importance of prosecuting the offense in question. This reason should
36 be limited to minor cases and should not be relied upon in serious
37 cases.

38 (g) Improper Motives of Complainant - It may be proper to decline
39 charges because the motives of the complainant are improper and

1 prosecution would serve no public purpose, would defeat the underlying
2 purpose of the law in question or would result in decreased respect for
3 the law.

4 (h) Immunity - It may be proper to decline to charge where immunity
5 is to be given to an accused in order to prosecute another where the
6 accused's information or testimony will reasonably lead to the
7 conviction of others who are responsible for more serious criminal
8 conduct or who represent a greater danger to the public interest.

9 (i) Victim Request - It may be proper to decline to charge because
10 the victim requests that no criminal charges be filed and the case
11 involves the following crimes or situations:

12 (i) Assault cases where the victim has suffered little or no
13 injury;

14 (ii) Crimes against property, not involving violence, where no
15 major loss was suffered;

16 (iii) Where doing so would not jeopardize the safety of society.

17 Care should be taken to insure that the victim's request is freely
18 made and is not the product of threats or pressure by the accused.

19 The presence of these factors may also justify the decision to
20 dismiss a prosecution which has been commenced.

21 Notification

22 The prosecutor is encouraged to notify the victim, when practical,
23 and the law enforcement personnel, of the decision not to prosecute.

24 (2) Decision to prosecute.

25 (a) STANDARD:

26 Crimes against persons will be filed if sufficient admissible
27 evidence exists, which, when considered with the most plausible,
28 reasonably foreseeable defense that could be raised under the evidence,
29 would justify conviction by a reasonable and objective fact-finder.
30 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,
31 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and
32 9A.64.020 the prosecutor should avoid prefiling agreements or
33 diversions intended to place the accused in a program of treatment or
34 counseling, so that treatment, if determined to be beneficial, can be
35 provided pursuant to RCW 9.94A.120(8).

36 Crimes against property/other crimes will be filed if the
37 admissible evidence is of such convincing force as to make it probable
38 that a reasonable and objective fact-finder would convict after hearing

1 all the admissible evidence and the most plausible defense that could
2 be raised.

3 See table below for the crimes within these categories.

4 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

5 CRIMES AGAINST PERSONS

6 Aggravated Murder
7 1st Degree Murder
8 2nd Degree Murder
9 1st Degree Kidnaping
10 1st Degree Assault
11 1st Degree Assault of a Child
12 1st Degree Rape
13 1st Degree Robbery
14 1st Degree Rape of a Child
15 1st Degree Arson
16 2nd Degree Kidnaping
17 2nd Degree Assault
18 2nd Degree Assault of a Child
19 2nd Degree Rape
20 2nd Degree Robbery
21 1st Degree Burglary
22 1st Degree Manslaughter
23 2nd Degree Manslaughter
24 1st Degree Extortion
25 Indecent Liberties
26 Incest
27 2nd Degree Rape of a Child
28 Vehicular Homicide
29 Vehicular Assault
30 3rd Degree Rape
31 3rd Degree Rape of a Child
32 1st Degree Child Molestation
33 2nd Degree Child Molestation
34 3rd Degree Child Molestation
35 2nd Degree Extortion
36 1st Degree Promoting Prostitution
37 Intimidating a Juror
38 Communication with a Minor

1 Intimidating a Witness
2 Intimidating a Public Servant
3 Bomb Threat (if against person)
4 3rd Degree Assault
5 3rd Degree Assault of a Child
6 Unlawful Imprisonment
7 Promoting a Suicide Attempt
8 Riot (if against person)
9 Stalking
10 Custodial Assault
11 No-Contact Order-Domestic Violence Pretrial (RCW 10.99.040(4) (b)
12 and (c))
13 No-Contact Order-Domestic Violence Sentence (RCW 10.99.050(2))
14 Protection Order-Domestic Violence Civil (RCW 26.50.110 (4) and
15 (5))

16 CRIMES AGAINST PROPERTY/OTHER CRIMES

17 2nd Degree Arson
18 1st Degree Escape
19 2nd Degree Burglary
20 1st Degree Theft
21 1st Degree Perjury
22 1st Degree Introducing Contraband
23 1st Degree Possession of Stolen Property
24 Bribery
25 Bribing a Witness
26 Bribe received by a Witness
27 Bomb Threat (if against property)
28 1st Degree Malicious Mischief
29 2nd Degree Theft
30 2nd Degree Escape
31 2nd Degree Introducing Contraband
32 2nd Degree Possession of Stolen Property
33 2nd Degree Malicious Mischief
34 1st Degree Reckless Burning
35 Taking a Motor Vehicle without Authorization
36 Forgery
37 2nd Degree Perjury
38 2nd Degree Promoting Prostitution
39 Tampering with a Witness

1 Trading in Public Office
2 Trading in Special Influence
3 Receiving/Granting Unlawful Compensation
4 Bigamy
5 Eluding a Pursuing Police Vehicle
6 Willful Failure to Return from Furlough
7 Escape from Community Custody
8 Riot (if against property)
9 Thefts of Livestock

10 ALL OTHER UNCLASSIFIED FELONIES

11 Selection of Charges/Degree of Charge

12 ~~((1))~~ (i) The prosecutor should file charges which adequately
13 describe the nature of defendant's conduct. Other offenses may be
14 charged only if they are necessary to ensure that the charges:

15 ~~((a))~~ (A) Will significantly enhance the strength of the state's
16 case at trial; or

17 ~~((b))~~ (B) Will result in restitution to all victims.

18 ~~((2))~~ (ii) The prosecutor should not overcharge to obtain a
19 guilty plea. Overcharging includes:

20 ~~((a))~~ (A) Charging a higher degree;

21 ~~((b))~~ (B) Charging additional counts.

22 This standard is intended to direct prosecutors to charge those
23 crimes which demonstrate the nature and seriousness of a defendant's
24 criminal conduct, but to decline to charge crimes which are not
25 necessary to such an indication. Crimes which do not merge as a matter
26 of law, but which arise from the same course of conduct, do not all
27 have to be charged.

28 (b) GUIDELINES/COMMENTARY:

29 (i) Police Investigation

30 A prosecuting attorney is dependent upon law enforcement agencies
31 to conduct the necessary factual investigation which must precede the
32 decision to prosecute. The prosecuting attorney shall ensure that a
33 thorough factual investigation has been conducted before a decision to
34 prosecute is made. In ordinary circumstances the investigation should
35 include the following:

36 ~~((1))~~ (A) The interviewing of all material witnesses, together
37 with the obtaining of written statements whenever possible;

38 ~~((2))~~ (B) The completion of necessary laboratory tests; and

1 (~~(3)~~) (C) The obtaining, in accordance with constitutional
2 requirements, of the suspect's version of the events.

3 If the initial investigation is incomplete, a prosecuting attorney
4 should insist upon further investigation before a decision to prosecute
5 is made, and specify what the investigation needs to include.

6 (ii) Exceptions

7 In certain situations, a prosecuting attorney may authorize filing
8 of a criminal complaint before the investigation is complete if:

9 (~~(1)~~) (A) Probable cause exists to believe the suspect is guilty;
10 and

11 (~~(2)~~) (B) The suspect presents a danger to the community or is
12 likely to flee if not apprehended; or

13 (~~(3)~~) (C) The arrest of the suspect is necessary to complete the
14 investigation of the crime.

15 In the event that the exception to the standard is applied, the
16 prosecuting attorney shall obtain a commitment from the law enforcement
17 agency involved to complete the investigation in a timely manner. If
18 the subsequent investigation does not produce sufficient evidence to
19 meet the normal charging standard, the complaint should be dismissed.

20 (iii) Investigation Techniques

21 The prosecutor should be fully advised of the investigatory
22 techniques that were used in the case investigation including:

23 (~~(1)~~) (A) Polygraph testing;

24 (~~(2)~~) (B) Hypnosis;

25 (~~(3)~~) (C) Electronic surveillance;

26 (~~(4)~~) (D) Use of informants.

27 (iv) Pre-Filing Discussions with Defendant

28 Discussions with the defendant or his/her representative regarding
29 the selection or disposition of charges may occur prior to the filing
30 of charges, and potential agreements can be reached.

31 (v) Pre-Filing Discussions with Victim(s)

32 Discussions with the victim(s) or victims' representatives
33 regarding the selection or disposition of charges may occur before the
34 filing of charges. The discussions may be considered by the prosecutor
35 in charging and disposition decisions, and should be considered before
36 reaching any agreement with the defendant regarding these decisions.

37 NEW SECTION. Sec. 13. A new section is added to chapter 72.09 RCW
38 to read as follows:

1 Except as specifically prohibited by other law, and for purposes of
2 determining, modifying, or monitoring compliance with conditions of
3 community custody, community placement, or community supervision as
4 authorized under RCW 9.94A.120 and 9.94A.383, the department:

5 (1) Shall have access to all relevant records and information in
6 the possession of public agencies relating to offenders, including
7 police reports, prosecutors' statements of probable cause, complete
8 criminal history information, psychological evaluations and psychiatric
9 hospital reports, sex offender treatment program reports, and juvenile
10 records; and

11 (2) May require periodic reports from providers of treatment or
12 other services required by the court or the department, including
13 progress reports, evaluations and assessments, and reports of
14 violations of conditions imposed by the court or the department.

15 NEW SECTION. **Sec. 14.** A new section is added to chapter 72.09 RCW
16 to read as follows:

17 (1) To the extent practicable, the department shall deploy
18 community corrections staff on the basis of geographic areas in which
19 offenders under the department's jurisdiction are located, and shall
20 establish a systematic means of assessing risk to the safety of those
21 communities.

22 (2) The sum of \$2,800,000, or as much thereof as may be necessary,
23 is appropriated for the biennium ending June 30, 2001, from the general
24 fund to the department of corrections for the purpose of providing a
25 salary adjustment of ten percent to employees classified as Community
26 Corrections Officer 2 and Community Corrections Officer 3. Within the
27 funds provided in this section, the department shall make a five
28 percent salary adjustment on July 1, 1999, and shall make a 4.8 percent
29 adjustment on July 1, 2000.

30 NEW SECTION. **Sec. 15.** The secretary of corrections may adopt
31 rules to implement sections 1 through 14 of this act.

32 NEW SECTION. **Sec. 16.** A new section is added to chapter 72.09 RCW
33 to read as follows:

34 (1) The Washington state institute for public policy shall conduct
35 a study of the effect of the use of community custody under this act.

1 The study shall include the effect of this act on recidivism and other
2 outcomes. In its study the institute shall consider:

3 (a) Recidivism, according to the definition adopted by the
4 institute pursuant to section 59, chapter 338, Laws of 1997;

5 (b) The number and seriousness level of violations of conditions;

6 (c) The application of the graduated sanctions by the department;

7 (d) Unauthorized absences from supervision;

8 (e) Payment of legal financial obligations;

9 (f) Unlawful use of controlled substances;

10 (g) Use of alcohol when abstention or treatment for alcoholism is
11 a condition of supervision;

12 (h) Effects on the number of offenders who are employed or
13 participate in vocational rehabilitation;

14 (i) Participation in vocational and education programs; and

15 (j) Impact on the receipt of public assistance.

16 (2) By January 1, 2000, the institute shall report to the
17 legislature on the design for the study. By January 1st of each year
18 thereafter, the institute shall report to the legislature on the
19 progress and findings of the study and make recommendations based on
20 its findings. By January 1, 2010, the institute shall provide to the
21 legislature a final report on the findings of the study.

22 (3) This section expires December 31, 2010.

23 NEW SECTION. **Sec. 17.** This act may be known and cited as the
24 offender accountability act.

25 NEW SECTION. **Sec. 18.** Section 10 of this act takes effect July 1,
26 2000, and applies only to offenses committed on or after July 1, 2000.

27 NEW SECTION. **Sec. 19.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

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