
SENATE BILL 6184

State of Washington

56th Legislature

2000 Regular Session

By Senators McCaslin, Costa and Oke

Read first time 01/10/2000. Referred to Committee on Judiciary.

1 AN ACT Relating to habitual offenders; reenacting and amending RCW
2 9.94A.030 and 9.94A.120; creating a new section; and prescribing
3 penalties.

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

5 **Sec. 1.** RCW 9.94A.030 and 1999 c 352 s 8, 1999 c 197 s 1, and 1999
6 c 196 s 2 are each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

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

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

5 (4) "Community custody" means that portion of an offender's
6 sentence of confinement in lieu of earned release time or imposed
7 pursuant to RCW 9.94A.120 (~~((+5+))~~) (6), (7), (8), (~~((+10), or))~~ (9),
8 (11), or (12), or RCW 9.94A.383, served in the community subject to
9 controls placed on the offender's movement and activities by the
10 department of corrections. For offenders placed on community custody
11 for crimes committed on or after July 1, 2000, the department shall
12 assess the offender's risk of reoffense and may establish and modify
13 conditions of community custody, in addition to those imposed by the
14 court, based upon the risk to community safety.

15 (5) "Community custody range" means the minimum and maximum period
16 of community custody included as part of a sentence under RCW
17 9.94A.120(~~((+11))~~) (12), as established by the sentencing guidelines
18 commission or the legislature under RCW 9.94A.040, for crimes committed
19 on or after July 1, 2000.

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

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

30 (8) "Community supervision" means a period of time during which a
31 convicted offender is subject to crime-related prohibitions and other
32 sentence conditions imposed by a court pursuant to this chapter or RCW
33 16.52.200(6) or 46.61.524. For first-time offenders, the supervision
34 may include crime-related prohibitions and other conditions imposed
35 pursuant to RCW 9.94A.120(~~((+5+))~~) (6). Where the court finds that any
36 offender has a chemical dependency that has contributed to his or her
37 offense, the conditions of supervision may, subject to available
38 resources, include treatment. For purposes of the interstate compact
39 for out-of-state supervision of parolees and probationers, RCW

1 9.95.270, community supervision is the functional equivalent of
2 probation and should be considered the same as probation by other
3 states.

4 (9) "Confinement" means total or partial confinement as defined in
5 this section.

6 (10) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

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

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

30 (13) "Criminal history" means the list of a defendant's prior
31 convictions and juvenile adjudications, whether in this state, in
32 federal court, or elsewhere. The history shall include, where known,
33 for each conviction (a) whether the defendant has been placed on
34 probation and the length and terms thereof; and (b) whether the
35 defendant has been incarcerated and the length of incarceration.

36 (14) "Day fine" means a fine imposed by the sentencing judge that
37 equals the difference between the offender's net daily income and the
38 reasonable obligations that the offender has for the support of the
39 offender and any dependents.

1 (15) "Day reporting" means a program of enhanced supervision
2 designed to monitor the defendant's daily activities and compliance
3 with sentence conditions, and in which the defendant is required to
4 report daily to a specific location designated by the department or the
5 sentencing judge.

6 (16) "Department" means the department of corrections.

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

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

27 (19) "Drug offense" means:

28 (a) Any felony violation of chapter 69.50 RCW except possession of
29 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
30 controlled substance (RCW 69.50.403);

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

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

37 (20) "Escape" means:

38 (a) Escape in the first degree (RCW 9A.76.110), escape in the
39 second degree (RCW 9A.76.120), willful failure to return from furlough

1 (RCW 72.66.060), willful failure to return from work release (RCW
2 72.65.070), or willful failure to be available for supervision by the
3 department while in community custody (RCW 72.09.310); or

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

7 (21) "Felony traffic offense" means:

8 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
9 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
10 and-run injury-accident (RCW 46.52.020(4)); or

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

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

16 (23) "First-time offender" means any person who is convicted of a
17 felony (a) not classified as a violent offense or a sex offense under
18 this chapter, or (b) that is not the manufacture, delivery, or
19 possession with intent to manufacture or deliver a controlled substance
20 classified in Schedule I or II that is a narcotic drug or flunitrazepam
21 classified in Schedule IV, nor the manufacture, delivery, or possession
22 with intent to deliver methamphetamine, its salts, isomers, and salts
23 of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for
24 profit of any controlled substance or counterfeit substance classified
25 in Schedule I, RCW 69.50.204, except leaves and flowering tops of
26 marihuana, who previously has never been convicted of a felony in this
27 state, federal court, or another state, and who has never participated
28 in a program of deferred prosecution for a felony offense.

29 (24) "Habitual offender" means a person who:

30 (a) Has a current conviction for any felony;

31 (b) Has, before the commission of the offense under (a) of this
32 subsection, been convicted, whether in this state or elsewhere, of any
33 crime which under the laws of this state would be a felony, or has been
34 convicted on at least two separate occasions, whether in this state or
35 elsewhere, of any crime which under the laws of this state would be a
36 serious gross misdemeanor; and

37 (c) Is not a persistent offender.

1 (25) "Home detention" means a program of partial confinement
2 available to offenders wherein the offender is confined in a private
3 residence subject to electronic surveillance.

4 (~~(25)~~) (26) "Most serious offense" means any of the following
5 felonies or a felony attempt to commit any of the following felonies,
6 as now existing or hereafter amended:

7 (a) Any felony defined under any law as a class A felony or
8 criminal solicitation of or criminal conspiracy to commit a class A
9 felony;

10 (b) Assault in the second degree;

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

12 (d) Child molestation in the second degree;

13 (e) Controlled substance homicide;

14 (f) Extortion in the first degree;

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

16 (h) Indecent liberties;

17 (i) Kidnapping in the second degree;

18 (j) Leading organized crime;

19 (k) Manslaughter in the first degree;

20 (l) Manslaughter in the second degree;

21 (m) Promoting prostitution in the first degree;

22 (n) Rape in the third degree;

23 (o) Robbery in the second degree;

24 (p) Sexual exploitation;

25 (q) Vehicular assault;

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

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

32 (t) Any other felony with a deadly weapon verdict under RCW
33 9.94A.125;

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

1 (v)(i) A prior conviction for indecent liberties under RCW
2 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
3 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
4 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
5 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

6 (ii) A prior conviction for indecent liberties under RCW
7 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
8 if: (A) The crime was committed against a child under the age of
9 fourteen; or (B) the relationship between the victim and perpetrator is
10 included in the definition of indecent liberties under RCW
11 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
12 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
13 through July 27, 1997.

14 (~~(26)~~) (27) "Nonviolent offense" means an offense which is not a
15 violent offense.

16 (~~(27)~~) (28) "Offender" means a person who has committed a felony
17 established by state law and is eighteen years of age or older or is
18 less than eighteen years of age but whose case is under superior court
19 jurisdiction under RCW 13.04.030 or has been transferred by the
20 appropriate juvenile court to a criminal court pursuant to RCW
21 13.40.110. Throughout this chapter, the terms "offender" and
22 "defendant" are used interchangeably.

23 (~~(28)~~) (29) "Partial confinement" means confinement for no more
24 than one year in a facility or institution operated or utilized under
25 contract by the state or any other unit of government, or, if home
26 detention or work crew has been ordered by the court, in an approved
27 residence, for a substantial portion of each day with the balance of
28 the day spent in the community. Partial confinement includes work
29 release, home detention, work crew, and a combination of work crew and
30 home detention as defined in this section.

31 (~~(29)~~) (30) "Persistent offender" is an offender who:

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

34 (ii) Has, before the commission of the offense under (a) of this
35 subsection, been convicted as an offender on at least two separate
36 occasions, whether in this state or elsewhere, of felonies that under
37 the laws of this state would be considered most serious offenses and
38 would be included in the offender score under RCW 9.94A.360; provided
39 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
4 of a child in the first degree, child molestation in the first degree,
5 rape in the second degree, rape of a child in the second degree, or
6 indecent liberties by forcible compulsion; (B) murder in the first
7 degree, murder in the second degree, homicide by abuse, kidnapping in
8 the first degree, kidnapping in the second degree, assault in the first
9 degree, assault in the second degree, assault of a child in the first
10 degree, or burglary in the first degree, with a finding of sexual
11 motivation; or (C) an attempt to commit any crime listed in this
12 subsection (~~((29))~~) (30)(b)(i); and

13 (ii) Has, before the commission of the offense under (b)(i) of this
14 subsection, been convicted as an offender on at least one occasion,
15 whether in this state or elsewhere, of an offense listed in (b)(i) of
16 this subsection. A conviction for rape of a child in the first degree
17 constitutes a conviction under (~~(subsection—(29))~~) (b)(i) of this
18 subsection only when the offender was sixteen years of age or older
19 when the offender committed the offense. A conviction for rape of a
20 child in the second degree constitutes a conviction under (~~(subsection~~
21 ~~(29))~~) (b)(i) of this subsection only when the offender was eighteen
22 years of age or older when the offender committed the offense.

23 (~~((30))~~) (31) "Postrelease supervision" is that portion of an
24 offender's community placement that is not community custody.

25 (~~((31))~~) (32) "Restitution" means the requirement that the offender
26 pay a specific sum of money over a specific period of time to the court
27 as payment of damages. The sum may include both public and private
28 costs. The imposition of a restitution order does not preclude civil
29 redress.

30 (~~((32))~~) (33) "Risk assessment" means the application of an
31 objective instrument supported by research and adopted by the
32 department for the purpose of assessing an offender's risk of
33 reoffense, taking into consideration the nature of the harm done by the
34 offender, place and circumstances of the offender related to risk, the
35 offender's relationship to any victim, and any information provided to
36 the department by victims. The results of a risk assessment shall not
37 be based on unconfirmed or unconfirmable allegations.

38 (~~((33))~~) (34) "Serious gross misdemeanor" means any of the
39 following gross misdemeanors:

1 (a) Assault in the fourth degree, RCW 9A.36.041;
2 (b) Reckless endangerment, RCW 9A.36.050;
3 (c) Jury tampering, RCW 9A.72.140;
4 (d) Tampering with physical evidence, RCW 9A.72.150;
5 (e) Rendering criminal assistance in the first degree, RCW
6 9A.76.070(2)(a);
7 (f) Rendering criminal assistance in the second degree, RCW
8 9A.76.080(2)(b);
9 (g) Compounding, RCW 9A.76.100;
10 (h) Escape in the third degree, RCW 9A.76.130;
11 (i) Riot, RCW 9A.84.010(2)(b);
12 (j) Criminal attempt, solicitation, or conspiracy to commit a class
13 C felony defined in Title 9A RCW;
14 (k) Driving under the influence, RCW 46.61.502; and
15 (l) Physical control of vehicle under the influence, RCW 46.61.504.
16 (35) "Serious traffic offense" means:
17 (a) Driving while under the influence of intoxicating liquor or any
18 drug (RCW 46.61.502), actual physical control while under the influence
19 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
20 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
21 or
22 (b) Any federal, out-of-state, county, or municipal conviction for
23 an offense that under the laws of this state would be classified as a
24 serious traffic offense under (a) of this subsection.
25 (~~(34)~~) (36) "Serious violent offense" is a subcategory of violent
26 offense and means:
27 (a) Murder in the first degree, homicide by abuse, murder in the
28 second degree, manslaughter in the first degree, assault in the first
29 degree, kidnapping in the first degree, or rape in the first degree,
30 assault of a child in the first degree, or an attempt, criminal
31 solicitation, or criminal conspiracy to commit one of these felonies;
32 or
33 (b) Any federal or out-of-state conviction for an offense that
34 under the laws of this state would be a felony classified as a serious
35 violent offense under (a) of this subsection.
36 (~~(35)~~) (37) "Sentence range" means the sentencing court's
37 discretionary range in imposing a nonappealable sentence.
38 (~~(36)~~) (38) "Sex offense" means:

1 (a) A felony that is a violation of chapter 9A.44 RCW, other than
2 RCW 9A.44.130(10), or RCW 9A.64.020 or 9.68A.090 or a felony that is,
3 under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or
4 criminal conspiracy to commit such crimes;

5 (b) Any conviction for a felony offense in effect at any time prior
6 to July 1, 1976, that is comparable to a felony classified as a sex
7 offense in (a) of this subsection;

8 (c) A felony with a finding of sexual motivation under RCW
9 9.94A.127 or 13.40.135; or

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

13 (~~((37))~~) (39) "Sexual motivation" means that one of the purposes
14 for which the defendant committed the crime was for the purpose of his
15 or her sexual gratification.

16 (~~((38))~~) (40) "Total confinement" means confinement inside the
17 physical boundaries of a facility or institution operated or utilized
18 under contract by the state or any other unit of government for twenty-
19 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

20 (~~((39))~~) (41) "Transition training" means written and verbal
21 instructions and assistance provided by the department to the offender
22 during the two weeks prior to the offender's successful completion of
23 the work ethic camp program. The transition training shall include
24 instructions in the offender's requirements and obligations during the
25 offender's period of community custody.

26 (~~((40))~~) (42) "Victim" means any person who has sustained
27 emotional, psychological, physical, or financial injury to person or
28 property as a direct result of the crime charged.

29 (~~((41))~~) (43) "Violent offense" means:

30 (a) Any of the following felonies, as now existing or hereafter
31 amended: Any felony defined under any law as a class A felony or an
32 attempt to commit a class A felony, criminal solicitation of or
33 criminal conspiracy to commit a class A felony, manslaughter in the
34 first degree, manslaughter in the second degree, indecent liberties if
35 committed by forcible compulsion, kidnapping in the second degree,
36 arson in the second degree, assault in the second degree, assault of a
37 child in the second degree, extortion in the first degree, robbery in
38 the second degree, drive-by shooting, vehicular assault, and vehicular
39 homicide, when proximately caused by the driving of any vehicle by any

1 person while under the influence of intoxicating liquor or any drug as
2 defined by RCW 46.61.502, or by the operation of any vehicle in a
3 reckless manner;

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

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

10 (~~(42)~~) (44) "Work crew" means a program of partial confinement
11 consisting of civic improvement tasks for the benefit of the community
12 of not less than thirty-five hours per week that complies with RCW
13 9.94A.135. The civic improvement tasks shall have minimal negative
14 impact on existing private industries or the labor force in the county
15 where the service or labor is performed. The civic improvement tasks
16 shall not affect employment opportunities for people with developmental
17 disabilities contracted through sheltered workshops as defined in RCW
18 82.04.385. Only those offenders sentenced to a facility operated or
19 utilized under contract by a county or the state, or sanctioned under
20 RCW 9.94A.205, are eligible to participate on a work crew. Offenders
21 sentenced for a sex offense as defined in subsection (~~(36)~~) (38) of
22 this section are not eligible for the work crew program.

23 (~~(43)~~) (45) "Work ethic camp" means an alternative incarceration
24 program designed to reduce recidivism and lower the cost of corrections
25 by requiring offenders to complete a comprehensive array of real-world
26 job and vocational experiences, character-building work ethics
27 training, life management skills development, substance abuse
28 rehabilitation, counseling, literacy training, and basic adult
29 education.

30 (~~(44)~~) (46) "Work release" means a program of partial confinement
31 available to offenders who are employed or engaged as a student in a
32 regular course of study at school. Participation in work release shall
33 be conditioned upon the offender attending work or school at regularly
34 defined hours and abiding by the rules of the work release facility.

35 **Sec. 2.** RCW 9.94A.120 and 1999 c 324 s 2, 1999 c 197 s 4, 1999 c
36 196 s 5, and 1999 c 147 s 3 are each reenacted and amended to read as
37 follows:

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

3 (1) Except as authorized in subsections (2), (4), (5), (6), (7),
4 and ~~((+8))~~ (9) of this section, the court shall impose a sentence
5 within the sentence range for the offense.

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

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

14 (4) A persistent offender shall be sentenced to a term of total
15 confinement for life without the possibility of parole or, when
16 authorized by RCW 10.95.030 for the crime of aggravated murder in the
17 first degree, sentenced to death, notwithstanding the maximum sentence
18 under any other law. An offender convicted of the crime of murder in
19 the first degree shall be sentenced to a term of total confinement not
20 less than twenty years. An offender convicted of the crime of assault
21 in the first degree or assault of a child in the first degree where the
22 offender used force or means likely to result in death or intended to
23 kill the victim shall be sentenced to a term of total confinement not
24 less than five years. An offender convicted of the crime of rape in
25 the first degree shall be sentenced to a term of total confinement not
26 less than five years. The foregoing minimum terms of total confinement
27 are mandatory and shall not be varied or modified as provided in
28 subsection (2) of this section. In addition, all offenders subject to
29 the provisions of this subsection shall not be eligible for community
30 custody, earned release time, furlough, home detention, partial
31 confinement, work crew, work release, or any other form of early
32 release as defined under RCW 9.94A.150 (1), (2), (3), ~~((+5))~~ (6),
33 ~~((+7))~~ (8), or ~~((+8))~~ (9), or any other form of authorized leave of
34 absence from the correctional facility while not in the direct custody
35 of a corrections officer or officers during such minimum terms of total
36 confinement except: (a) In the case of an offender in need of
37 emergency medical treatment; (b) for the purpose of commitment to an
38 inpatient treatment facility in the case of an offender convicted of

1 the crime of rape in the first degree; or (c) for an extraordinary
2 medical placement when authorized under RCW 9.94A.150(4).

3 (5) Notwithstanding the maximum sentence under any other law:

4 (a) An habitual offender shall be sentenced to a term of total
5 confinement of ten years, except when (b) of this subsection applies;

6 (b) An habitual offender shall be sentenced to a term of total
7 confinement of fifteen years if the habitual offender has been
8 convicted, whether in this state or elsewhere:

9 (i) On at least two separate occasions of any crime which under the
10 laws of this state would be a felony;

11 (ii) On at least four separate occasions of any crime which under
12 the laws of this state would be a serious gross misdemeanor; or

13 (iii) On at least three separate occasions of any crime which under
14 the laws of this state would be a combination of one felony and two or
15 more serious gross misdemeanors.

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

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

26 (ii) Undergo available outpatient treatment for up to the period
27 specified in (b) of this subsection, or inpatient treatment not to
28 exceed the standard range of confinement for that offense;

29 (iii) Pursue a prescribed, secular course of study or vocational
30 training;

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

34 (v) Report as directed to a community corrections officer; or

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

37 (b) The terms and statuses applicable to sentences under (a) of
38 this subsection are:

1 (i) For sentences imposed on or after July 25, 1999, for crimes
2 committed before July 1, 2000, up to one year of community supervision.
3 If treatment is ordered, the period of community supervision may
4 include up to the period of treatment, but shall not exceed two years;
5 and

6 (ii) For crimes committed on or after July 1, 2000, up to one year
7 of community custody unless treatment is ordered, in which case the
8 period of community custody may include up to the period of treatment,
9 but shall not exceed two years. Any term of community custody imposed
10 under this subsection (~~((+5+))~~) (6) is subject to conditions and
11 sanctions as authorized in this subsection (~~((+5+))~~) (6) and in
12 subsection (~~((+11+))~~) (12)(b) and (c) of this section.

13 (c) The department shall discharge from community supervision any
14 offender sentenced under this subsection (~~((+5+))~~) (6) before July 25,
15 1999, who has served at least one year of community supervision and has
16 completed any treatment ordered by the court.

17 (~~((+6+))~~) (7)(a) An offender is eligible for the special drug
18 offender sentencing alternative if:

19 (i) The offender is convicted of a felony that is not a violent
20 offense or sex offense and the violation does not involve a sentence
21 enhancement under RCW 9.94A.310 (3) or (4);

22 (ii) The offender has no current or prior convictions for a sex
23 offense or violent offense in this state, another state, or the United
24 States;

25 (iii) For a violation of the uniform controlled substances act
26 under chapter 69.50 RCW or a criminal solicitation to commit such a
27 violation under chapter 9A.28 RCW, the offense involved only a small
28 quantity of the particular controlled substance as determined by the
29 judge upon consideration of such factors as the weight, purity,
30 packaging, sale price, and street value of the controlled substance;
31 and

32 (iv) The offender has not been found by the United States attorney
33 general to be subject to a deportation detainer or order.

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

1 facility for one-half of the midpoint of the standard range. During
2 incarceration in the state facility, offenders sentenced under this
3 subsection shall undergo a comprehensive substance abuse assessment and
4 receive, within available resources, treatment services appropriate for
5 the offender. The treatment services shall be designed by the division
6 of alcohol and substance abuse of the department of social and health
7 services, in cooperation with the department of corrections.

8 The court shall also impose:

9 (i) The remainder of the midpoint of the standard range as a term
10 of community custody which must include appropriate substance abuse
11 treatment in a program that has been approved by the division of
12 alcohol and substance abuse of the department of social and health
13 services;

14 (ii) Crime-related prohibitions including a condition not to use
15 illegal controlled substances; and

16 (iii) A requirement to submit to urinalysis or other testing to
17 monitor that status.

18 The court may prohibit the offender from using alcohol or
19 controlled substances and may require that the monitoring for
20 controlled substances be conducted by the department or by a treatment
21 alternatives to street crime program or a comparable court or agency-
22 referred program. The offender may be required to pay thirty dollars
23 per month while on community custody to offset the cost of monitoring.
24 In addition, the court shall impose three or more of the following
25 conditions:

26 (A) Devote time to a specific employment or training;

27 (B) Remain within prescribed geographical boundaries and notify the
28 court or the community corrections officer before any change in the
29 offender's address or employment;

30 (C) Report as directed to a community corrections officer;

31 (D) Pay all court-ordered legal financial obligations;

32 (E) Perform community service work;

33 (F) Stay out of areas designated by the sentencing judge;

34 (G) Such other conditions as the court may require such as
35 affirmative conditions.

36 (c) If the offender violates any of the sentence conditions in (b)
37 of this subsection, a violation hearing shall be held by the department
38 unless waived by the offender. If the department finds that conditions

1 have been willfully violated, the offender may be reclassified to serve
2 the remaining balance of the original sentence.

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

9 (e) An offender who fails to complete the special drug offender
10 sentencing alternative program or who is administratively terminated
11 from the program shall be reclassified to serve the unexpired term of
12 his or her sentence as ordered by the sentencing judge and shall be
13 subject to all rules relating to earned early release time. An
14 offender who violates any conditions of supervision as defined by the
15 department shall be sanctioned. Sanctions may include, but are not
16 limited to, reclassifying the offender to serve the unexpired term of
17 his or her sentence as ordered by the sentencing judge. If an offender
18 is reclassified to serve the unexpired term of his or her sentence, the
19 offender shall be subject to all rules relating to earned early release
20 time.

21 ~~((+7))~~ (8) If a sentence range has not been established for the
22 defendant's crime, the court shall impose a determinate sentence which
23 may include not more than one year of confinement; community service
24 work; until July 1, 2000, a term of community supervision not to exceed
25 one year and on and after July 1, 2000, a term of community custody not
26 to exceed one year, subject to conditions and sanctions as authorized
27 in subsection ~~((+11))~~ (12)(b) and (c) of this section; and/or other
28 legal financial obligations. The court may impose a sentence which
29 provides more than one year of confinement if the court finds,
30 considering the purpose of this chapter, that there are substantial and
31 compelling reasons justifying an exceptional sentence.

32 ~~((+8))~~ (9)(a)(i) When an offender is convicted of a sex offense
33 other than a violation of RCW 9A.44.050 or a sex offense that is also
34 a serious violent offense and has no prior convictions for a sex
35 offense or any other felony sex offenses in this or any other state,
36 the sentencing court, on its own motion or the motion of the state or
37 the defendant, may order an examination to determine whether the
38 defendant is amenable to treatment.

1 The report of the examination shall include at a minimum the
2 following: The defendant's version of the facts and the official
3 version of the facts, the defendant's offense history, an assessment of
4 problems in addition to alleged deviant behaviors, the offender's
5 social and employment situation, and other evaluation measures used.
6 The report shall set forth the sources of the evaluator's information.

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

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

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

14 (C) Monitoring plans, including any requirements regarding living
15 conditions, lifestyle requirements, and monitoring by family members
16 and others;

17 (D) Anticipated length of treatment; and

18 (E) Recommended crime-related prohibitions.

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

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

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

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

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

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

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

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

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

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

30 (iii) The sex offender therapist shall submit quarterly reports on
31 the defendant's progress in treatment to the court and the parties.
32 The report shall reference the treatment plan and include at a minimum
33 the following: Dates of attendance, defendant's compliance with
34 requirements, treatment activities, the defendant's relative progress
35 in treatment, and any other material as specified by the court at
36 sentencing.

37 (iv) At the time of sentencing, the court shall set a treatment
38 termination hearing for three months prior to the anticipated date for
39 completion of treatment. Prior to the treatment termination hearing,

1 the treatment professional and community corrections officer shall
2 submit written reports to the court and parties regarding the
3 defendant's compliance with treatment and monitoring requirements, and
4 recommendations regarding termination from treatment, including
5 proposed community supervision conditions. Either party may request
6 and the court may order another evaluation regarding the advisability
7 of termination from treatment. The defendant shall pay the cost of any
8 additional evaluation ordered unless the court finds the defendant to
9 be indigent in which case the state shall pay the cost. At the
10 treatment termination hearing the court may: (A) Modify conditions of
11 community custody, and either (B) terminate treatment, or (C) extend
12 treatment for up to the remaining period of community custody.

13 (v) If a violation of conditions occurs during community custody,
14 the department shall either impose sanctions as provided for in RCW
15 9.94A.205(2)(a) or refer the violation to the court and recommend
16 revocation of the suspended sentence as provided for in (a)(vi) of this
17 subsection.

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

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

29 (viii) A sex offender therapist who examines or treats a sex
30 offender pursuant to this subsection (~~((+8+))~~) (9) does not have to be
31 certified by the department of health pursuant to chapter 18.155 RCW if
32 the court finds that: (A) The offender has already moved to another
33 state or plans to move to another state for reasons other than
34 circumventing the certification requirements; (B) no certified
35 providers are available for treatment within a reasonable geographical
36 distance of the offender's home; and (C) the evaluation and treatment
37 plan comply with this subsection (~~((+8+))~~) (9) and the rules adopted by
38 the department of health.

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

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

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

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

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

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

28 (iii) Report as directed to the court and a community corrections
29 officer;

30 (iv) Undergo available outpatient treatment.

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

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

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

9 (d) Within the funds available for this purpose, the department
10 shall develop and monitor transition and relapse prevention strategies,
11 including risk assessment and release plans, to reduce risk to the
12 community after sex offenders' terms of confinement in the custody of
13 the department.

14 (~~(+9)~~) (10)(a)(i) When a court sentences a person to a term of
15 total confinement to the custody of the department of corrections for
16 an offense categorized as a sex offense or a serious violent offense
17 committed after July 1, 1988, but before July 1, 1990, assault in the
18 second degree, assault of a child in the second degree, any crime
19 against a person where it is determined in accordance with RCW
20 9.94A.125 that the defendant or an accomplice was armed with a deadly
21 weapon at the time of commission, or any felony offense under chapter
22 69.50 or 69.52 RCW not sentenced under subsection (~~(+6)~~) (7) of this
23 section, committed on or after July 1, 1988, but before July 25, 1999,
24 the court shall in addition to the other terms of the sentence,
25 sentence the offender to a one-year term of community placement
26 beginning either upon completion of the term of confinement or at such
27 time as the offender is transferred to community custody in lieu of
28 earned release in accordance with RCW 9.94A.150 (1) and (2). When the
29 court sentences an offender under this subsection to the statutory
30 maximum period of confinement then the community placement portion of
31 the sentence shall consist entirely of such community custody to which
32 the offender may become eligible, in accordance with RCW 9.94A.150 (1)
33 and (2). Any period of community custody actually served shall be
34 credited against the community placement portion of the sentence.

35 (ii) Except for persons sentenced under (b) of this subsection or
36 subsection (~~(+10)~~) (11)(a) of this section, when a court sentences a
37 person to a term of total confinement to the custody of the department
38 of corrections for a violent offense, any crime against a person under
39 RCW 9.94A.440(2), or any felony offense under chapter 69.50 or 69.52

1 RCW not sentenced under subsection (~~((6+))~~) (7) of this section,
2 committed on or after July 25, 1999, but before July 1, 2000, the court
3 shall in addition to the other terms of the sentence, sentence the
4 offender to a one-year term of community placement beginning either
5 upon completion of the term of confinement or at such time as the
6 offender is transferred to community custody in lieu of earned release
7 in accordance with RCW 9.94A.150 (1) and (2). When the court sentences
8 the offender under this subsection (~~((9+))~~) (10)(a)(ii) to the statutory
9 maximum period of confinement, then the community placement portion of
10 the sentence shall consist entirely of such community custody to which
11 the offender may become eligible, in accordance with RCW 9.94A.150 (1)
12 and (2). Any period of community custody actually served shall be
13 credited against the community placement portion of the sentence.

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

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

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

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

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

5 (v) The residence location and living arrangements are subject to
6 the prior approval of the department of corrections during the period
7 of community placement; and

8 (vi) The offender shall submit to affirmative acts necessary to
9 monitor compliance with the orders of the court as required by the
10 department.

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

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

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

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

20 (iv) The offender shall not consume alcohol;

21 (v) The offender shall comply with any crime-related prohibitions;

22 or

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

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

32 (~~(10)~~) (11)(a) When a court sentences a person to the custody of
33 the department of corrections for an offense categorized as a sex
34 offense committed on or after June 6, 1996, but before July 1, 2000,
35 the court shall, in addition to other terms of the sentence, sentence
36 the offender to community custody for three years or up to the period
37 of earned release awarded pursuant to RCW 9.94A.150 (1) and (2),
38 whichever is longer. The community custody shall begin either upon
39 completion of the term of confinement or at such time as the offender

1 is transferred to community custody in lieu of earned release in
2 accordance with RCW 9.94A.150 (1) and (2).

3 (b) Unless a condition is waived by the court, the terms of
4 community custody shall be the same as those provided for in subsection
5 (~~(9)~~) (10)(b) of this section and may include those provided for in
6 subsection (~~(9)~~) (10)(c) of this section. As part of any sentence
7 that includes a term of community custody imposed under this
8 subsection, the court shall also require the offender to comply with
9 any conditions imposed by the department of corrections under
10 subsection (~~(15)~~) (16) of this section.

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

22 (~~(11)~~) (12)(a) When a court sentences a person to the custody of
23 the department of corrections for a sex offense, a violent offense, any
24 crime against a person under RCW 9.94A.440(2), or a felony offense
25 under chapter 69.50 or 69.52 RCW not sentenced under subsection (~~(6)~~)
26 (7) of this section, committed on or after July 1, 2000, the court
27 shall in addition to the other terms of the sentence, sentence the
28 offender to community custody for the community custody range or up to
29 the period of earned release awarded pursuant to RCW 9.94A.150 (1) and
30 (2), whichever is longer. The community custody shall begin either
31 upon completion of the term of confinement or at such time as the
32 offender is transferred to community custody in lieu of earned release
33 in accordance with RCW 9.94A.150 (1) and (2).

34 (b) Unless a condition is waived by the court, the conditions of
35 community custody shall include those provided for in subsection
36 (~~(9)~~) (10)(b)(i) through (vi) of this section. The conditions may
37 also include those provided for in subsection (~~(9)~~) (10)(c)(i)
38 through (vi) of this section. The court may also order the offender to
39 participate in rehabilitative programs or otherwise perform affirmative

1 conduct reasonably related to the circumstances of the offense, the
2 offender's risk of reoffending, or the safety of the community, and the
3 department shall enforce such conditions pursuant to (f) of this
4 subsection. As part of any sentence that includes a term of community
5 custody imposed under this subsection, the court shall also require the
6 offender to comply with any conditions imposed by the department of
7 corrections under subsection (~~((15))~~) (16) of this section. The
8 department shall assess the offender's risk of reoffense and may
9 establish and modify additional conditions of the offender's community
10 custody based upon the risk to community safety. The department may
11 not impose conditions that are contrary to those ordered by the court
12 and may not contravene or decrease court imposed conditions. The
13 department shall notify the offender in writing of any such conditions
14 or modifications. In setting, modifying, and enforcing conditions of
15 community custody, the department shall be deemed to be performing a
16 quasi-judicial function.

17 (c) If an offender violates conditions imposed by the court or the
18 department pursuant to this subsection during community custody, the
19 department may transfer the offender to a more restrictive confinement
20 status and impose other available sanctions as provided in RCW
21 9.94A.205 and 9.94A.207.

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

28 (e) At any time prior to the completion or termination of a sex
29 offender's term of community custody, if the court finds that public
30 safety would be enhanced, the court may impose and enforce an order
31 extending any or all of the conditions imposed pursuant to this section
32 for a period up to the maximum allowable sentence for the crime as it
33 is classified in chapter 9A.20 RCW, regardless of the expiration of the
34 offender's term of community custody. If a violation of a condition
35 extended under this subsection occurs after the expiration of the
36 offender's term of community custody, it shall be deemed a violation of
37 the sentence for the purposes of RCW 9.94A.195 and may be punishable as
38 contempt of court as provided for in RCW 7.21.040. If the court
39 extends a condition beyond the expiration of the term of community

1 custody, the department is not responsible for supervision of the
2 offender's compliance with the condition.

3 (f) Within the funds available for community custody, the
4 department shall determine conditions and duration of community custody
5 on the basis of risk to community safety, and shall supervise offenders
6 during community custody on the basis of risk to community safety and
7 conditions imposed by the court. The secretary shall adopt rules to
8 implement the provisions of this subsection (~~((11))~~) (12)(f).

9 (g) By the close of the next business day after receiving notice of
10 a condition imposed or modified by the department, an offender may
11 request an administrative review under rules adopted by the department.
12 The condition shall remain in effect unless the reviewing officer finds
13 that it is not reasonably related to any of the following: (i) The
14 crime of conviction; (ii) the offender's risk of reoffending; or (iii)
15 the safety of the community.

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

22 (~~((13))~~) (14) If a sentence imposed includes payment of a legal
23 financial obligation, the sentence shall specify the total amount of
24 the legal financial obligation owed, and shall require the offender to
25 pay a specified monthly sum toward that legal financial obligation.
26 Restitution to victims shall be paid prior to any other payments of
27 monetary obligations. Any legal financial obligation that is imposed
28 by the court may be collected by the department, which shall deliver
29 the amount paid to the county clerk for credit. The offender's
30 compliance with payment of legal financial obligations shall be
31 supervised by the department for ten years following the entry of the
32 judgment and sentence or ten years following the offender's release
33 from total confinement. All monetary payments ordered shall be paid no
34 later than ten years after the last date of release from confinement
35 pursuant to a felony conviction or the date the sentence was entered
36 unless the superior court extends the criminal judgment an additional
37 ten years. If the legal financial obligations including crime victims'
38 assessments are not paid during the initial ten-year period, the
39 superior court may extend jurisdiction under the criminal judgment an

1 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and
2 9.94A.145. If jurisdiction under the criminal judgment is extended,
3 the department is not responsible for supervision of the offender
4 during the subsequent period. Independent of the department, the party
5 or entity to whom the legal financial obligation is owed shall have the
6 authority to utilize any other remedies available to the party or
7 entity to collect the legal financial obligation. Nothing in this
8 section makes the department, the state, or any of its employees,
9 agents, or other persons acting on their behalf liable under any
10 circumstances for the payment of these legal financial obligations. If
11 an order includes restitution as one of the monetary assessments, the
12 county clerk shall make disbursements to victims named in the order.

13 ~~((14))~~ (15) Except as provided under RCW 9.94A.140(1) and
14 9.94A.142(1), a court may not impose a sentence providing for a term of
15 confinement or community supervision, community placement, or community
16 custody which exceeds the statutory maximum for the crime as provided
17 in chapter 9A.20 RCW.

18 ~~((15))~~ (16) All offenders sentenced to terms involving community
19 supervision, community service, community placement, community custody,
20 or legal financial obligation shall be under the supervision of the
21 department of corrections and shall follow explicitly the instructions
22 and conditions of the department of corrections. The department may
23 require an offender to perform affirmative acts it deems appropriate to
24 monitor compliance with the conditions of the sentence imposed.

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

30 (b) For offenders sentenced to terms involving community custody
31 for crimes committed on or after June 6, 1996, the department may
32 include, in addition to the instructions in (a) of this subsection, any
33 appropriate conditions of supervision, including but not limited to,
34 prohibiting the offender from having contact with any other specified
35 individuals or specific class of individuals. For offenders sentenced
36 to terms of community custody for crimes committed on or after July 1,
37 2000, the department may additionally require the offender to
38 participate in rehabilitative programs or otherwise perform affirmative
39 conduct, and to obey all laws.

1 The conditions authorized under this subsection (~~((+15+))~~) (16)(b)
2 may be imposed by the department prior to or during an offender's
3 community custody term. If a violation of conditions imposed by the
4 court or the department pursuant to subsection (~~((+10+))~~) (11) of this
5 section occurs during community custody, it shall be deemed a violation
6 of community placement for the purposes of RCW 9.94A.207 and shall
7 authorize the department to transfer an offender to a more restrictive
8 confinement status as provided in RCW 9.94A.205. At any time prior to
9 the completion of an offender's term of community custody, the
10 department may recommend to the court that any or all of the conditions
11 imposed by the court or the department pursuant to subsection (~~((+10+))~~)
12 (11) or (~~((+11+))~~) (12) of this section be continued beyond the
13 expiration of the offender's term of community custody as authorized in
14 subsection (~~((+10+))~~) (11)(c) or (~~((+11+))~~) (12)(e) of this section.

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

20 (~~((+16+))~~) (17) All offenders sentenced to terms involving community
21 supervision, community service, community custody, or community
22 placement under the supervision of the department of corrections shall
23 not own, use, or possess firearms or ammunition. Offenders who own,
24 use, or are found to be in actual or constructive possession of
25 firearms or ammunition shall be subject to the appropriate violation
26 process and sanctions. "Constructive possession" as used in this
27 subsection means the power and intent to control the firearm or
28 ammunition. "Firearm" as used in this subsection means a weapon or
29 device from which a projectile may be fired by an explosive such as
30 gunpowder.

31 (~~((+17+))~~) (18) The sentencing court shall give the offender credit
32 for all confinement time served before the sentencing if that
33 confinement was solely in regard to the offense for which the offender
34 is being sentenced.

35 (~~((+18+))~~) (19) A departure from the standards in RCW 9.94A.400 (1)
36 and (2) governing whether sentences are to be served consecutively or
37 concurrently is an exceptional sentence subject to the limitations in
38 subsections (2) and (3) of this section, and may be appealed by the
39 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

1 (~~(19)~~) (20) The court shall order restitution whenever the
2 offender is convicted of a felony that results in injury to any person
3 or damage to or loss of property, whether the offender is sentenced to
4 confinement or placed under community supervision, unless extraordinary
5 circumstances exist that make restitution inappropriate in the court's
6 judgment. The court shall set forth the extraordinary circumstances in
7 the record if it does not order restitution.

8 (~~(20)~~) (21) As a part of any sentence, the court may impose and
9 enforce an order that relates directly to the circumstances of the
10 crime for which the offender has been convicted, prohibiting the
11 offender from having any contact with other specified individuals or a
12 specific class of individuals for a period not to exceed the maximum
13 allowable sentence for the crime, regardless of the expiration of the
14 offender's term of community supervision or community placement.

15 (~~(21)~~) (22) The court may order an offender whose sentence
16 includes community placement or community supervision to undergo a
17 mental status evaluation and to participate in available outpatient
18 mental health treatment, if the court finds that reasonable grounds
19 exist to believe that the offender is a mentally ill person as defined
20 in RCW 71.24.025, and that this condition is likely to have influenced
21 the offense. An order requiring mental status evaluation or treatment
22 must be based on a presentence report and, if applicable, mental status
23 evaluations that have been filed with the court to determine the
24 offender's competency or eligibility for a defense of insanity. The
25 court may order additional evaluations at a later date if deemed
26 appropriate.

27 (~~(22)~~) (23) In any sentence of partial confinement, the court may
28 require the defendant to serve the partial confinement in work release,
29 in a program of home detention, on work crew, or in a combined program
30 of work crew and home detention.

31 (~~(23)~~) (24) All court-ordered legal financial obligations
32 collected by the department and remitted to the county clerk shall be
33 credited and paid where restitution is ordered. Restitution shall be
34 paid prior to any other payments of monetary obligations.

35 (~~(24)~~) (25) In sentencing an offender convicted of a crime of
36 domestic violence, as defined in RCW 10.99.020, if the offender has a
37 minor child, or if the victim of the offense for which the offender was
38 convicted has a minor child, the court may, as part of any term of

1 community supervision, order the offender to participate in a domestic
2 violence perpetrator program approved under RCW 26.50.150.

3 ((+25+)) (26)(a) Sex offender examinations and treatment ordered as
4 a special condition of community placement or community custody under
5 this section shall be conducted only by sex offender treatment
6 providers certified by the department of health under chapter 18.155
7 RCW unless the court finds that: (i) The offender has already moved to
8 another state or plans to move to another state for reasons other than
9 circumventing the certification requirements; (ii) no certified
10 providers are available for treatment within a reasonable geographic
11 distance of the offender's home, as determined in rules adopted by the
12 secretary; (iii) the evaluation and treatment plan comply with the
13 rules adopted by the department of health; or (iv) the treatment
14 provider is employed by the department. A treatment provider selected
15 by an offender who is not certified by the department of health shall
16 consult with a certified provider during the offender's period of
17 treatment to ensure compliance with the rules adopted by the department
18 of health. The frequency and content of the consultation shall be
19 based on the recommendation of the certified provider.

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

25 NEW SECTION. **Sec. 3.** This act applies only to crimes committed on
26 or after the effective date of this act.

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