

CERTIFICATION OF ENROLLMENT

**HOUSE BILL 1299**

Chapter 324, Laws of 1999

56th Legislature  
1999 Regular Session

EXTRAORDINARY MEDICAL PLACEMENT--OFFENDERS

EFFECTIVE DATE: 7/25/99

Passed by the House April 19, 1999  
Yeas 97 Nays 0

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

FRANK CHOPP  
**Speaker of the House of Representatives**

Passed by the Senate April 6, 1999  
Yeas 45 Nays 0

BRAD OWEN  
**President of the Senate**

Approved May 14, 1999

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 1299** as passed by the House of Representatives and the Senate on the dates hereon set forth.

DEAN R. FOSTER  
**Chief Clerk**

TIMOTHY A. MARTIN  
**Chief Clerk**

FILED

May 14, 1999 - 6:34 p.m.

**Secretary of State  
State of Washington**

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HOUSE BILL 1299

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AS AMENDED BY THE SENATE

Passed Legislature - 1999 Regular Session

State of Washington                      56th Legislature                      1999 Regular Session

By Representatives Ballasiotes, O'Brien, Lambert, Kastama, Esser and Schual-Berke; by request of Sentencing Guidelines Commission

Read first time 01/21/1999. Referred to Committee on Criminal Justice & Corrections.

1            AN ACT Relating to extraordinary medical releases for offenders;  
2 amending RCW 9.94A.150, 9.94A.120, and 69.50.410; reenacting and  
3 amending RCW 9.94A.310, 9.95.040, and 46.61.5055; and adding a new  
4 section to chapter 72.09 RCW.

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

6            **Sec. 1.** RCW 9.94A.150 and 1996 c 199 s 2 are each amended to read  
7 as follows:

8            No person serving a sentence imposed pursuant to this chapter and  
9 committed to the custody of the department shall leave the confines of  
10 the correctional facility or be released prior to the expiration of the  
11 sentence except as follows:

12            (1) Except as otherwise provided for in subsection (2) of this  
13 section, the term of the sentence of an offender committed to a  
14 correctional facility operated by the department, may be reduced by  
15 earned early release time in accordance with procedures that shall be  
16 developed and promulgated by the correctional agency having  
17 jurisdiction in which the offender is confined. The earned early  
18 release time shall be for good behavior and good performance, as  
19 determined by the correctional agency having jurisdiction. The

1 correctional agency shall not credit the offender with earned early  
2 release credits in advance of the offender actually earning the  
3 credits. Any program established pursuant to this section shall allow  
4 an offender to earn early release credits for presentence  
5 incarceration. If an offender is transferred from a county jail to the  
6 department of corrections, the county jail facility shall certify to  
7 the department the amount of time spent in custody at the facility and  
8 the amount of earned early release time. In the case of an offender  
9 who has been convicted of a felony committed after July 23, 1995, that  
10 involves any applicable deadly weapon enhancements under RCW 9.94A.310  
11 (3) or (4), or both, shall not receive any good time credits or earned  
12 early release time for that portion of his or her sentence that results  
13 from any deadly weapon enhancements. In the case of an offender  
14 convicted of a serious violent offense or a sex offense that is a class  
15 A felony committed on or after July 1, 1990, the aggregate earned early  
16 release time may not exceed fifteen percent of the sentence. In no  
17 other case shall the aggregate earned early release time exceed one-  
18 third of the total sentence;

19 (2) A person convicted of a sex offense or an offense categorized  
20 as a serious violent offense, assault in the second degree, vehicular  
21 homicide, vehicular assault, assault of a child in the second degree,  
22 any crime against a person where it is determined in accordance with  
23 RCW 9.94A.125 that the defendant or an accomplice was armed with a  
24 deadly weapon at the time of commission, or any felony offense under  
25 chapter 69.50 or 69.52 RCW may become eligible, in accordance with a  
26 program developed by the department, for transfer to community custody  
27 status in lieu of earned early release time pursuant to subsection (1)  
28 of this section;

29 (3) An offender may leave a correctional facility pursuant to an  
30 authorized furlough or leave of absence. In addition, offenders may  
31 leave a correctional facility when in the custody of a corrections  
32 officer or officers;

33 (4)(a) The secretary of corrections may authorize an extraordinary  
34 medical placement for an offender when all of the following conditions  
35 exist:

36 (i) The offender has a medical condition that is serious enough to  
37 require costly care or treatment;

1        (ii) The offender poses a low risk to the community because he or  
2 she is physically incapacitated due to age or the medical condition;  
3 and

4        (iii) Granting the extraordinary medical placement will result in  
5 a cost savings to the state.

6        (b) An offender sentenced to death or to life imprisonment without  
7 the possibility of release or parole is not eligible for an  
8 extraordinary medical placement under this subsection.

9        (c) The secretary shall require electronic monitoring for all  
10 offenders in extraordinary medical placement unless the electronic  
11 monitoring equipment interferes with the function of the offender's  
12 medical equipment or results in the loss of funding for the offender's  
13 medical care. The secretary shall specify who shall provide the  
14 monitoring services and the terms under which the monitoring shall be  
15 performed.

16        (d) The secretary may revoke an extraordinary medical placement  
17 under this subsection at any time.

18        (5) The governor, upon recommendation from the clemency and pardons  
19 board, may grant an extraordinary release for reasons of serious health  
20 problems, senility, advanced age, extraordinary meritorious acts, or  
21 other extraordinary circumstances;

22        ~~((+5))~~ (6) No more than the final six months of the sentence may  
23 be served in partial confinement designed to aid the offender in  
24 finding work and reestablishing himself or herself in the community;

25        ~~((+6))~~ (7) The governor may pardon any offender;

26        ~~((+7))~~ (8) The department of corrections may release an offender  
27 from confinement any time within ten days before a release date  
28 calculated under this section; and

29        ~~((+8))~~ (9) An offender may leave a correctional facility prior to  
30 completion of his or her sentence if the sentence has been reduced as  
31 provided in RCW 9.94A.160.

32        Notwithstanding any other provisions of this section, an offender  
33 sentenced for a felony crime listed in RCW 9.94A.120(4) as subject to  
34 a mandatory minimum sentence of total confinement shall not be released  
35 from total confinement before the completion of the listed mandatory  
36 minimum sentence for that felony crime of conviction unless allowed  
37 under RCW 9.94A.120(4).

1       **Sec. 2.** RCW 9.94A.120 and 1998 c 260 s 3 are each amended to read  
2 as follows:

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

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

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

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

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

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

4 (5) In sentencing a first-time offender the court may waive the  
5 imposition of a sentence within the sentence range and impose a  
6 sentence which may include up to ninety days of confinement in a  
7 facility operated or utilized under contract by the county and a  
8 requirement that the offender refrain from committing new offenses.  
9 The sentence may also include up to two years of community supervision,  
10 which, in addition to crime-related prohibitions, may include  
11 requirements that the offender perform any one or more of the  
12 following:

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

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

17 (c) Pursue a prescribed, secular course of study or vocational  
18 training;

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

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

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

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

28 (i) The offender is convicted of the manufacture, delivery, or  
29 possession with intent to manufacture or deliver a controlled substance  
30 classified in Schedule I or II that is a narcotic drug or a felony that  
31 is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt,  
32 criminal solicitation, or criminal conspiracy to commit such crimes,  
33 and the violation does not involve a sentence enhancement under RCW  
34 9.94A.310 (3) or (4);

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

37 (iii) The offense involved only a small quantity of the particular  
38 controlled substance as determined by the judge upon consideration of

1 such factors as the weight, purity, packaging, sale price, and street  
2 value of the controlled substance.

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

- 30 (i) Devote time to a specific employment or training;
  - 31 (ii) Remain within prescribed geographical boundaries and notify  
32 the court or the community corrections officer before any change in the  
33 offender's address or employment;
  - 34 (iii) Report as directed to a community corrections officer;
  - 35 (iv) Pay all court-ordered legal financial obligations;
  - 36 (v) Perform community service work;
  - 37 (vi) Stay out of areas designated by the sentencing judge.
- 38 (c) If the offender violates any of the sentence conditions in (b)  
39 of this subsection, the department shall impose sanctions

1 administratively, with notice to the prosecuting attorney and the  
2 sentencing court. Upon motion of the court or the prosecuting  
3 attorney, a violation hearing shall be held by the court. If the court  
4 finds that conditions have been willfully violated, the court may  
5 impose confinement consisting of up to the remaining one-half of the  
6 midpoint of the standard range. All total confinement served during  
7 the period of community custody shall be credited to the offender,  
8 regardless of whether the total confinement is served as a result of  
9 the original sentence, as a result of a sanction imposed by the  
10 department, or as a result of a violation found by the court. The term  
11 of community supervision shall be tolled by any period of time served  
12 in total confinement as a result of a violation found by the court.

13 (d) The department shall determine the rules for calculating the  
14 value of a day fine based on the offender's income and reasonable  
15 obligations which the offender has for the support of the offender and  
16 any dependents. These rules shall be developed in consultation with  
17 the administrator for the courts, the office of financial management,  
18 and the commission.

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

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

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



1 The examiner shall assess and report regarding the defendant's  
2 amenability to treatment and relative risk to the community. A  
3 proposed treatment plan shall be provided and shall include, at a  
4 minimum:

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

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

8 (C) Monitoring plans, including any requirements regarding living  
9 conditions, lifestyle requirements, and monitoring by family members  
10 and others;

11 (D) Anticipated length of treatment; and

12 (E) Recommended crime-related prohibitions.

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

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

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

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

1 not change providers without court approval after a hearing if the  
2 prosecutor or community corrections officer object to the change. In  
3 addition, as conditions of the suspended sentence, the court may impose  
4 other sentence conditions including up to six months of confinement,  
5 not to exceed the sentence range of confinement for that offense,  
6 crime-related prohibitions, and requirements that the offender perform  
7 any one or more of the following:

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

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

12 (III) Report as directed to the court and a community corrections  
13 officer;

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

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

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

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

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

1 be indigent in which case the state shall pay the cost. At the  
2 treatment termination hearing the court may: (A) Modify conditions of  
3 community custody, and either (B) terminate treatment, or (C) extend  
4 treatment for up to the remaining period of community custody.

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

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

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

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

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

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

38 (b) When an offender commits any felony sex offense on or after  
39 July 1, 1987, and is sentenced to a term of confinement of more than

1 one year but less than six years, the sentencing court may, on its own  
2 motion or on the motion of the offender or the state, request the  
3 department of corrections to evaluate whether the offender is amenable  
4 to treatment and the department may place the offender in a treatment  
5 program within a correctional facility operated by the department.

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

- 13 (i) Devote time to a specific employment or occupation;
- 14 (ii) Remain within prescribed geographical boundaries and notify  
15 the court or the community corrections officer prior to any change in  
16 the offender's address or employment;
- 17 (iii) Report as directed to the court and a community corrections  
18 officer;
- 19 (iv) Undergo available outpatient treatment.

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

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

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

36 (9)(a) When a court sentences a person to a term of total  
37 confinement to the custody of the department of corrections for an  
38 offense categorized as a sex offense or a serious violent offense  
39 committed after July 1, 1988, but before July 1, 1990, assault in the

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

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

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

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

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

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

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

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

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

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

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

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

22 (iv) The offender shall not consume alcohol;

23 (v) The offender shall comply with any crime-related prohibitions;  
24 or

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

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

34 (10)(a) When a court sentences a person to the custody of the  
35 department of corrections for an offense categorized as a sex offense  
36 committed on or after June 6, 1996, the court shall, in addition to  
37 other terms of the sentence, sentence the offender to community custody  
38 for three years or up to the period of earned early release awarded  
39 pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The

1 community custody shall begin either upon completion of the term of  
2 confinement or at such time as the offender is transferred to community  
3 custody in lieu of earned early release in accordance with RCW  
4 9.94A.150 (1) and (2).

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

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

23 (11) If the court imposes a sentence requiring confinement of  
24 thirty days or less, the court may, in its discretion, specify that the  
25 sentence be served on consecutive or intermittent days. A sentence  
26 requiring more than thirty days of confinement shall be served on  
27 consecutive days. Local jail administrators may schedule court-ordered  
28 intermittent sentences as space permits.

29 (12) If a sentence imposed includes payment of a legal financial  
30 obligation, the sentence shall specify the total amount of the legal  
31 financial obligation owed, and shall require the offender to pay a  
32 specified monthly sum toward that legal financial obligation.  
33 Restitution to victims shall be paid prior to any other payments of  
34 monetary obligations. Any legal financial obligation that is imposed  
35 by the court may be collected by the department, which shall deliver  
36 the amount paid to the county clerk for credit. The offender's  
37 compliance with payment of legal financial obligations shall be  
38 supervised by the department for ten years following the entry of the  
39 judgment and sentence or ten years following the offender's release

1 from total confinement. All monetary payments ordered shall be paid no  
2 later than ten years after the last date of release from confinement  
3 pursuant to a felony conviction or the date the sentence was entered  
4 unless the superior court extends the criminal judgment an additional  
5 ten years. If the legal financial obligations including crime victims'  
6 assessments are not paid during the initial ten-year period, the  
7 superior court may extend jurisdiction under the criminal judgment an  
8 additional ten years as provided in RCW 9.94A.140, 9.94A.142, and  
9 9.94A.145. If jurisdiction under the criminal judgment is extended,  
10 the department is not responsible for supervision of the offender  
11 during the subsequent period. Independent of the department, the party  
12 or entity to whom the legal financial obligation is owed shall have the  
13 authority to utilize any other remedies available to the party or  
14 entity to collect the legal financial obligation. Nothing in this  
15 section makes the department, the state, or any of its employees,  
16 agents, or other persons acting on their behalf liable under any  
17 circumstances for the payment of these legal financial obligations. If  
18 an order includes restitution as one of the monetary assessments, the  
19 county clerk shall make disbursements to victims named in the order.

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

24 (14) All offenders sentenced to terms involving community  
25 supervision, community service, community placement, or legal financial  
26 obligation shall be under the supervision of the department of  
27 corrections and shall follow explicitly the instructions and conditions  
28 of the department of corrections. The department may require an  
29 offender to perform affirmative acts it deems appropriate to monitor  
30 compliance with the conditions of the sentence imposed.

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

36 (b) For offenders sentenced to terms involving community custody  
37 for crimes committed on or after June 6, 1996, the department may  
38 include, in addition to the instructions in (a) of this subsection, any  
39 appropriate conditions of supervision, including but not limited to,



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

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

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

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

35 (17) A departure from the standards in RCW 9.94A.400 (1) and (2)  
36 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 (18) The court shall order restitution whenever the offender is  
2 convicted of a felony that results in injury to any person or damage to  
3 or loss of property, whether the offender is sentenced to confinement  
4 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 (19) As a part of any sentence, the court may impose and enforce an  
9 order that relates directly to the circumstances of the crime for which  
10 the offender has been convicted, prohibiting the offender from having  
11 any contact with other specified individuals or a specific class of  
12 individuals for a period not to exceed the maximum allowable sentence  
13 for the crime, regardless of the expiration of the offender's term of  
14 community supervision or community placement.

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

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

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

34 **Sec. 3.** RCW 9.94A.310 and 1998 c 235 s 1 and 1998 c 211 s 3 are  
35 each reenacted and amended to read as follows:

2 Sentencing Grid

3 SERIOUSNESS

4 SCORE

OFFENDER SCORE

9 or

more

8 XV Life Sentence without Parole/Death Penalty

10	XIV	23y4m	24y4m	25y4m	26y4m	27y4m	28y4m	30y4m	32y10m36y	40y	
11		240-	250-	261-	271-	281-	291-	312-	338-	370-	411-
12		320	333	347	361	374	388	416	450	493	548

14	XIII	14y4m	15y4m	16y2m	17y	17y11m	18y9m	20y5m	22y2m	25y7m	29y
15		123-	134-	144-	154-	165-	175-	195-	216-	257-	298-
16		220	234	244	254	265	275	295	316	357	397

18	XII	9y	9y11m	10y9m	11y8m	12y6m	13y5m	15y9m	17y3m	20y3m	23y3m
19		93-	102-	111-	120-	129-	138-	162-	178-	209-	240-
20		123	136	147	160	171	184	216	236	277	318

22	XI	7y6m	8y4m	9y2m	9y11m	10y9m	11y7m	14y2m	15y5m	17y11m	20y5m
23		78-	86-	95-	102-	111-	120-	146-	159-	185-	210-
24		102	114	125	136	147	158	194	211	245	280

26	X	5y	5y6m	6y	6y6m	7y	7y6m	9y6m	10y6m	12y6m	14y6m
27		51-	57-	62-	67-	72-	77-	98-	108-	129-	149-
28		68	75	82	89	96	102	130	144	171	198

30	IX	3y	3y6m	4y	4y6m	5y	5y6m	7y6m	8y6m	10y6m	12y6m
31		31-	36-	41-	46-	51-	57-	77-	87-	108-	129-
32		41	48	54	61	68	75	102	116	144	171

34	VIII	2y	2y6m	3y	3y6m	4y	4y6m	6y6m	7y6m	8y6m	10y6m
35		21-	26-	31-	36-	41-	46-	67-	77-	87-	108-
36		27	34	41	48	54	61	89	102	116	144

1	VII	18m	2y	2y6m	3y	3y6m	4y	5y6m	6y6m	7y6m	8y6m
2		15-	21-	26-	31-	36-	41-	57-	67-	77-	87-
3		20	27	34	41	48	54	75	89	102	116
4											
5	VI	13m	18m	2y	2y6m	3y	3y6m	4y6m	5y6m	6y6m	7y6m
6		12+-	15-	21-	26-	31-	36-	46-	57-	67-	77-
7		14	20	27	34	41	48	61	75	89	102
8											
9	V	9m	13m	15m	18m	2y2m	3y2m	4y	5y	6y	7y
10		6-	12+-	13-	15-	22-	33-	41-	51-	62-	72-
11		12	14	17	20	29	43	54	68	82	96
12											
13	IV	6m	9m	13m	15m	18m	2y2m	3y2m	4y2m	5y2m	6y2m
14		3-	6-	12+-	13-	15-	22-	33-	43-	53-	63-
15		9	12	14	17	20	29	43	57	70	84
16											
17	III	2m	5m	8m	11m	14m	20m	2y2m	3y2m	4y2m	5y
18		1-	3-	4-	9-	12+-	17-	22-	33-	43-	51-
19		3	8	12	12	16	22	29	43	57	68
20											
21	II		4m	6m	8m	13m	16m	20m	2y2m	3y2m	4y2m
22		0-90	2-	3-	4-	12+-	14-	17-	22-	33-	43-
23		Days	6	9	12	14	18	22	29	43	57
24											
25	I			3m	4m	5m	8m	13m	16m	20m	2y2m
26		0-60	0-90	2-	2-	3-	4-	12+-	14-	17-	22-
27		Days	Days	5	6	8	12	14	18	22	29
28											

29 NOTE: Numbers in the first horizontal row of each seriousness category  
30 represent sentencing midpoints in years(y) and months(m). Numbers in  
31 the second and third rows represent presumptive sentencing ranges in  
32 months, or in days if so designated. 12+ equals one year and one day.

33 (2) For persons convicted of the anticipatory offenses of criminal  
34 attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the  
35 presumptive sentence is determined by locating the sentencing grid  
36 sentence range defined by the appropriate offender score and the  
37 seriousness level of the completed crime, and multiplying the range by  
38 75 percent.

1 (3) The following additional times shall be added to the  
2 presumptive sentence for felony crimes committed after July 23, 1995,  
3 if the offender or an accomplice was armed with a firearm as defined in  
4 RCW 9.41.010 and the offender is being sentenced for one of the crimes  
5 listed in this subsection as eligible for any firearm enhancements  
6 based on the classification of the completed felony crime. If the  
7 offender is being sentenced for more than one offense, the firearm  
8 enhancement or enhancements must be added to the total period of  
9 confinement for all offenses, regardless of which underlying offense is  
10 subject to a firearm enhancement. If the offender or an accomplice was  
11 armed with a firearm as defined in RCW 9.41.010 and the offender is  
12 being sentenced for an anticipatory offense under chapter 9A.28 RCW to  
13 commit one of the crimes listed in this subsection as eligible for any  
14 firearm enhancements, the following additional times shall be added to  
15 the presumptive sentence determined under subsection (2) of this  
16 section based on the felony crime of conviction as classified under RCW  
17 9A.28.020:

18 (a) Five years for any felony defined under any law as a class A  
19 felony or with a maximum sentence of at least twenty years, or both,  
20 and not covered under (f) of this subsection.

21 (b) Three years for any felony defined under any law as a class B  
22 felony or with a maximum sentence of ten years, or both, and not  
23 covered under (f) of this subsection.

24 (c) Eighteen months for any felony defined under any law as a  
25 class C felony or with a maximum sentence of five years, or both, and  
26 not covered under (f) of this subsection.

27 (d) If the offender is being sentenced for any firearm  
28 enhancements under (a), (b), and/or (c) of this subsection and the  
29 offender has previously been sentenced for any deadly weapon  
30 enhancements after July 23, 1995, under (a), (b), and/or (c) of this  
31 subsection or subsection (4)(a), (b), and/or (c) of this section, or  
32 both, any and all firearm enhancements under this subsection shall be  
33 twice the amount of the enhancement listed.

34 (e) Notwithstanding any other provision of law, any and all  
35 firearm enhancements under this section are mandatory, shall be served  
36 in total confinement, and shall run consecutively to all other  
37 sentencing provisions, including other firearm or deadly weapon  
38 enhancements, for all offenses sentenced under this chapter. However,  
39 whether or not a mandatory minimum term has expired, an offender

1 servicing a sentence under this subsection may be granted an  
2 extraordinary medical placement when authorized under RCW 9.94A.150(4).

3 (f) The firearm enhancements in this section shall apply to all  
4 felony crimes except the following: Possession of a machine gun,  
5 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
6 unlawful possession of a firearm in the first and second degree, and  
7 use of a machine gun in a felony.

8 (g) If the presumptive sentence under this section exceeds the  
9 statutory maximum for the offense, the statutory maximum sentence shall  
10 be the presumptive sentence unless the offender is a persistent  
11 offender as defined in RCW 9.94A.030. If the addition of a firearm  
12 enhancement increases the sentence so that it would exceed the  
13 statutory maximum for the offense, the portion of the sentence  
14 representing the enhancement may not be reduced.

15 (4) The following additional times shall be added to the  
16 presumptive sentence for felony crimes committed after July 23, 1995,  
17 if the offender or an accomplice was armed with a deadly weapon as  
18 defined in this chapter other than a firearm as defined in RCW 9.41.010  
19 and the offender is being sentenced for one of the crimes listed in  
20 this subsection as eligible for any deadly weapon enhancements based on  
21 the classification of the completed felony crime. If the offender is  
22 being sentenced for more than one offense, the deadly weapon  
23 enhancement or enhancements must be added to the total period of  
24 confinement for all offenses, regardless of which underlying offense is  
25 subject to a deadly weapon enhancement. If the offender or an  
26 accomplice was armed with a deadly weapon other than a firearm as  
27 defined in RCW 9.41.010 and the offender is being sentenced for an  
28 anticipatory offense under chapter 9A.28 RCW to commit one of the  
29 crimes listed in this subsection as eligible for any deadly weapon  
30 enhancements, the following additional times shall be added to the  
31 presumptive sentence determined under subsection (2) of this section  
32 based on the felony crime of conviction as classified under RCW  
33 9A.28.020:

34 (a) Two years for any felony defined under any law as a class A  
35 felony or with a maximum sentence of at least twenty years, or both,  
36 and not covered under (f) of this subsection.

37 (b) One year for any felony defined under any law as a class B  
38 felony or with a maximum sentence of ten years, or both, and not  
39 covered under (f) of this subsection.

1 (c) Six months for any felony defined under any law as a class C  
2 felony or with a maximum sentence of five years, or both, and not  
3 covered under (f) of this subsection.

4 (d) If the offender is being sentenced under (a), (b), and/or (c)  
5 of this subsection for any deadly weapon enhancements and the offender  
6 has previously been sentenced for any deadly weapon enhancements after  
7 July 23, 1995, under (a), (b), and/or (c) of this subsection or  
8 subsection (3)(a), (b), and/or (c) of this section, or both, any and  
9 all deadly weapon enhancements under this subsection shall be twice the  
10 amount of the enhancement listed.

11 (e) Notwithstanding any other provision of law, any and all deadly  
12 weapon enhancements under this section are mandatory, shall be served  
13 in total confinement, and shall run consecutively to all other  
14 sentencing provisions, including other firearm or deadly weapon  
15 enhancements, for all offenses sentenced under this chapter. However,  
16 whether or not a mandatory minimum term has expired, an offender  
17 serving a sentence under this subsection may be granted an  
18 extraordinary medical placement when authorized under RCW 9.94A.150(4).

19 (f) The deadly weapon enhancements in this section shall apply to  
20 all felony crimes except the following: Possession of a machine gun,  
21 possessing a stolen firearm, drive-by shooting, theft of a firearm,  
22 unlawful possession of a firearm in the first and second degree, and  
23 use of a machine gun in a felony.

24 (g) If the presumptive sentence under this section exceeds the  
25 statutory maximum for the offense, the statutory maximum sentence shall  
26 be the presumptive sentence unless the offender is a persistent  
27 offender as defined in RCW 9.94A.030. If the addition of a deadly  
28 weapon enhancement increases the sentence so that it would exceed the  
29 statutory maximum for the offense, the portion of the sentence  
30 representing the enhancement may not be reduced.

31 (5) The following additional times shall be added to the  
32 presumptive sentence if the offender or an accomplice committed the  
33 offense while in a county jail or state correctional facility as that  
34 term is defined in this chapter and the offender is being sentenced for  
35 one of the crimes listed in this subsection. If the offender or an  
36 accomplice committed one of the crimes listed in this subsection while  
37 in a county jail or state correctional facility as that term is defined  
38 in this chapter, and the offender is being sentenced for an  
39 anticipatory offense under chapter 9A.28 RCW to commit one of the

1 crimes listed in this subsection, the following additional times shall  
2 be added to the presumptive sentence determined under subsection (2) of  
3 this section:

4 (a) Eighteen months for offenses committed under RCW  
5 69.50.401(a)(1) (i) or (ii) or 69.50.410;

6 (b) Fifteen months for offenses committed under RCW  
7 69.50.401(a)(1) (iii), (iv), and (v);

8 (c) Twelve months for offenses committed under RCW 69.50.401(d).

9 For the purposes of this subsection, all of the real property of  
10 a state correctional facility or county jail shall be deemed to be part  
11 of that facility or county jail.

12 (6) An additional twenty-four months shall be added to the  
13 presumptive sentence for any ranked offense involving a violation of  
14 chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435.

15 (7) An additional two years shall be added to the presumptive  
16 sentence for vehicular homicide committed while under the influence of  
17 intoxicating liquor or any drug as defined by RCW 46.61.502 for each  
18 prior offense as defined in RCW 46.61.5055.

19 **Sec. 4.** RCW 9.95.040 and 1993 c 144 s 4 and 1993 c 140 s 1 are  
20 each reenacted and amended to read as follows:

21 The board shall fix the duration of confinement for persons  
22 committed by the court before July 1, 1986, for crimes committed before  
23 July 1, 1984. Within six months after the admission of the convicted  
24 person to a state correctional facility, the board shall fix the  
25 duration of confinement. The term of imprisonment so fixed shall not  
26 exceed the maximum provided by law for the offense of which the person  
27 was convicted or the maximum fixed by the court where the law does not  
28 provide for a maximum term.

29 Subject to RCW 9.95.047, the following limitations are placed on  
30 the board or the court for persons committed to a state correctional  
31 facility on or after July 1, 1986, for crimes committed before July 1,  
32 1984, with regard to fixing the duration of confinement in certain  
33 cases, notwithstanding any provisions of law specifying a lesser  
34 sentence:

35 (1) For a person not previously convicted of a felony but armed  
36 with a deadly weapon at the time of the commission of the offense, the  
37 duration of confinement shall not be fixed at less than five years.



1 (2) For a person previously convicted of a felony either in this  
2 state or elsewhere and who was armed with a deadly weapon at the time  
3 of the commission of the offense, the duration of confinement shall not  
4 be fixed at less than seven and one-half years.

5 The words "deadly weapon," as used in this section include, but  
6 are not limited to, any instrument known as a blackjack, sling shot,  
7 billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol,  
8 revolver, or any other firearm, any knife having a blade longer than  
9 three inches, any razor with an unguarded blade, any metal pipe or bar  
10 used or intended to be used as a club, any explosive, and any weapon  
11 containing poisonous or injurious gas.

12 (3) For a person convicted of being an habitual criminal within  
13 the meaning of the statute which provides for mandatory life  
14 imprisonment for such habitual criminals, the duration of confinement  
15 shall not be fixed at less than fifteen years.

16 (4) Any person convicted of embezzling funds from any institution  
17 of public deposit of which the person was an officer or stockholder,  
18 the duration of confinement shall be fixed at not less than five years.

19 Except when an inmate of a state correctional facility has been  
20 convicted of murder in the first or second degree, the board may parole  
21 an inmate prior to the expiration of a mandatory minimum term, provided  
22 such inmate has demonstrated a meritorious effort in rehabilitation and  
23 at least two-thirds of the board members concur in such action:  
24 PROVIDED, That any inmate who has a mandatory minimum term and is  
25 paroled prior to the expiration of such term according to the  
26 provisions of this chapter shall not receive a conditional release from  
27 supervision while on parole until after the mandatory minimum term has  
28 expired.

29 An inmate serving a sentence fixed under this chapter, whether or  
30 not a mandatory minimum term has expired, may be granted an  
31 extraordinary medical placement by the secretary of corrections when  
32 authorized under RCW 9.94A.150(4).

33 **Sec. 5.** RCW 46.61.5055 and 1998 c 215 s 1, 1998 c 214 s 1, 1998  
34 c 211 s 1, 1998 c 210 s 4, 1998 c 207 s 1 and 1998 c 206 s 1 are each  
35 reenacted and amended to read as follows:

36 (1) A person who is convicted of a violation of RCW 46.61.502 or  
37 46.61.504 and who has no prior offense within seven years shall be  
38 punished as follows:

1 (a) In the case of a person whose alcohol concentration was less  
2 than 0.15, or for whom for reasons other than the person's refusal to  
3 take a test offered pursuant to RCW 46.20.308 there is no test result  
4 indicating the person's alcohol concentration:

5 (i) By imprisonment for not less than one day nor more than one  
6 year. Twenty-four consecutive hours of the imprisonment may not be  
7 suspended or deferred unless the court finds that the imposition of  
8 this mandatory minimum sentence would impose a substantial risk to the  
9 offender's physical or mental well-being. Whenever the mandatory  
10 minimum sentence is suspended or deferred, the court shall state in  
11 writing the reason for granting the suspension or deferral and the  
12 facts upon which the suspension or deferral is based. In lieu of the  
13 mandatory minimum term of imprisonment required under this subsection  
14 (1)(a)(i), the court may order not less than fifteen days of electronic  
15 home monitoring. The offender shall pay the cost of electronic home  
16 monitoring. The county or municipality in which the penalty is being  
17 imposed shall determine the cost. The court may also require the  
18 offender's electronic home monitoring device to include an alcohol  
19 detection breathalyzer, and the court may restrict the amount of  
20 alcohol the offender may consume during the time the offender is on  
21 electronic home monitoring; and

22 (ii) By a fine of not less than three hundred fifty dollars nor  
23 more than five thousand dollars. Three hundred fifty dollars of the  
24 fine may not be suspended or deferred unless the court finds the  
25 offender to be indigent; and

26 (iii) By suspension of the offender's license or permit to drive,  
27 or suspension of any nonresident privilege to drive, for a period of  
28 ninety days. The period of license, permit, or privilege suspension  
29 may not be suspended. The court shall notify the department of  
30 licensing of the conviction, and upon receiving notification of the  
31 conviction the department shall suspend the offender's license, permit,  
32 or privilege; or

33 (b) In the case of a person whose alcohol concentration was at  
34 least 0.15, or for whom by reason of the person's refusal to take a  
35 test offered pursuant to RCW 46.20.308 there is no test result  
36 indicating the person's alcohol concentration:

37 (i) By imprisonment for not less than two days nor more than one  
38 year. Two consecutive days of the imprisonment may not be suspended or  
39 deferred unless the court finds that the imposition of this mandatory

1 minimum sentence would impose a substantial risk to the offender's  
2 physical or mental well-being. Whenever the mandatory minimum sentence  
3 is suspended or deferred, the court shall state in writing the reason  
4 for granting the suspension or deferral and the facts upon which the  
5 suspension or deferral is based. In lieu of the mandatory minimum term  
6 of imprisonment required under this subsection (1)(b)(i), the court may  
7 order not less than thirty days of electronic home monitoring. The  
8 offender shall pay the cost of electronic home monitoring. The county  
9 or municipality in which the penalty is being imposed shall determine  
10 the cost. The court may also require the offender's electronic home  
11 monitoring device to include an alcohol detection breathalyzer, and the  
12 court may restrict the amount of alcohol the offender may consume  
13 during the time the offender is on electronic home monitoring; and

14 (ii) By a fine of not less than five hundred dollars nor more than  
15 five thousand dollars. Five hundred dollars of the fine may not be  
16 suspended or deferred unless the court finds the offender to be  
17 indigent; and

18 (iii) By revocation of the offender's license or permit to drive,  
19 or suspension of any nonresident privilege to drive, for a period of  
20 one year. The period of license, permit, or privilege suspension may  
21 not be suspended. The court shall notify the department of licensing  
22 of the conviction, and upon receiving notification of the conviction  
23 the department shall suspend the offender's license, permit, or  
24 privilege; and

25 (iv) By a court-ordered restriction under RCW 46.20.720.

26 (2) A person who is convicted of a violation of RCW 46.61.502 or  
27 46.61.504 and who has one prior offense within seven years shall be  
28 punished as follows:

29 (a) In the case of a person whose alcohol concentration was less  
30 than 0.15, or for whom for reasons other than the person's refusal to  
31 take a test offered pursuant to RCW 46.20.308 there is no test result  
32 indicating the person's alcohol concentration:

33 (i) By imprisonment for not less than thirty days nor more than  
34 one year and sixty days of electronic home monitoring. The offender  
35 shall pay for the cost of the electronic monitoring. The county or  
36 municipality where the penalty is being imposed shall determine the  
37 cost. The court may also require the offender's electronic home  
38 monitoring device include an alcohol detection breathalyzer, and may  
39 restrict the amount of alcohol the offender may consume during the time

1 the offender is on electronic home monitoring. Thirty days of  
2 imprisonment and sixty days of electronic home monitoring may not be  
3 suspended or deferred unless the court finds that the imposition of  
4 this mandatory minimum sentence would impose a substantial risk to the  
5 offender's physical or mental well-being. Whenever the mandatory  
6 minimum sentence is suspended or deferred, the court shall state in  
7 writing the reason for granting the suspension or deferral and the  
8 facts upon which the suspension or deferral is based; and

9 (ii) By a fine of not less than five hundred dollars nor more than  
10 five thousand dollars. Five hundred dollars of the fine may not be  
11 suspended or deferred unless the court finds the offender to be  
12 indigent; and

13 (iii) By revocation of the offender's license or permit to drive,  
14 or suspension of any nonresident privilege to drive, for a period of  
15 two years. The period of license, permit, or privilege revocation may  
16 not be suspended. The court shall notify the department of licensing  
17 of the conviction, and upon receiving notification of the conviction  
18 the department shall revoke the offender's license, permit, or  
19 privilege; and

20 (iv) By a court-ordered restriction under RCW 46.20.720; or

21 (b) In the case of a person whose alcohol concentration was at  
22 least 0.15, or for whom by reason of the person's refusal to take a  
23 test offered pursuant to RCW 46.20.308 there is no test result  
24 indicating the person's alcohol concentration:

25 (i) By imprisonment for not less than forty-five days nor more  
26 than one year and ninety days of electronic home monitoring. The  
27 offender shall pay for the cost of the electronic monitoring. The  
28 county or municipality where the penalty is being imposed shall  
29 determine the cost. The court may also require the offender's  
30 electronic home monitoring device include an alcohol detection  
31 breathalyzer, and may restrict the amount of alcohol the offender may  
32 consume during the time the offender is on electronic home monitoring.  
33 Forty-five days of imprisonment and ninety days of electronic home  
34 monitoring may not be suspended or deferred unless the court finds that  
35 the imposition of this mandatory minimum sentence would impose a  
36 substantial risk to the offender's physical or mental well-being.  
37 Whenever the mandatory minimum sentence is suspended or deferred, the  
38 court shall state in writing the reason for granting the suspension or

1 deferral and the facts upon which the suspension or deferral is based;  
2 and

3 (ii) By a fine of not less than seven hundred fifty dollars nor  
4 more than five thousand dollars. Seven hundred fifty dollars of the  
5 fine may not be suspended or deferred unless the court finds the  
6 offender to be indigent; and

7 (iii) By revocation of the offender's license or permit to drive,  
8 or suspension of any nonresident privilege to drive, for a period of  
9 nine hundred days. The period of license, permit, or privilege  
10 revocation may not be suspended. The court shall notify the department  
11 of licensing of the conviction, and upon receiving notification of the  
12 conviction the department shall revoke the offender's license, permit,  
13 or privilege; and

14 (iv) By a court-ordered restriction under RCW 46.20.720.

15 (3) A person who is convicted of a violation of RCW 46.61.502 or  
16 46.61.504 and who has two or more prior offenses within seven years  
17 shall be punished as follows:

18 (a) In the case of a person whose alcohol concentration was less  
19 than 0.15, or for whom for reasons other than the person's refusal to  
20 take a test offered pursuant to RCW 46.20.308 there is no test result  
21 indicating the person's alcohol concentration:

22 (i) By imprisonment for not less than ninety days nor more than  
23 one year and one hundred twenty days of electronic home monitoring.  
24 The offender shall pay for the cost of the electronic monitoring. The  
25 county or municipality where the penalty is being imposed shall  
26 determine the cost. The court may also require the offender's  
27 electronic home monitoring device include an alcohol detection  
28 breathalyzer, and may restrict the amount of alcohol the offender may  
29 consume during the time the offender is on electronic home monitoring.  
30 Ninety days of imprisonment and one hundred twenty days of electronic  
31 home monitoring may not be suspended or deferred unless the court finds  
32 that the imposition of this mandatory minimum sentence would impose a  
33 substantial risk to the offender's physical or mental well-being.  
34 Whenever the mandatory minimum sentence is suspended or deferred, the  
35 court shall state in writing the reason for granting the suspension or  
36 deferral and the facts upon which the suspension or deferral is based;  
37 and

38 (ii) By a fine of not less than one thousand dollars nor more than  
39 five thousand dollars. One thousand dollars of the fine may not be

1 suspended or deferred unless the court finds the offender to be  
2 indigent; and

3 (iii) By revocation of the offender's license or permit to drive,  
4 or suspension of any nonresident privilege to drive, for a period of  
5 three years. The period of license, permit, or privilege revocation  
6 may not be suspended. The court shall notify the department of  
7 licensing of the conviction, and upon receiving notification of the  
8 conviction the department shall revoke the offender's license, permit,  
9 or privilege; and

10 (iv) By a court-ordered restriction under RCW 46.20.720; or

11 (b) In the case of a person whose alcohol concentration was at  
12 least 0.15, or for whom by reason of the person's refusal to take a  
13 test offered pursuant to RCW 46.20.308 there is no test result  
14 indicating the person's alcohol concentration:

15 (i) By imprisonment for not less than one hundred twenty days nor  
16 more than one year and one hundred fifty days of electronic home  
17 monitoring. The offender shall pay for the cost of the electronic  
18 monitoring. The county or municipality where the penalty is being  
19 imposed shall determine the cost. The court may also require the  
20 offender's electronic home monitoring device include an alcohol  
21 detection breathalyzer, and may restrict the amount of alcohol the  
22 offender may consume during the time the offender is on electronic home  
23 monitoring. One hundred twenty days of imprisonment and one hundred  
24 fifty days of electronic home monitoring may not be suspended or  
25 deferred unless the court finds that the imposition of this mandatory  
26 minimum sentence would impose a substantial risk to the offender's  
27 physical or mental well-being. Whenever the mandatory minimum sentence  
28 is suspended or deferred, the court shall state in writing the reason  
29 for granting the suspension or deferral and the facts upon which the  
30 suspension or deferral is based; and

31 (ii) By a fine of not less than one thousand five hundred dollars  
32 nor more than five thousand dollars. One thousand five hundred dollars  
33 of the fine may not be suspended or deferred unless the court finds the  
34 offender to be indigent; and

35 (iii) By revocation of the offender's license or permit to drive,  
36 or suspension of any nonresident privilege to drive, for a period of  
37 four years. The period of license, permit, or privilege revocation may  
38 not be suspended. The court shall notify the department of licensing  
39 of the conviction, and upon receiving notification of the conviction

1 the department shall revoke the offender's license, permit, or  
2 privilege; and

3 (iv) By a court-ordered restriction under RCW 46.20.720.

4 (4) In exercising its discretion in setting penalties within the  
5 limits allowed by this section, the court shall particularly consider  
6 the following:

7 (a) Whether the person's driving at the time of the offense was  
8 responsible for injury or damage to another or another's property; and

9 (b) Whether the person was driving or in physical control of a  
10 vehicle with one or more passengers at the time of the offense.

11 (5) An offender punishable under this section is subject to the  
12 alcohol assessment and treatment provisions of RCW 46.61.5056.

13 (6) After expiration of any period of suspension or revocation of  
14 the offender's license, permit, or privilege to drive required by this  
15 section, the department shall place the offender's driving privilege in  
16 probationary status pursuant to RCW 46.20.355.

17 (7)(a) In addition to any nonsuspendable and nondeferrable jail  
18 sentence required by this section, whenever the court imposes less than  
19 one year in jail, the court shall also suspend but shall not defer a  
20 period of confinement for a period not exceeding five years. The court  
21 shall impose conditions of probation that include: (i) Not driving a  
22 motor vehicle within this state without a valid license to drive and  
23 proof of financial responsibility for the future; (ii) not driving a  
24 motor vehicle within this state while having an alcohol concentration  
25 of 0.08 or more within two hours after driving; and (iii) not refusing  
26 to submit to a test of his or her breath or blood to determine alcohol  
27 concentration upon request of a law enforcement officer who has  
28 reasonable grounds to believe the person was driving or was in actual  
29 physical control of a motor vehicle within this state while under the  
30 influence of intoxicating liquor. The court may impose conditions of  
31 probation that include nonrepetition, installation of an ignition  
32 interlock or other biological or technical device on the probationer's  
33 motor vehicle, alcohol or drug treatment, supervised probation, or  
34 other conditions that may be appropriate. The sentence may be imposed  
35 in whole or in part upon violation of a condition of probation during  
36 the suspension period.

37 (b) For each violation of mandatory conditions of probation under  
38 (a)(i) and (ii) or (a)(i) and (iii) of this subsection, the court shall

1 order the convicted person to be confined for thirty days, which shall  
2 not be suspended or deferred.

3 (c) For each incident involving a violation of a mandatory  
4 condition of probation imposed under this subsection, the license,  
5 permit, or privilege to drive of the person shall be suspended by the  
6 court for thirty days or, if such license, permit, or privilege to  
7 drive already is suspended, revoked, or denied at the time the finding  
8 of probation violation is made, the suspension, revocation, or denial  
9 then in effect shall be extended by thirty days. The court shall  
10 notify the department of any suspension, revocation, or denial or any  
11 extension of a suspension, revocation, or denial imposed under this  
12 subsection.

13 (8) An offender serving a sentence under this section, whether or  
14 not a mandatory minimum term has expired, may be granted an  
15 extraordinary medical placement by the jail administrator subject to  
16 the standards and limitations set forth in RCW 9.94A.150(4).

17 (9) For purposes of this section:

18 (a) "Electronic home monitoring" shall not be considered  
19 confinement as defined in RCW 9.94A.030;

20 (b) A "prior offense" means any of the following:

21 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
22 local ordinance;

23 (ii) A conviction for a violation of RCW 46.61.504 or an  
24 equivalent local ordinance;

25 (iii) A conviction for a violation of RCW 46.61.520 committed  
26 while under the influence of intoxicating liquor or any drug;

27 (iv) A conviction for a violation of RCW 46.61.522 committed while  
28 under the influence of intoxicating liquor or any drug;

29 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
30 9A.36.050 or an equivalent local ordinance, if the conviction is the  
31 result of a charge that was originally filed as a violation of RCW  
32 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
33 46.61.520 or 46.61.522;

34 (vi) An out-of-state conviction for a violation that would have  
35 been a violation of (b)(i), (ii), (iii), (iv), or (v) of this  
36 subsection if committed in this state;

37 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
38 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
39 equivalent local ordinance; or



1 (viii) A deferred prosecution under chapter 10.05 RCW granted in  
2 a prosecution for a violation of RCW 46.61.5249, or an equivalent local  
3 ordinance, if the charge under which the deferred prosecution was  
4 granted was originally filed as a violation of RCW 46.61.502 or  
5 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
6 46.61.522; and

7 (c) "Within seven years" means that the arrest for a prior offense  
8 occurred within seven years of the arrest for the current offense.

9 **Sec. 6.** RCW 69.50.410 and 1975-'76 2nd ex.s. c 103 s 1 are each  
10 amended to read as follows:

11 (1) Except as authorized by this chapter it shall be unlawful for  
12 any person to sell for profit any controlled substance or counterfeit  
13 substance classified in Schedule I, RCW 69.50.204, except leaves and  
14 flowering tops of marihuana.

15 For the purposes of this section only, the following words and  
16 phrases shall have the following meanings:

17 (a) "To sell" means the passing of title and possession of a  
18 controlled substance from the seller to the buyer for a price whether  
19 or not the price is paid immediately or at a future date.

20 (b) "For profit" means the obtaining of anything of value in  
21 exchange for a controlled substance.

22 (c) "Price" means anything of value.

23 (2) Any person convicted of a violation of subsection (1) of this  
24 section shall receive a sentence of not more than five years in a  
25 correctional facility of the department of social and health services  
26 for the first offense. Any person convicted on a second or subsequent  
27 cause, the sale having transpired after prosecution and conviction on  
28 the first cause, of subsection (1) of this section shall receive a  
29 mandatory sentence of five years in a correctional facility of the  
30 department of social and health services and no judge of any court  
31 shall suspend or defer the sentence imposed for the second or  
32 subsequent violation of subsection (1) of this section.

33 (3) Any person convicted of a violation of subsection (1) of this  
34 section by selling heroin shall receive a mandatory sentence of two  
35 years in a correctional facility of the department of social and health  
36 services and no judge of any court shall suspend or defer the sentence  
37 imposed for such violation. Any person convicted on a second or  
38 subsequent sale of heroin, the sale having transpired after prosecution

1 and conviction on the first cause of the sale of heroin shall receive  
2 a mandatory sentence of ten years in a correctional facility of the  
3 department of social and health services and no judge of any court  
4 shall suspend or defer the sentence imposed for this second or  
5 subsequent violation: PROVIDED, That the indeterminate sentence review  
6 board ((of prison terms and paroles)) under RCW 9.95.040 shall not  
7 reduce the minimum term imposed for a violation under this subsection.

8 (4) Whether or not a mandatory minimum term has expired, an  
9 offender serving a sentence under this section may be granted an  
10 extraordinary medical placement when authorized under RCW 9.94A.150(4).

11 (5) In addition to the sentences provided in subsection (2) of  
12 this section, any person convicted of a violation of subsection (1) of  
13 this section shall be fined in an amount calculated to at least  
14 eliminate any and all proceeds or profits directly or indirectly gained  
15 by such person as a result of sales of controlled substances in  
16 violation of the laws of this or other states, or the United States, up  
17 to the amount of five hundred thousand dollars on each count.

18 ((+5)) (6) Any person, addicted to the use of controlled  
19 substances, who voluntarily applies to the department of social and  
20 health services for the purpose of participating in a rehabilitation  
21 program approved by the department for addicts of controlled substances  
22 shall be immune from prosecution for subsection (1) offenses unless a  
23 filing of an information or indictment against such person for a  
24 violation of subsection (1) of this section is made prior to his or her  
25 voluntary participation in the program of the department of social and  
26 health services. All applications for immunity under this section  
27 shall be sent to the department of social and health services in  
28 Olympia. It shall be the duty of the department to stamp each  
29 application received pursuant to this section with the date and time of  
30 receipt.

31 This section shall not apply to offenses defined and punishable  
32 under the provisions of RCW 69.50.401 ((as now or hereafter amended)).

33 NEW SECTION. Sec. 7. A new section is added to chapter 72.09 RCW  
34 to read as follows:

35 The secretary shall report annually to the legislature on the  
36 number of offenders considered for an extraordinary medical placement,  
37 the number of offenders who were granted such a placement, the number  
38 of offenders who were denied such a placement, the length of time

1 between initial consideration and the placement decision for each  
2 offender who was granted an extraordinary medical placement, the number  
3 of offenders granted an extraordinary medical placement who were later  
4 returned to total confinement, and the cost savings realized by the  
5 state.

Passed the House April 19, 1999.

Passed the Senate April 6, 1999.

Approved by the Governor May 14, 1999.

Filed in Office of Secretary of State May 14, 1999.