
HOUSE BILL 2160

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By Representatives Carrell, O'Brien, Mastin, Conway, Armstrong, Benson, Alexander, Miloscia, Ericksen and Talcott

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1 AN ACT Relating to establishing a risk assessment office for
2 inmates released on community custody; amending RCW 9.94A.500 and
3 9.94A.715; reenacting and amending RCW 9.94A.030; and adding a new
4 chapter to Title 43 RCW.

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

6 NEW SECTION. **Sec. 1.** (1) There is hereby created an office of
7 risk assessment for community safety within the office of the governor
8 for the purpose of assessing inmates released from prison into one of
9 four risk levels for community supervision.

10 (2) The office shall:

11 (a) For offenders placed on community custody for crimes committed
12 on or after January 1, 2004, assess the offender's risk of reoffending
13 by performing a risk assessment test on each offender prior to being
14 released on community custody status;

15 (b) Classify each offender in one of at least four categories
16 between highest and lowest risk;

17 (c) Verify any and all answers submitted directly by the offender
18 as part of the risk assessment test;

1 (d) By December 31, 2004, and annually thereafter, prepare a report
2 to the governor and legislature that shows the recidivism rates of
3 offenders that were released onto community custody status and
4 classified in one of the four risk level categories.

5 (3) The office may establish and modify conditions of community
6 custody, in addition to those imposed by the court, based upon the
7 offender's risk to community safety.

8 (4) The "risk assessment" means the application of an objective
9 instrument or test supported by research and adopted by the office of
10 risk assessment, for the purpose of assessing an offender's risk of
11 reoffense, taking into consideration the nature of the harm done by the
12 offender, place and circumstances of the offender related to risk, the
13 offender's relationship to any victim, and any information provided to
14 the department by victims. The results of a risk assessment shall not
15 be based on unconfirmed or unconfirmable allegations. All answers and
16 results must be verified by the office of risk assessment prior to
17 classifying the offender into one of four types of risk.

18 (5) By no later than September 30, 2003, the office of risk
19 management must propose a risk assessment test and show how the results
20 and scores will be used for the purpose of assessing each offender's
21 behavior prior to such offender being released on community custody
22 status. The legislature may, by enactment of a legislative bill, adopt
23 or modify the risk assessment test and classification criteria as
24 proposed by the office of risk assessment.

25 NEW SECTION. **Sec. 2.** Except as specifically prohibited by other
26 law, and for purposes of assessing offender's risk of reoffending by
27 performing a risk assessment test or for determining or modifying the
28 offender's risk level classification, the office of risk assessment:

29 (1) Shall have access to all relevant records and information in
30 the possession of public agencies relating to offenders, including
31 police reports, prosecutors' statements of probable cause, complete
32 criminal history information, psychological evaluations and psychiatric
33 hospital reports, sex offender treatment program reports, and juvenile
34 records; and

35 (2) May require periodic reports from providers of treatment or
36 other services required by the court or the department of corrections,

1 including progress reports, evaluations and assessments, and reports of
2 violations of conditions imposed by the court or the department of
3 corrections.

4 **Sec. 3.** RCW 9.94A.030 and 2002 c 175 s 5 and 2002 c 107 s 2 are
5 each reenacted and amended to read as follows:

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

8 (1) "Board" means the indeterminate sentence review board created
9 under chapter 9.95 RCW.

10 (2) "Collect," or any derivative thereof, "collect and remit," or
11 "collect and deliver," when used with reference to the department,
12 means that the department, either directly or through a collection
13 agreement authorized by RCW 9.94A.760, is responsible for monitoring
14 and enforcing the offender's sentence with regard to the legal
15 financial obligation, receiving payment thereof from the offender, and,
16 consistent with current law, delivering daily the entire payment to the
17 superior court clerk without depositing it in a departmental account.

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

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

23 (5) "Community custody" means that portion of an offender's
24 sentence of confinement in lieu of earned release time or imposed
25 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,
26 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the
27 community subject to controls placed on the offender's movement and
28 activities by the department. For offenders placed on community
29 custody for crimes committed on or after July 1, 2000, but no later
30 than July 1, 2003, the department shall assess the offender's risk of
31 reoffense and may establish and modify conditions of community custody,
32 in addition to those imposed by the court, based upon the risk to
33 community safety. For offenders placed on community custody for crimes
34 committed on or after July 1, 2003, the office of risk assessment as
35 established under section 1 of this act, shall assess the offender's
36 risk of reoffense and may establish and modify conditions of community

1 custody, in addition to those imposed by the court, based upon the risk
2 to community safety.

3 (6) "Community custody range" means the minimum and maximum period
4 of community custody included as part of a sentence under RCW
5 9.94A.715, as established by the commission or the legislature under
6 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

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

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

17 (9) "Community supervision" means a period of time during which a
18 convicted offender is subject to crime-related prohibitions and other
19 sentence conditions imposed by a court pursuant to this chapter or RCW
20 16.52.200(6) or 46.61.524. Where the court finds that any offender has
21 a chemical dependency that has contributed to his or her offense, the
22 conditions of supervision may, subject to available resources, include
23 treatment. For purposes of the interstate compact for out-of-state
24 supervision of parolees and probationers, RCW 9.95.270, community
25 supervision is the functional equivalent of probation and should be
26 considered the same as probation by other states.

27 (10) "Confinement" means total or partial confinement.

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

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

1 (13) "Criminal history" means the list of a defendant's prior
2 convictions and juvenile adjudications, whether in this state, in
3 federal court, or elsewhere.

4 (a) The history shall include, where known, for each conviction (i)
5 whether the defendant has been placed on probation and the length and
6 terms thereof; and (ii) whether the defendant has been incarcerated and
7 the length of incarceration.

8 (b) A conviction may be removed from a defendant's criminal history
9 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or
10 a similar out-of-state statute, or if the conviction has been vacated
11 pursuant to a governor's pardon.

12 (c) The determination of a defendant's criminal history is distinct
13 from the determination of an offender score. A prior conviction that
14 was not included in an offender score calculated pursuant to a former
15 version of the sentencing reform act remains part of the defendant's
16 criminal history.

17 (14) "Day fine" means a fine imposed by the sentencing court that
18 equals the difference between the offender's net daily income and the
19 reasonable obligations that the offender has for the support of the
20 offender and any dependents.

21 (15) "Day reporting" means a program of enhanced supervision
22 designed to monitor the offender's daily activities and compliance with
23 sentence conditions, and in which the offender is required to report
24 daily to a specific location designated by the department or the
25 sentencing court.

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

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

35 (18) "Disposable earnings" means that part of the earnings of an
36 offender remaining after the deduction from those earnings of any
37 amount required by law to be withheld. For the purposes of this
38 definition, "earnings" means compensation paid or payable for personal

1 services, whether denominated as wages, salary, commission, bonuses, or
2 otherwise, and, notwithstanding any other provision of law making the
3 payments exempt from garnishment, attachment, or other process to
4 satisfy a court-ordered legal financial obligation, specifically
5 includes periodic payments pursuant to pension or retirement programs,
6 or insurance policies of any type, but does not include payments made
7 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
8 or Title 74 RCW.

9 (19) "Drug offender sentencing alternative" is a sentencing option
10 available to persons convicted of a felony offense other than a violent
11 offense or a sex offense and who are eligible for the option under RCW
12 9.94A.660.

13 (20) "Drug offense" means:

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

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

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

23 (21) "Earned release" means earned release from confinement as
24 provided in RCW 9.94A.728.

25 (22) "Escape" means:

26 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the
27 first degree (RCW 9A.76.110), escape in the second degree (RCW
28 9A.76.120), willful failure to return from furlough (RCW 72.66.060),
29 willful failure to return from work release (RCW 72.65.070), or willful
30 failure to be available for supervision by the department while in
31 community custody (RCW 72.09.310); or

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

35 (23) "Felony traffic offense" means:

36 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
37 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
38 and-run injury-accident (RCW 46.52.020(4)); or

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

4 (24) "Fine" means a specific sum of money ordered by the sentencing
5 court to be paid by the offender to the court over a specific period of
6 time.

7 (25) "First-time offender" means any person who has no prior
8 convictions for a felony and is eligible for the first-time offender
9 waiver under RCW 9.94A.650.

10 (26) "Home detention" means a program of partial confinement
11 available to offenders wherein the offender is confined in a private
12 residence subject to electronic surveillance.

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

27 (28) "Most serious offense" means any of the following felonies or
28 a felony attempt to commit any of the following felonies:

29 (a) Any felony defined under any law as a class A felony or
30 criminal solicitation of or criminal conspiracy to commit a class A
31 felony;

32 (b) Assault in the second degree;

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

34 (d) Child molestation in the second degree;

35 (e) Controlled substance homicide;

36 (f) Extortion in the first degree;

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

38 (h) Indecent liberties;

- 1 (i) Kidnapping in the second degree;
- 2 (j) Leading organized crime;
- 3 (k) Manslaughter in the first degree;
- 4 (l) Manslaughter in the second degree;
- 5 (m) Promoting prostitution in the first degree;
- 6 (n) Rape in the third degree;
- 7 (o) Robbery in the second degree;
- 8 (p) Sexual exploitation;
- 9 (q) Vehicular assault, when caused by the operation or driving of
10 a vehicle by a person while under the influence of intoxicating liquor
11 or any drug or by the operation or driving of a vehicle in a reckless
12 manner;
- 13 (r) Vehicular homicide, when proximately caused by the driving of
14 any vehicle by any person while under the influence of intoxicating
15 liquor or any drug as defined by RCW 46.61.502, or by the operation of
16 any vehicle in a reckless manner;
- 17 (s) Any other class B felony offense with a finding of sexual
18 motivation;
- 19 (t) Any other felony with a deadly weapon verdict under RCW
20 9.94A.602;
- 21 (u) Any felony offense in effect at any time prior to December 2,
22 1993, that is comparable to a most serious offense under this
23 subsection, or any federal or out-of-state conviction for an offense
24 that under the laws of this state would be a felony classified as a
25 most serious offense under this subsection;
- 26 (v)(i) A prior conviction for indecent liberties under RCW
27 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.
28 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as
29 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)
30 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- 31 (ii) A prior conviction for indecent liberties under RCW
32 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,
33 if: (A) The crime was committed against a child under the age of
34 fourteen; or (B) the relationship between the victim and perpetrator is
35 included in the definition of indecent liberties under RCW
36 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,
37 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,
38 through July 27, 1997.

1 (29) "Nonviolent offense" means an offense which is not a violent
2 offense.

3 (30) "Offender" means a person who has committed a felony
4 established by state law and is eighteen years of age or older or is
5 less than eighteen years of age but whose case is under superior court
6 jurisdiction under RCW 13.04.030 or has been transferred by the
7 appropriate juvenile court to a criminal court pursuant to RCW
8 13.40.110. Throughout this chapter, the terms "offender" and
9 "defendant" are used interchangeably.

10 (31) "Partial confinement" means confinement for no more than one
11 year in a facility or institution operated or utilized under contract
12 by the state or any other unit of government, or, if home detention or
13 work crew has been ordered by the court, in an approved residence, for
14 a substantial portion of each day with the balance of the day spent in
15 the community. Partial confinement includes work release, home
16 detention, work crew, and a combination of work crew and home
17 detention.

18 (32) "Persistent offender" is an offender who:

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

21 (ii) Has, before the commission of the offense under (a) of this
22 subsection, been convicted as an offender on at least two separate
23 occasions, whether in this state or elsewhere, of felonies that under
24 the laws of this state would be considered most serious offenses and
25 would be included in the offender score under RCW 9.94A.525; provided
26 that of the two or more previous convictions, at least one conviction
27 must have occurred before the commission of any of the other most
28 serious offenses for which the offender was previously convicted; or

29 (b)(i) Has been convicted of: (A) Rape in the first degree, rape
30 of a child in the first degree, child molestation in the first degree,
31 rape in the second degree, rape of a child in the second degree, or
32 indecent liberties by forcible compulsion; (B) any of the following
33 offenses with a finding of sexual motivation: Murder in the first
34 degree, murder in the second degree, homicide by abuse, kidnapping in
35 the first degree, kidnapping in the second degree, assault in the first
36 degree, assault in the second degree, assault of a child in the first
37 degree, or burglary in the first degree; or (C) an attempt to commit
38 any crime listed in this subsection (32)(b)(i); and

1 (ii) Has, before the commission of the offense under (b)(i) of this
2 subsection, been convicted as an offender on at least one occasion,
3 whether in this state or elsewhere, of an offense listed in (b)(i) of
4 this subsection or any federal or out-of-state offense or offense under
5 prior Washington law that is comparable to the offenses listed in
6 (b)(i) of this subsection. A conviction for rape of a child in the
7 first degree constitutes a conviction under (b)(i) of this subsection
8 only when the offender was sixteen years of age or older when the
9 offender committed the offense. A conviction for rape of a child in
10 the second degree constitutes a conviction under (b)(i) of this
11 subsection only when the offender was eighteen years of age or older
12 when the offender committed the offense.

13 (33) "Postrelease supervision" is that portion of an offender's
14 community placement that is not community custody.

15 (34) "Restitution" means a specific sum of money ordered by the
16 sentencing court to be paid by the offender to the court over a
17 specified period of time as payment of damages. The sum may include
18 both public and private costs.

19 (35) "Risk assessment" means the application of an objective
20 instrument supported by research and adopted by the department, and the
21 office of risk assessment, for the purpose of assessing an offender's
22 risk of reoffense, taking into consideration the nature of the harm
23 done by the offender, place and circumstances of the offender related
24 to risk, the offender's relationship to any victim, and any information
25 provided to the department by victims. The results of a risk
26 assessment shall not be based on unconfirmed or unconfirmable
27 allegations.

28 (36) "Serious traffic offense" means:

29 (a) Driving while under the influence of intoxicating liquor or any
30 drug (RCW 46.61.502), actual physical control while under the influence
31 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
32 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
33 or

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

37 (37) "Serious violent offense" is a subcategory of violent offense
38 and means:

1 (a)(i) Murder in the first degree;
2 (ii) Homicide by abuse;
3 (iii) Murder in the second degree;
4 (iv) Manslaughter in the first degree;
5 (v) Assault in the first degree;
6 (vi) Kidnapping in the first degree;
7 (vii) Rape in the first degree;
8 (viii) Assault of a child in the first degree; or
9 (ix) An attempt, criminal solicitation, or criminal conspiracy to
10 commit one of these felonies; 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 serious
13 violent offense under (a) of this subsection.

14 (38) "Sex offense" means:

15 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than
16 RCW 9A.44.130(11);

17 (ii) A violation of RCW 9A.64.020;

18 (iii) A felony that is a violation of chapter 9.68A RCW other than
19 RCW 9.68A.070 or 9.68A.080; or

20 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,
21 criminal solicitation, or criminal conspiracy to commit such crimes;

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

25 (c) A felony with a finding of sexual motivation under RCW
26 9.94A.835 or 13.40.135; or

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

30 (39) "Sexual motivation" means that one of the purposes for which
31 the defendant committed the crime was for the purpose of his or her
32 sexual gratification.

33 (40) "Standard sentence range" means the sentencing court's
34 discretionary range in imposing a nonappealable sentence.

35 (41) "Statutory maximum sentence" means the maximum length of time
36 for which an offender may be confined as punishment for a crime as
37 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the
38 crime, or other statute defining the maximum penalty for a crime.

1 (42) "Total confinement" means confinement inside the physical
2 boundaries of a facility or institution operated or utilized under
3 contract by the state or any other unit of government for twenty-four
4 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

5 (43) "Transition training" means written and verbal instructions
6 and assistance provided by the department to the offender during the
7 two weeks prior to the offender's successful completion of the work
8 ethic camp program. The transition training shall include instructions
9 in the offender's requirements and obligations during the offender's
10 period of community custody.

11 (44) "Victim" means any person who has sustained emotional,
12 psychological, physical, or financial injury to person or property as
13 a direct result of the crime charged.

14 (45) "Violent offense" means:

15 (a) Any of the following felonies:

16 (i) Any felony defined under any law as a class A felony or an
17 attempt to commit a class A felony;

18 (ii) Criminal solicitation of or criminal conspiracy to commit a
19 class A felony;

20 (iii) Manslaughter in the first degree;

21 (iv) Manslaughter in the second degree;

22 (v) Indecent liberties if committed by forcible compulsion;

23 (vi) Kidnapping in the second degree;

24 (vii) Arson in the second degree;

25 (viii) Assault in the second degree;

26 (ix) Assault of a child in the second degree;

27 (x) Extortion in the first degree;

28 (xi) Robbery in the second degree;

29 (xii) Drive-by shooting;

30 (xiii) Vehicular assault, when caused by the operation or driving
31 of a vehicle by a person while under the influence of intoxicating
32 liquor or any drug or by the operation or driving of a vehicle in a
33 reckless manner; and

34 (xiv) Vehicular homicide, when proximately caused by the driving of
35 any vehicle by any person while under the influence of intoxicating
36 liquor or any drug as defined by RCW 46.61.502, or by the operation of
37 any vehicle in a reckless manner;

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

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

7 (46) "Work crew" means a program of partial confinement consisting
8 of civic improvement tasks for the benefit of the community that
9 complies with RCW 9.94A.725.

10 (47) "Work ethic camp" means an alternative incarceration program
11 as provided in RCW 9.94A.690 designed to reduce recidivism and lower
12 the cost of corrections by requiring offenders to complete a
13 comprehensive array of real-world job and vocational experiences,
14 character-building work ethics training, life management skills
15 development, substance abuse rehabilitation, counseling, literacy
16 training, and basic adult education.

17 (48) "Work release" means a program of partial confinement
18 available to offenders who are employed or engaged as a student in a
19 regular course of study at school.

20 **Sec. 4.** RCW 9.94A.500 and 2000 c 75 s 8 are each amended to read
21 as follows:

22 (1) Before imposing a sentence upon a defendant, the court shall
23 conduct a sentencing hearing. The sentencing hearing shall be held
24 within forty court days following conviction. Upon the motion of
25 either party for good cause shown, or on its own motion, the court may
26 extend the time period for conducting the sentencing hearing.

27 Except in cases where the defendant shall be sentenced to a term of
28 total confinement for life without the possibility of release or, when
29 authorized by RCW 10.95.030 for the crime of aggravated murder in the
30 first degree, sentenced to death, the court may order the
31 ((department)) office of risk assessment to complete a risk assessment
32 report. If available before sentencing, the report shall be provided
33 to the court.

34 Unless specifically waived by the court, the court shall order the
35 department to complete a chemical dependency screening report before
36 imposing a sentence upon a defendant who has been convicted of a
37 violation of the uniform controlled substances act under chapter 69.50

1 RCW or a criminal solicitation to commit such a violation under chapter
2 9A.28 RCW where the court finds that the offender has a chemical
3 dependency that has contributed to his or her offense. In addition,
4 the court shall, at the time of plea or conviction, order the
5 department to complete a presentence report before imposing a sentence
6 upon a defendant who has been convicted of a felony sexual offense.
7 The department of corrections shall give priority to presentence
8 investigations for sexual offenders. If the court determines that the
9 defendant may be a mentally ill person as defined in RCW 71.24.025,
10 although the defendant has not established that at the time of the
11 crime he or she lacked the capacity to commit the crime, was
12 incompetent to commit the crime, or was insane at the time of the
13 crime, the court shall order the department to complete a presentence
14 report before imposing a sentence.

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

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

33 (2) To prevent wrongful disclosure of information related to mental
34 health services, as defined in RCW 71.05.445 and 71.34.225, a court may
35 take only those steps necessary during a sentencing hearing or any
36 hearing in which the department presents information related to mental
37 health services to the court. The steps may be taken on motion of the
38 defendant, the prosecuting attorney, or on the court's own motion. The

1 court may seal the portion of the record relating to information
2 relating to mental health services, exclude the public from the hearing
3 during presentation or discussion of information relating to mental
4 health services, or grant other relief to achieve the result intended
5 by this subsection, but nothing in this subsection shall be construed
6 to prevent the subsequent release of information related to mental
7 health services as authorized by RCW 71.05.445, 71.34.225, or
8 72.09.585. Any person who otherwise is permitted to attend any hearing
9 pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the
10 hearing solely because the department intends to disclose or discloses
11 information related to mental health services.

12 **Sec. 5.** RCW 9.94A.715 and 2001 2nd sp.s. c 12 s 302 are each
13 amended to read as follows:

14 (1) When a court sentences a person to the custody of the
15 department for a sex offense not sentenced under RCW 9.94A.712, a
16 violent offense, any crime against persons under RCW 9.94A.411(2), or
17 a felony offense under chapter 69.50 or 69.52 RCW, committed on or
18 after July 1, 2000, the court shall in addition to the other terms of
19 the sentence, sentence the offender to community custody for the
20 community custody range established under RCW 9.94A.850 or up to the
21 period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2),
22 whichever is longer. The community custody shall begin: (a) Upon
23 completion of the term of confinement; (b) at such time as the offender
24 is transferred to community custody in lieu of earned release in
25 accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to
26 offenders sentenced under RCW 9.94A.660, upon failure to complete or
27 administrative termination from the special drug offender sentencing
28 alternative program.

29 (2)(a) Unless a condition is waived by the court, the conditions of
30 community custody shall include those provided for in RCW 9.94A.700(4).
31 The conditions may also include those provided for in RCW 9.94A.700(5).
32 The court may also order the offender to participate in rehabilitative
33 programs or otherwise perform affirmative conduct reasonably related to
34 the circumstances of the offense, the offender's risk of reoffending,
35 or the safety of the community, and the department shall enforce such
36 conditions pursuant to subsection (6) of this section.

1 (b) As part of any sentence that includes a term of community
2 custody imposed under this subsection, the court shall also require the
3 offender to comply with any conditions imposed by the department under
4 RCW 9.94A.720. The (~~department~~) office of risk assessment shall
5 assess the offender's risk of reoffense and may establish and modify
6 additional conditions of the offender's community custody based upon
7 the risk to community safety. In addition, the department, in
8 conjunction with the office of risk assessment, may require the
9 offender to participate in rehabilitative programs, or otherwise
10 perform affirmative conduct, and to obey all laws.

11 (c) The department, in conjunction with the office of risk
12 assessment, may not impose conditions that are contrary to those
13 ordered by the court and may not contravene or decrease court imposed
14 conditions. The department, working in conjunction with the office of
15 risk assessment, shall notify the offender in writing of any such
16 conditions or modifications. In setting, modifying, and enforcing
17 conditions of community custody, the office of risk assessment and the
18 department shall be deemed to be performing a quasi-judicial function.

19 (3) If an offender violates conditions imposed by the court or the
20 department pursuant to this section during community custody, the
21 department may transfer the offender to a more restrictive confinement
22 status and impose other available sanctions as provided in RCW
23 9.94A.737 and 9.94A.740.

24 (4) Except for terms of community custody under RCW 9.94A.670, the
25 department, in conjunction with the office of risk assessment, shall
26 discharge the offender from community custody on a date determined by
27 the department, which the department may modify, based on risk and
28 performance of the offender, within the range or at the end of the
29 period of earned release, whichever is later.

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

1 the sentence for the purposes of RCW 9.94A.631 and may be punishable as
2 contempt of court as provided for in RCW 7.21.040. If the court
3 extends a condition beyond the expiration of the term of community
4 custody, the department is not responsible for supervision of the
5 offender's compliance with the condition.

6 (6) Within the funds available for community custody, the
7 department, in conjunction with the office of risk assessment, shall
8 determine conditions and duration of community custody on the basis of
9 risk to community safety, and shall supervise offenders during
10 community custody on the basis of risk to community safety and
11 conditions imposed by the court. The secretary, in conjunction with
12 the office of risk assessment, shall adopt rules to implement the
13 provisions of this subsection.

14 (7) By the close of the next business day after receiving notice of
15 a condition imposed or modified by the department, an offender may
16 request an administrative review under rules adopted by the department.
17 The condition shall remain in effect unless the reviewing officer finds
18 that it is not reasonably related to any of the following: (a) The
19 crime of conviction; (b) the offender's risk of reoffending; or (c) the
20 safety of the community.

21 NEW SECTION. **Sec. 6.** Sections 1 and 2 of this act constitute a
22 new chapter in Title 43 RCW.

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